

TELUS RIGHT-OF-WAY BARRIER SCHEDULE OF CORRESPONDENCE

- | | |
|---------------------|--|
| 1. April 28, 2009 | Telus to DIRA stating requirements to protect cable |
| 2. May 5, 2009 | DIRA to Telus agreeing to the requirements |
| 3. August 12, 2009 | Agriculture and Lands to DIRA indicating type of barrier |
| 4. April 6, 2016 | Telus to DIRA stating they still require the barrier |
| 5. May 3, 2016 | FLNRO to DIRA stating barricade must be maintained |
| 6. July 21, 2016 | FLNRO to DIRA recommending gate be left open |
| 7. July 21, 2016 | FLNRO to DIRA stating not authorized to restrict access |
| 8. August 24, 2016 | FLNRO to DIRA with options |
| 9. August 26, 2016 | DIRA to FLNRO accepting Option A |
| 10. August 31, 2016 | DIRA to Telus confirming decommissioning of gate |

From: "Lori White" <[REDACTED]>
To: [REDACTED]; [REDACTED] ILMB EX" <Simone.Engels@gov.bc.ca>
Cc: "RightofWay" <RightofWay@TELUS.COM>
Sent: April 28, 2009 8:37 AM
Attach: Attn Lori White.doc; scan0001.pdf, scan0002.pdf, scan0003.pdf
Subject: FW: Telus Referral Lot 257

TELUS is satisfied that the impact will be minimal and would like you to provide the following

- Item 1: TELUS requires a document from DIRA ensuring that we have uninterrupted access to our RoW.
- Item 2: TELUS will require 60 days notice before construction starts. In addition, we request before and after photos
- Item 3: We will require all 3 mitigation recommendations be implemented. TELUS will supply the sign and post. (Details to follow)

① →

DIRA consult with ILMB for TELUS regarding the permanent concrete barrier along the northern boundary.

All costs will be borne by DIRA

Lori White
Manager, Real Estate
Tel: 604-432-3928 | Mobile: 604-317-8415
Member of the TELUS team

The future is friendly®

Sent: Monday, April 27, 2009 2:53 PM
To: Lori White
Cc: Engels, Simon
Subject: Telus Referral Lot 257

Hi Lori,
Please find attached some information regarding Water lot 257 and the Telus r.o.w. Thanks
[REDACTED]

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DENMAN ISLAND RESIDENTS ASSOCIATION

P.O. Box 17
Denman Island, B.C.
V0R 1T0

May 5, 2009

Lori White
Manager, Real Estate
Telus

By email to Lori.White@telus.net

Dear Ms. White,

Further to your correspondence with John Johnston of the Dock Committee of the Denman Island Residents' Association (DIRA), we are confirming the acceptance of the conditions Telus has put on DIRA during the construction of a dock on Denman near the Denman West Ferry terminal and your Right-of-Way.

Specifically,

1. TELUS will have uninterrupted access to its Right-of-Way.
2. DIRA will provide TELUS with 60 days notice before construction starts.
3. DIRA will provide before and after photos of the site.
4. DIRA agrees to these three items for mitigation:

- At all times during construction DIRA will provide temporary construction barriers and install these barriers along the Telus R.O.W.
- Telus would provide a permanent metal sign and post advising that there is a buried cable on site and no vehicle traffic is allowed which DIRA would install as part of our project. We suggest 18"x 18" minimum size or as provided by the Islands Trust bylaws at the time of posting.
- As a possible solution to Shellfish growers' vehicles crossing over the Telus cable, a permanent concrete barrier might be set in place along the northern boundary of the R.O.W. DIRA will consult with ILMB for TELUS regarding the permanent concrete barrier along the northern boundary, should such barriers be required.



Ministry of Agriculture and Lands
Suite 142 - 2080 Labieux Road
Nanaimo, BC V9T 6J9

Telephone No: 250 751-7248
Facsimile No: 250 751-7224

GST Registration No: R107864738

Your contact is: Barbara Biss

Our file: 0126457

TENURE OFFER

Date **AUG 12 2009**

THE DENMAN ISLAND RESIDENTS ASSOCIATION
PO Box 17
Denman Island, BC V0R 1T0



Dear Sir:

Re: Your Application for a Tenure over Crown Land

District Lot 257, Nanaimo District

(the "Land") has been accepted by us subject to fulfillment of certain requirements. Accordingly, we are offering to you a permit on the terms and conditions set out in this letter.

Please be aware that if a barrier is placed on the beach to prevent vehicles from driving over the Telus Cable, the barrier must include a gate with a key available to emergency First Responders.

