FORM 1 (RULE 3-1 (1))

Further amended pursuant to Rule 6-1(1)(b)(i) and the Order
of the Honourable Mr. Justice Verhoeven pronounced May 5, 2010
Original filed September 16, 2008

NO. S115162
NEW WESTMINSTER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

DANIEL JOHN STONEMAN and
DEBRA MONICA STONEMAN

PLAINTIFFS

AND:

DENMAN ISLAND LOCAL TRUST COMMITTEE, TONY LAW, LOUISE BELL, DAVID MARLOR, THE ISLANDS TRUST, and THE ISLANDS TRUST COUNCIL

DEFENDANTS

FURTHER AMENDED NOTICE OF CIVIL CLAIM

This action has been started by the plaintiffs for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and

b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

a) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and

b) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff(s),

a) if you reside anywhere in Canada, within 21 days after the date on which a copy of the filed notice of civil claim was served on you,

b) if you reside in the United States of America. within 35 days after the date on which a copy of the filed notice of civil claim was served on you,

c) if you reside elsewhere, within 49 days after the date on which a copy of the filed notice of civil claim was served on you, or

d) if the time for response to civil claim has been set by order of the court, within that time.

CLAIM OF THE PLAINTIFF(S)

Part 1: STATEMENT OF FACTS

THE PARTIES AND BACKGROUND

1. The Plaintiff Daniel Stoneman is retired. The Plaintiff Debra Stoneman is a retired office manager. Both Plaintiffs reside at 2600 Swan Road, Denman Island, British Columbia.

2. The Defendant, Denman Island Local Trust Committee (hereinafter referred to as "DILTC'), is a corporation under the provisions of the *Islands Trust Act*, and has an address for delivery of 700 North Road, Gabriola Island, British Columbia, V0R 1X3.

3. The Defendants, Tony Law and Louise Bell, were at all times material to this action, Islands Trust Trustees. Bell was elected Trustee for Denman Island, and Law was the elected Trustee for Hornby Island, and sat as a Trustee for the DILTC. The Defendants Tony Law and Louise Bell (collectively, the "Trustees") have an address for delivery in care of 200 – 1627 Fort Street, Victoria, British Columbia, V8R 1H8.

4. The Defendant, the Islands Trust (hereinafter referred as to "Islands Trust"), is a statutory trust established and continued under the *Islands Trust Act*, R.S.B.C. 1996, c. 329. The Islands Trust has an address for delivery of 200 – 1627 Fort Street, Victoria, British Columbia, V8R 1H8.

5. The Defendant, David Marlor (hereinafter referred to as "Marlor") is a planner with the Islands Trust and was at all times material to this action the planner responsible for the decisions that were made with respect to the Plaintiffs' property. He was, at all material times, the agent, servant or employee of the Islands Trust. He has an address for delivery in care of 200 – 1627 Fort Street, Victoria, British Columbia, V8R 1H8.

6. The Defendant, The Islands Trust Council (hereinafter referred to as the "Trust Council") is a corporation under the provisions of the *Islands Trust Act*. The Trust Council has an address for delivery in care of 200 – 1627 Fort Street, Victoria, British Columbia, V8R 1H8. Under the *Islands Trust Act*, s. 4. and Part 2, the Trust Council establishes policies and substantially carries out the business of the Islands Trust.

~~7.~~ In July 2004, the Plaintiffs purchased property at 2600 Swan Road, Denman Island. It was and is 23 acres. At the time of purchase, the property had two Development Permits registered on title. The First Permit allowed clearing of the land for the purposes of farming up to 50 meters from Komas Bluff. The Second Permit subdivided the Plaintiffs' property from the parent parcel and allowed construction. Pursuant to s. 928 of the *Local Government Act* these permits are binding on the DILTC and the Plaintiffs.

8. At the time the property was purchased, the DILTC was embroiled in litigation (the "Ellis Litigation") with Dean Ellis, the vendor of the Plaintiffs' property, concerning the Plaintiffs' property, and another parcel of land.

FACTS PERTAINING TO MISFEASANCE OF PUBLIC OFFICE AND BAD FAITH

9. All of the Defendants, at all material times and in respect of all acts and omissions described herein, held and were acting in positions as public officers.

10. All of the decisions and refusals described in this Claim were in law those of the DILTC. The Islands Trust and Trust Council. Islands Trust and Trust Council are vicariously liable for the DILTC by virtue of the statutory provision cited under Part 3 herein.

11. The personal defendants and each of them were the individuals who caused the DILTC to make all decisions, refusals, acts and omissions described in this claim. The defendants Bell and Law did so in their position as Trustees of the DILTC, and the defendant Marlor did so in his position as planner for the Islands Trust.

