



# Denman Conservancy Association

# NEWSLETTER

P.O. Box 60, Denman Island, B.C. V0R 1T0

November 2004

## DCA legal action against 4064 Investments Ltd.

I would like to take you back, back more than seven years to a meeting at the Coast Westerly Hotel in Courtenay on a sunny afternoon, 30th June 1997. The John Hancock Timber Group had invited representatives of the Denman Forestry Initiative (DFI) and the Forestry Committee of DIRA without revealing the purpose of the meeting. As it turned out, it was not a discuss-and-try-to-agree meeting, but more like that meeting at the Pearly Gates where you find out your fate.

Our hosts were late so we sat around in the foyer wondering if we were being stood up, though the clerk at the desk assured us that a room had been booked. Tension built as we waited over half an hour. Finally the other parties arrived and we crowded into the small meeting room. Those from the Corporations arranged themselves at one end of the table and we sat around the perimeter of the room, backs to the wall as it were.

John Davis (from Hancock) announced that their Denman holdings had been sold that day. Mr. Larkam of Northland Development represented the buyer, although it appeared that he had flipped the property immediately to 4064 Investments Ltd. Mr. Davis also announced that, as a sort of parting gift from John Hancock to the Community, covenants were to be placed on two land areas that had been identified to Hancock as particularly sensitive.

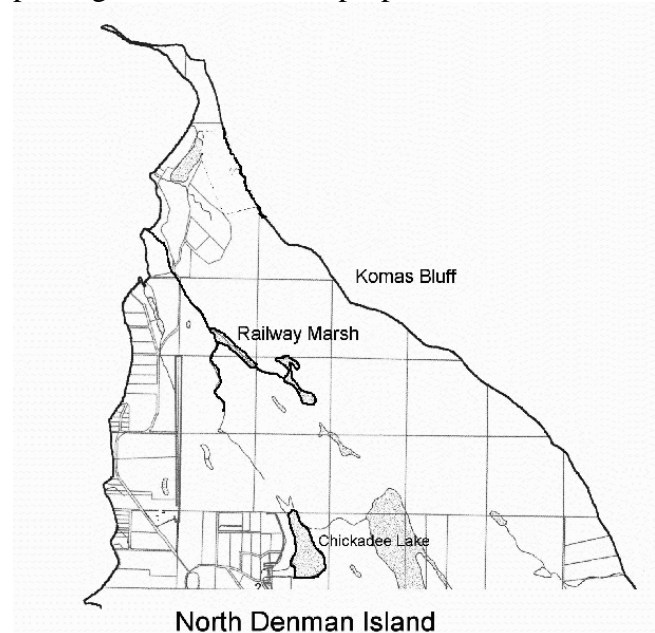
To the invited groups Mr. Davis hand delivered a letter dated June 30, 1997 that said in part:

“The sales agreement we structured with Northland also includes protective covenants requiring the new owners to pursue protection of certain sensitive areas on Denman Island

(specifically the areas buffering Komass (sic) Bluff and the Railway Grade Marsh) by working with public agencies and/or private conservation groups. We strongly encourage you to express your interest in supporting this effort to Northland and to Mike Jenks, and perhaps to assist them in finding an organization, or organizations, willing to accept responsibility for maintaining the covenants.”

Although the Denman Conservancy Association (DCA) had been having some discussions with Hancock about conservation of sensitive ecosystems, DCA was not among the groups invited that day.

DCA promptly expressed to 4064 its interest in assisting with the creation of the covenants, as did the Islands Trust Fund (ITF). Some meetings were held with Mike Jenks and a draft covenant prepared by DCA and the ITF was discussed. With the exception of a few clauses, Mr. Jenks generally agreed to the draft covenant; however, he subsequently broke off discussions. 4064 apparently made no progress towards actually placing covenants on the properties.