Please be aware that you are required under this permit to observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any competent governmental authority which in any way affects your use and occupation of the Crown land and any improvements made to that land. If you have any concerns or questions regarding any such laws, bylaws, orders, directions, ordinances and regulations you are encouraged to seek legal advice.

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Real Estate Department
1 - 15079 - 64 Ave.
Surrey, BC V3S 1X9

Toll Free 1-866-774-7002 press 2 BC
Telephone (604) 432-4177
Facsimile (604) 599-0396
E-mail rightofway@telus.com

April 6, 2015

Denman Island Residents Association
Attention: Frank Frketich
President

TELUS File: 6627-3

Dear Sir,

RE: Denman Island Community Dock

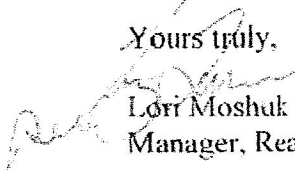
TELUS Communications Inc. has been approached by various community organizations concerning our Works that are located in proximity to the community dock, vis-a-vis the relationship to current public site usage at this location. Our onsite assessment has been performed by Joe Duffe, Engineering Technician, to ensure 1) the continuing uninterrupted communications services to the Denman Island and Hornby Island communities serviced thru this portal and 2) the contractual obligations for the benefit of TELUS by the governing authorities and user groups present at this site.

4 Our agreement for the construction and maintenance of the community dock included provision for the protection of our Works at the high water mark, by way of the placement of bollards or a concrete barrier that would prevent unauthorized vehicular traffic to the foreshore that could cause damage to our communications system. It is in the best interests of TELUS that this condition be fulfilled as contemplated in our agreement.

As an active participant in this community, TELUS strives to encourage the enhancement of the social, cultural and environmental conditions for the sake of all. In that spirit, we hope that all participants in this discussion can reach a mutually-agreecable solution.

If you have any questions or concerns, please contact the undersigned.

Yours truly,


Lorr Moshuk
Manager, Real Estate

LM/tkt

cc. Denman Island Forage Fish Group
Denman Island Sailing & Paddling Club
Comox Valley Regional District
Islands Trust

DIRA
COPY

Your contact is: Elizabeth DeMunck

Our file: 0126457

NOTICE OF FINAL REVIEW

Handwritten initials/signature in a circle.

May 3, 2016

THE DENMAN ISLAND RESIDENTS ASSOCIATION
Po Box 17
Denman Island, BC V0R 1T0

Dear Sir or Madam:

Re: Your Application for a Tenure over Crown Land

The review of your application for a lease for community wharf purposes over District Lot 257, Nanaimo District, (the "Land") has reached the stage where we anticipate making our final decision once the various matters described in this letter have been completed.

This is to replace Lease No. 113365.

Please note the following:

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- when a survey is completed for the adjacent boat launch, we will issue one amalgamated lease for a 30 year term;
- Denman Island Resident's Association will continue to maintain the barricade to protect the Telus Right-of-Way; and
- you agree to provide the K'omoks First Nation access through the lease to those parts of Archaeological site DjSe-17 which are outside the lease boundaries.

1. Deadline for Completion of Requirements

We ask that you complete the requirements described below by within 60 days.

Please complete the Response to Notice of Final Review page attached, indicating whether you will or will not proceed with the application and sign and return that page to us for our records.

✓ 2.

Requirements

Signing and Return of Tenure Documents

From: Wallace, Bonita FLNR:EX [REDACTED]
Subject: RE: Tenure Gate
Date: July 21, 2016 at 11:59 AM
To: Ron Shepherd [REDACTED]
Cc: Johnson, Jim FLNR:EX [REDACTED]

Thanks Ron. Until everything gets sorted, I would recommend that you leave the gate open.
Bonita

-----Original Message-----

From: Ron Shepherd [REDACTED]
Sent: Thursday, July 21, 2016 11:44 AM
To: Wallace, Bonita FLNR:EX
Subject: Re: Tenure Gate

Not a "Yes or No" but certainly provides the clarity I was looking for.

Thanks very much

Ron

On Jul 21, 2016, at 11:38 AM, Wallace, Bonita FLNR:EX [REDACTED]

Hi Ron: As much as I would like to respond with a simple yes or no, it is not possible.

The tenure that was offered in no way authorizes the restriction of access to lands beyond.

There seems to be confusion over the term barricade which I believe was previously described by a representative of Telus as a construction block to prevent damage to the exposed cable. Telus has advised that the cable is now buried and can withstand light vehicle traffic.