12. The legal authority of the DILTC in passing bylaws, as well as the legal authority of all the Defendants in administering and enforcing bylaws, is confined to the powers and objects granted to it by the *Islands Trust Act* and the *Local Government Act*. The DILTC's authority to pass bylaws designating areas ("Development Permit Areas" or "DPAs") and to enforce and administer its DPA, only for the specific purposes authorized by the *Local Government Act* s. 919.1, namely:

> "...a community plan may designate areas for one or more of the following:
> (a) protection of the natural environment, its ecosystems and biological diversity;
> (b) protection of development from hazardous conditions"

13. Part of Komas Bluff was designated in bylaws as a Development Permit Area based on only (b), a "hazardous condition", that being erosive sands identified on a limited portion of Komas Bluff in a 1989 engineering report (the "Holden Report"), an area approximately 2.5 kilometers north of the Plaintiffs' land.

14. In 1999, Komas Bluff bylaws were expanded to restrict tree cutting, on the basis of a "Silva report" ecosystem-based assessment which identified steep slopes as "sensitive" areas on Komas Bluff and the "Hopwood report" on forest management. At all material times the Defendants knew that the amendments were for the purpose of restricting tree cutting to protect forest cover, beyond the legal authority of the DILTC and in conflict with ALR and Ministry of Environment regulation which excepts ALR land from tree cutting regulation.

15. Despite the fact the 1999 amendments were based upon reports dealing with matters other than hazardous conditions, the 1999 amendments by DILTC establishing "Development

Permit Area No. 1 Komas Bluff" were declared in the bylaws to be for "protection of development from hazardous conditions".

16. The collection of bylaws establishing the said Development Permit Area were declared invalid by the British Columbia Supreme Court in 2000 as being bylaws passed for the purpose of tree cutting regulation rather than "protection of development from hazardous conditions", and that the British Columbia Court of Appeal agreed that one of the bylaws was invalid, but remitted the remainder to the trial court for further consideration.

17. The Defendants nevertheless continued to use the impugned bylaws as a means of enforcing an anti-development political agenda without having the validity of the bylaws further considered as directed by the Court of Appeal.

18. Despite the doubtful validity of the bylaws, the Defendants expanded their application to the Plaintiffs after the Plaintiffs purchased their property, in bylaw 164, by removing an exemption for development permits applying to the Plaintiffs' property and then applied the bylaw arbitrarily, unreasonably and retroactively to include development permit requirements for the Plaintiffs for the improper purpose of preventing legal development.

19. As a consequence of their knowledge of the circumstances, history and court challenge regarding the bylaws, the Defendants knew at all material times that:

    a) the bylaw could not lawfully be applied or administered for any objective other than "protection of development from hazardous conditions", and in particular, that it was unlawful to enforce and administer the bylaw in pursuit of other objectives such as the regulation of tree cutting, aesthetics, viewscapes, preservation of status-quo or to set a political example;

    b) as public officials, they are obligated to exercise their authority reasonably and in good faith and not arbitrarily or for improper purpose, both at common law and pursuant to ss. 58 and 59 of the *Administrative Tribunals Act*;

c) the Plaintiffs' property is located entirely within the Agricultural Land Reserve, such that further legal restrictions on the Defendants' authority apply, arising from the protected farming activities under the *Farm Practises Protection (Right to Farm) Act* and the paramountcy of the *Agricultural Land Commission Act*;

d) the Plaintiffs' land was never identified as consisting of erosive soil in the Holden Report, which related to an area approximately 2.5 kilometers north of the Plaintiffs' land;

e) none of the Plaintiffs' land, save for the actual vertical drop from the bluff edge to sea level, has ever been identified as "steep slopes" in the Silva Report;

f) on lands along Komas Bluff generally and on the Plaintiffs' land in particular, the boundaries of the Development Permit Area significantly exceeded the areas identified as posing "hazardous conditions";

g) on the Plaintiffs' land, the DPA boundaries were not drawn in accordance with the hazards identified in the Holden or Silva reports, and vastly exceed any area identified as posing hazardous conditions for the entire width of the bluff and back from the bluff approximately 120 meters, all of which consists of flat farmland and not steep slopes, and had never been identified as erosive sand, but is in fact as stable glacial till.

