



Islands Trust

News Release

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ISLANDS TRUST SETTLES COURT COSTS IN KOMAS BLUFF CASE

VICTORIA — The Islands Trust will receive \$92,000 for costs in the final settlements of costs awarded in the Supreme Court and Court of Appeal decisions in favour of the Islands Trust regarding Komas Bluff on Denman Island. A portion of these costs were paid by the Defendant upon settlement, and the remainder will accrue interest until full payment is made.

"We are happy that this long-standing case has finally been settled and that the Islands Trust will be reimbursed for the costs it incurred to support community bylaws," said Sheila Malcolmson, Chair of the Islands Trust Council. "We appreciate the help received from the Union of BC Municipalities to achieve this significant decision, a decision that upholds the right of BC communities to plan around natural hazard areas and establishes consequences for those who disregard adopted bylaws."

"This development permit area was established 20 years ago," said Louise Bell, Local Trustee for Denman Island, "in recognition of the instability of the fine Quadra sand comprising the Bluff and of erosion that occurred earlier due to logging operations along an area of the cliff edge. Expert technical analysis at that time recommended that the tree cover and groundwater regime be left in their natural state to minimize natural erosion. The outcome of this case provides renewed emphasis to this community concerning the role of deep-rooted vegetation in minimizing slumping, runoff and wind erosion."

The Komas Bluff case dates from 2002, when members of the Denman Island community complained that Dean Ellis was removing trees from portions of his property that were within a development permit area established to protect development from hazardous conditions. Investigations by Islands Trust bylaw enforcement officers confirmed the complaints were valid. Ellis was advised by Islands Trust staff about the buffer area and the need to obtain permits before removing trees.

When Ellis continued to remove trees from the development permit area, the Islands Trust filed a legal claim against him in September 2003, seeking an injunction and an order for restoration. The case went to court in January 2005, and the Supreme Court of British Columbia decided the case in favour of the Islands Trust. The decision upheld the ability of local governments in BC to use development permits to protect development from naturally hazardous conditions such as unstable slopes.

Ellis appealed the court decision but his appeal was dismissed in November 2007, again in favour of the Islands Trust, confirming the earlier decision of 2005. Due to the significance of the case for local governments in BC, the Union of BC Municipalities had committed funds in support of the Islands Trust's case in the Court of Appeal.

The courts ruled that the development permit area regulations in the Denman Island Official Community Plan were valid and ordered a mandatory injunction that required Mr. Ellis to remediate the lands affected when he removed trees and dug ditches in violation of the Denman Island bylaw and a related development permit. The decision set a precedent in BC regarding local government's ability to require remedial work when development permit conditions are breached.

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Preserving **island** communities, culture and environment

Bowen, Denman, Hornby, Gabriola, Galiano, Gambier, Lasqueti, Mayne, N. Pender, Salt Spring, Saturna, S. Pender, Thetis

Citing Mr. Ellis' "persistence in violating the legislation" in the face of warnings from the Islands Trust, Supreme Court Justice Groberman also placed a permanent injunction against Ellis that restrains him from cutting trees, clearing, developing, excavating or otherwise altering lands within 50 metres of the Komas Bluff. In a further order the Local Trust Committee was awarded special costs against Mr. Ellis with respect to those aspects of the litigation relating to Mr. Ellis' "deliberate misleading of the court."

The Islands Trust is a federation of independent local governments that represents some 25,000 people living within the Islands Trust Area. The Islands Trust is responsible for preserving and protecting the unique environment of the Islands Trust Area through planning and regulating land use, development management, education, cooperation with other agencies, and land conservation. The area covers the islands and waters between the British Columbia mainland and southern Vancouver Island, including 13 major and more than 450 smaller islands and covering 5200 square kilometres. The Islands Trust is celebrating its 35th anniversary this year.

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