We now come to July 2000. By this time much of the 4064 lands had already been clear-cut. Their logging then began to encroach on the riparian zone of the Railway Marsh Complex, an area stipulated by Hancock to be protected by covenant. Though DCA contacted 4064 by fax and phone in an attempt to stop the logging, its efforts were unsuccessful. Mr. Davis of Hancock was contacted by DCA and asked to intervene with 4064. Though Hancock was unwilling itself to enforce the covenant provisions of the contract of sale, it did assign those rights to DCA.

By the time logging was stopped, 4064 had removed approximately 80% of the timber from the intended covenant area. In order to preserve its legal rights before their expiry, DCA filed a Statement of Claim in Supreme Court of BC in late June 2002.

Taking any legal action was complicated by DCA's desire to purchase land from 4064, particularly the Chickadee Lake parcel. Chickadee Lake had been the centre of its fund-raising efforts since 1998. DCA made two written offers to the partners of 4064 for Chickadee in late 2002 and early 2003. Both offers were based on a BC certified appraisal. 4064 was unaware of our pending legal action at the time of those first two offers. Both offers were rejected.

With the serving of the writ to 4064 in 2003, no further purchase offers were made through the spring & summer of that year. Our legal case is based on 'breach of contract'. We are asking to have covenants placed on the Railway Grade Marsh and Komasa Bluffs as well as damages to compensate for the logging, in the Railway Grade Marsh area, which the covenants would have prevented.

We initiated some attempts at out-of-court settlement of the legal action late in 2003, but no progress was made towards a settlement.

DCA has registered Certificates of Pending Litigation (CPLs) on the titles of all the parcels of 4064 lands that were identified by the Hancock's sales contract to have covenants placed on them.

DCA was approached this year by 4064 to voluntarily lift the Certificates of Pending Litigation registered on some parcels at the south

end of the Komasa Bluff that were in the process of being sold. Threatened with court action, we chose to write a letter to 4064 that, although we are not required to do so, we are willing, under specified conditions, to lift those CPLs. At present our letter of March 2004 has not been acknowledged and the CPLs remain on the parcels.

The Case continues. Following after the process of 'Discovery of Documents', amended Statements of Claim and Defence have now been filed, and we are proceeding to the 'Examinations for Discovery'. The DCA continues to view litigation as a last resort and would prefer to settle this matter with 4064.

This article has become far too long, but still I have left out some of the twists and turns! Most of these are documented in back issues of the Newsletters, available on our web site:

[www.denmanis.bc.ca/consERVE](http://www.denmanis.bc.ca/consERVE)

John Millen



This image represents the coming of winter – not the new treasurer - Ed.

## New Board Member

In August the Board appointed David Freeman as a member of the Board. David has agreed to be treasurer for the Conservancy while Concha takes a break from this responsibility.

### The other DCA Directors for 2004 are:

Concha Dennis  
Patrick Fawkes  
Carol Freeman  
Bentley LeBaron  
Denise MacKean  
Roxanna Mandryk-chair

John Millen-co-chair  
Laura Pope  
J Thornton  
Patti Willis  
Dorrie Woodward  
Susan-Marie Yoshihara

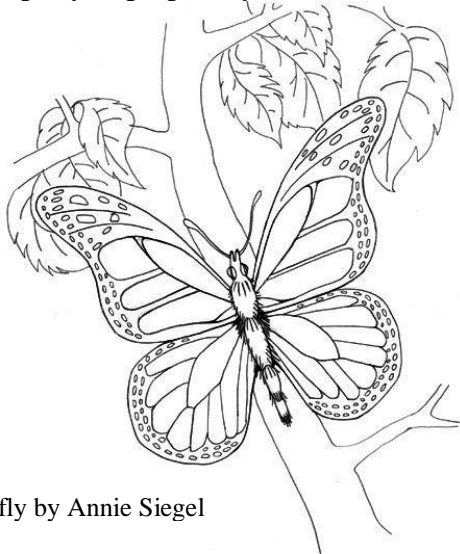
## DCA Conservation Covenant Project

In July, DCA initiated a new project -- the **DCA Conservation Covenant Project**. A conservation covenant is a voluntary written agreement that allows landowners to permanently protect natural features of their land. Registered on the property's title, a conservation covenant can be a powerful tool for successfully protecting private land for ecological purposes.