20. Notwithstanding the Defendants' knowledge described above, the Defendants and each of them have, deliberately and unlawfully:

a) refused to issue, or have caused the DILTC to refuse or failed to approve two applications for Siting and Use Permits by the Plaintiffs, despite the knowledge that doing so was not in furtherance of the only lawful object of such decision, namely "protection of development from hazardous conditions";

b) enforced, or caused the DILTC to consistently enforce, an internal arbitrary policy of requiring land owners along Komas Bluff, including the Plaintiffs, to agree not

to cut trees or otherwise alter their land within 50 meters of the bluff, despite the knowledge that doing so was not in furtherance of the only lawful object of the bylaw, namely "protection of development from hazardous conditions";

c) taken the position, or caused the DILTC to take the position, that numerous farming activities protected under the *Right to Farm Act* require the Plaintiffs to seek Development Permits, and the Defendants have failed or refused to amend the Development Permit Area boundaries or alter their approach described above to the application and administration of the said Development Permit requirements to ensure the land may be used as agricultural land protected by the *Agricultural Land Commission Act.*

21. The Defendants' actions in refusing Building and Siting permits to the Plaintiffs; in enforcing an arbitrary 50 meter preservation zone; in placing the above-described restrictions upon farming activities on the Plaintiffs land; in failing to have the bylaws reviewed as directed by the BC Court of Appeal; and in continuing and expanding the application of the impugned bylaws to the Plaintiffs' land, were all knowingly pursued by the Defendants for the improper purposes of regulation of tree cutting, aesthetics, viewscapes, preservation of status-quo and to set a political example, and knowingly in violation of laws protecting the Plaintiffs' right to farm their ALR land.

22. The misconduct of the Defendants herein was wilful and in bad faith and was specifically intended to injure the Plaintiffs or alternatively the Defendants knew their conduct was unlawful and likely to cause damage to the Plaintiffs.

23. The misfeasance of public office of the Defendants described herein caused damages to the Plaintiffs as set forth under the subtitle "FACTS PERTAINING TO DAMAGES" below.

FACTS PERTAINING TO NEGLIGENCE

24. The negligence alleged herein is alleged only against the DILTC, Islands Trust and Trust Council (the "Negligence Defendants"), arising from their own acts or omissions or their

vicarious liability for the negligent acts or omissions of their employees and officers including the individual defendants.

25. The Negligence Defendants owed a duty of care to the Plaintiffs arising from the reasonable foreseeability of damages that the Negligence Defendants' acts and omissions described herein could and did cause to the Plaintiffs; or alternatively arising from the special relationship created by the position of dependency and reliance of the Plaintiffs upon the Negligence Defendants in respect of the Plaintiffs' use of their land.

26. The Negligence Defendants negligently breached their said duty of care or caused the DILTC to breach its duty of care to the Plaintiffs. The particulars of the negligence include:

a) Failing to adequately consider whether there was evidence of unstable quadra sands or any hazardous conditions on any of the Plaintiffs' property justifying refusal of permits;

b) Failing to adequately consider geotechnical findings that the Plaintiffs' land is composed of stable glacial till with minimum erosion rates;

c) Failing to maintain a previous general and successful policy that land along the bluff perimeter be kept as open spaces and vegetation be managed to a low or medium height to minimize wind throw, erosion and landslide, without the requirement of development permits to do so;

d) Failing to adequately consider or disclose to the Plaintiffs, the Courts and Provincial Ministries accurate hazardous area boundary information as to exactly which lands had been justified as hazardous;

e) Failing to take steps to clarify the validity of the Komas Bluff development permit bylaws despite a court ruling casting doubt on the validity of the said bylaw, and a direction of the British Columbia Court of Appeal to have the said bylaws reviewed by the British Columbia Supreme Court;

f) Failing to adequately consider or comply with the resolutions #117/99 and #777/98 of the Agricultural Land Commission requiring that the bylaw only apply to slopes of 60% or greater;

g) Failure to adequately consider or comply with the directions of the Ministry of Agriculture and Lands as well as the Land Commission to amend Komas Bluff DPA boundaries to be consistent with the quadra sands hazardous area and application consistent with provincial regulations.

27. The Negligence Defendants' negligent breach of their duty of care caused damages to the Plaintiffs, namely the damages as enumerated under the subtitle "FACTS PERTAINING TO DAMAGES" below.

FACTS PERTAINING TO DAMAGES

28. The Defendants' acts and omissions set forth herein have caused damages to the Plaintiffs, specifically:

a) Prevention of the Plaintiffs' zoned use of their property by requiring them to leave untouched all remaining trees and documented hazards within 50 meters of the bluff thereby preventing the Plaintiffs' agricultural use of this stable portion of their property, thereby decreasing its economic value as farmland and putting their property at higher risk of loss through erosion and landslide;

b) The Defendants' unlawful and arbitrary enforcement of a 50 meter preservation zone prevented the Plaintiffs from building their residence in the most desirable and preferred location closer to the bluff with a south-eastern view featuring dynamic views of changing tide lines down Lambert Channel;

~~e)~~ The Defendants' failure to honour the first and second development permits pursuant to s. 928 of the *Local Government Act*, caused unnecessary lengthy delay, impeded the Plaintiffs' ability to finance construction, resulted in the loss of a building contract, additional and increased construction costs, damage to and

loss of land from retained water, erosion and landslide and also caused significant changes to the Plaintiffs' retirement plans, including the sale of their White Rock home;

d) The Defendants continued refusal of a Siting and Use permit results in the house being of doubtful permit status which may negatively impact its future sale value;

e) The Defendants' insistence upon Development Permit applications for any activity which "alters" the land, including all activities protected under the *Farm Practices Protection (Right to Farm) Act*, effectively prevents the Plaintiffs from farming anywhere within the Komas Bluff DPA given the repetitive costs of permits, supporting geotechnical reports and inherent processing delays thus decreasing the economic market value of the Plaintiffs' property as farmland;

f) Divested the Plaintiffs of their common law land and riparian rights, including a right to protect their lands from erosion, access to the ocean, the preservation of accreted soil material and the quality and quantity of surface water flow.

Part 2: RELIEF SOUGHT

1. Damages;

2. Special damages;

3. Punitive, aggravated and exemplary damages;

4. Special costs;

5. An Order requiring the DILTC to issue a Siting and Use Permit for the buildings on the Plaintiffs' property that have been constructed;

6. A declaration that the Plaintiffs' property is not unstable terrain and thus is not subject to Komas Bluff development permit requirements; and

7. Such further and other relief as this honourable Court deems just.

Part 3: LEGAL BASIS

1. The Defendants and each of them, upon the facts enumerated in this Claim, are liable for the tort of misfeasance of public office, as they are public officers who have knowingly acted in a manner outside their authority, and as such have engaged in deliberate and unlawful conduct in their capacities as public officers, wilfully, dishonestly and in bad faith, with a specific intent to injure the Plaintiffs or alternatively with knowledge that their conduct was unlawful and likely to harm the Plaintiffs, which conduct caused loss and damage to the Plaintiffs.

2. The Defendants and each of them, upon the facts enumerated in this Claim, owed a duty for care to the Plaintiffs, which was negligently breached, and which caused loss and damage to the Plaintiffs.

3. The Islands Trust and Trust Council are vicariously liable for the actions of the DILTC, and the Trustees, by virtue of sections 4(3) and 11 of the *Islands Trust Act.* Section 4(3) requires the Trust Council to review the activities of Local Trust Committees including the DILTC, and section 11 requires the Trust Council to establish procedures for Local Trust Committees including the DILTC.

Plaintiffs' address for service: Owen Bird Law Corporation
P.O. Box 49130
Three Bentall Centre
2900-595 Burrard Street
Vancouver, BC V7X 1J5
(Attention: Daniel W. Burnett)

Fax number address for service (if any): 604-632-4433

E-mail address for service (if any): dburnett@owenbird.com

Place of trial: New Westminster, British Columbia

The address of the registry is: New Westminster Law Courts,
651 Carnarvon Street
New Westminster, BC V3M 1C9

Date: July 16, 2010

Signature of lawyer for plaintiffs
Daniel W. Burnett

Rule 7-1 (1) of the Supreme Court Civil Rules states:

(1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,

a) prepare a list of documents in Form 22 that lists

i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and

ii) all other documents to which the party intends to refer at trial, and

b) serve the list on all parties of record.

APPENDIX

Part 1: CONCISE SUMMARY OF NATURE OF CLAIM:

Misfeasance of public office and alternatively, negligence.

Part 2: THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

[ ] a motor vehicle accident

[ ] medical malpractice

[X] another cause

A dispute concerning:

[ ] contaminated sites

[ ] construction defects

[ ] real property (real estate)

[ ] personal property

[ ] the provision of goods or services or other general commercial matters

[ ] investment losses

[ ] the lending of money

[ ] an employment relationship

[ ] a will or other issues concerning the probate of an estate

[X] a matter not listed here

Part 3: THIS CLAIM INVOLVES:

[ ] a class action

[ ] maritime law

[ ] aboriginal law

[ ] constitutional law

[ ] conflict of laws

[X] none of the above

[ ] do not know

Part 4:

Islands Trust Act, R.S.B.C. 1996, c. 329

Local Government Act, R.S.B.C. 1996, c. 323

Agricultural Land Commission Act, R.S.B.C. 1996, c. 36