DCA has acquired some expertise relative to conservation covenants in recent years. To facilitate this work into the future, the Board has decided that this important function needs to be better structured, sustainable and user-friendly.

To that end, procedures, informational materials, and templates are being developed by DCA to facilitate placement and maintenance of conservation covenants on Denman.

In the months to come, DCA will introduce these materials to the community in an effort to give profile to this important option by which landowners may protect the ecological values of their property in perpetuity.



Butterfly by Annie Siegel

This Newsletter produced with the help of Denise MacKean, John Millen, & Patti Willis.

## Membership

Conservancy will once again have a table at the Christmas Craft Faire on Denman Island, December 4 & 5. Members will be able to check whether their subscription is up-to-date. We welcome inquiries about our activities and hope to sign up some new members.

### A Board Policy on Development Projects

The DCA Board has, for several years wrestled with the issue of its 'position' on proposed development projects on Denman Island. Even when the members of the board were unanimous in their judgement about a project it did not seem right to make any statement which would be interpreted as representing the views of the whole membership of the Association.

Conservancy has a membership of over 200 Island residents and we believe that they all support our constitutional purpose, the first clause of which reads:

*"To preserve, protect and enhance the quality of the human and natural environment of the Denman Island area;"*

However it is easy to see that opinions on the merits of a project that proposes to include enhancement of the human environment as well as protection and/or enhancement of the natural environment can vary among members. The Board believes it is best for individual members to represent their own views in the democratic processes of decision-making on the Island. However, this does not preclude that there may be occasions where an organizational position is warranted, as the following Board policy provides.

In May of this year the Board adopted a policy for guidance of its decisions about projects.

See back page

# DCA Policy re Development

Adopted by DCA Board 17 May, 2004

1. The default position of DCA, except under the conditions set out in paragraphs 4 and 5 below, is:

a. we do not take a position in support of, or in opposition to, a development proposal whether it is on or off Denman Island

b. we do not undertake projects that include development as a component

2. DCA as an organization may assist any party to better understand the conservation values and potential impact of development of their land on Denman Island by recommending appropriate expertise either from the membership or elsewhere.

3. DCA may organize projects that generate information about conservation values and promote conservation of public lands on Denman Island, and of private land that meets DCA selection criteria, which will depend on the project's objectives and plan. E.g. the stewardship program invited participation from any landowner with the understanding that a commitment to conservation would be made by the owner.

Factors considered would include:

-capacity of DCA to meet all eligible requests for assistance;

-prima facie conservation values of the private land;

-prior commitment of the landowner to undertaking conservation measures such as placing covenants;

-in the event that the project is equivalent in magnitude to a capital expenditure of greater than \$10,000, that a Special Resolution of the membership authorizing the project is passed at a Special General Meeting of the Association.

4. DCA may choose to participate in a project, jointly with another party, which has a significant conservation component and which will result in DCA or 'public' ownership of conservation lands or covenanted rights. Participation would be subject to meeting all the following conditions:

-that DCA would have the capacity to undertake the project including long term support of all of its ongoing responsibilities;

-in the event that the project is equivalent in magnitude to a capital expenditure of greater than \$10,000, that a Special Resolution of the membership authorizing the project is passed at a Special General Meeting of the Association;

-that conservation measures are a significant proportion of the whole project;

-that the participation of the DCA in the project is not directed, apart from advocacy of conservation, to influencing decisions of the Local Trust Committee of the Islands Trust in its regulation of land use on the Island;

5. DCA may choose to take a position in support of or in opposition to a proposed development or project that significantly affects conservation values in the Denman Island area when:

-the membership of DCA has had an opportunity to become informed about the project and the Board is satisfied that a strong majority support the position proposed to be taken;

-the proposed development or proposal would clearly and significantly affect values of concern to DCA as set out in its Objects;

6. DCA may purchase or accept ownership of any property for its own use or development (including building) regardless of any existing development on the property.

Frog by  
Annie Siegel