As for the gate: now that it is in place, you have some options:

1. continue to use the gate and provide keys to the shellfish growers (you will need to work out the details with the shellfish growers)- Your management plan will need to be updated appropriately
2. leave the gate in place but leave it open. Your management plan will need to be updated.
3. remove the gate. Please note that if you choose this option, because of the close proximity to an archaeological site you will need to contact the Archaeological Branch and they will advise you if a permit is required or not. Then you will need to provide me with copies of the removal plan including correspondence from the Archaeological Branch.

I hope this provides the clarity you were looking for.

Bonita Wallace
Land Technical Officer
Ministry of Forests Lands and
Natural Resource Operations
West Coast Region
142 2080 Labieux Rd [REDACTED]
Nanaimo BC V9T 6J9

-----Original Message-----

From: Ron Shepherd [REDACTED]
Sent: Thursday, July 21, 2016 8:10 AM
To: Wallace, Bonita FLNR:EX; Johnson, Jim FLNR:EX
Cc: dira
Subject: Tenure Gate

Good Morning...A question has been raised by a board member regarding whether it is appropriate for us to be blocking access to the lands beyond our tenure and if it isn't why is it part of our tenure requirements. This question was raised based on a Telus letter to the Shellfish Growers stating that Telus has no authority to restrict access to the beach. DIRA also has no authority to restrict access to the beach but felt the gate had to be installed to meet Telus and FLNRO documented requirements. The other point raised with this item is your recent questioning of our installation of the gate. The broader question is if Telus needs to protect its infrastructure why do they not do it themselves on their right of way.

Would you please confirm whether or not FLNRO requires us to maintain the barricade (gate) to protect the Telus right of way as part of our tenure agreement for the dock. For clarity a "yes or no" response would be appreciated and would provide clear guidance as we work through the issue with yourselves and Telus.



File: 12800-20/0126457

August 24, 2016

The Denman Island Residents Association
P.O. Box 17
Denman Island, BC
V0R 1T0
e-mail: rshepherd9397@gmail.com

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Dear Ron Shephard:

Thank you for returning the Response to Notice of Final Review and associated documents for the Denman Island community wharf.

The Ministry of Forests, Lands and Natural Resource Operations (FLNRO) has identified that the returned management plan documents were modified from the documents provided by the addition of a notation. This notation is regarding the recently constructed gate located in the northeast portion of the application area adjacent the Statutory Right-of Way to Telus.

Documents presented with the Notice of Final Review must be accepted as offered and cannot be modified by the tenure applicant. A replacement Notice of Final Review is now necessary.

Specific to the gate identified by your modification to the Notice of Final Offer, this gate at this location was not authorized by FLNRO.

The temporary-use permit dated August 15, 2009, did not authorize this gate. A gate is not identified within the permit documents. This gate is also not considered as having been required for "community dock purposes" as specified in Section 2.1 of the permit document.

It is acknowledged that FLNRO's tenure offer of August 12, 2009, included the following statement: "*Please be aware that if a barrier is placed on the beach to prevent vehicles from driving over the Telus cable, the barrier must include a gate with a key available to emergency first responders.*" This statement, being within the covering letter, was offered as guidance should a request have been made for the temporary-use permit to authorize a gate.

Page 1 of 2

Ministry of Forests, Lands
and Natural Resource
Operations

West Coast
Natural Resource Region

Location:
142-2080 Labieux Road
Nanaimo, BC
V9T 6J9
CANADA

Mailing Address:
142-2080 Labieux Road
Nanaimo, BC V9T 6J9
Tel: 250-751-7220
Fax: 250-751-7224

At this time the following two options are available to you, the tenure applicant:

- A. You may choose to receive a replacement Notice of Final Offer for your consideration. This replacement Notice will not include the reference to the gate and can only be agreed to as presented.

Any future authorization of a gate would require an application for amendment to the management plan. The decision of whether to approve such an amendment would include consideration of the potential effects of a gate on other owners and occupiers of land in vicinity to your application. Additional First Nations consultation may be required.

- B. You may choose to amend your current application to include a gate structure.

Making this request for amendment will cause our Notice of Final Offer to be withdrawn and your application to be reconsidered, including potential effects of a gate on other owners and occupiers of land in vicinity to your application. Additional First Nations consultation may be required.

We ask for your response to these options at your earliest convenience.

Until or if Denman Island Residents Association is instructed to remove the existing gate posts, the swing arm is to be removed or securely fastened in an open condition so as not to restrict access.

If you choose to remove the gate posts at this time, or become required to remove the gate posts, you are advised that the area in which the gate is located is of high archeological potential and that the requirements of the Heritage Conservation Act must be adhered to. For information on the requirements of the Heritage Conservation Act, contact Archaeological Branch of the Ministry of Forests, Lands and Natural Resource Operations.

If you require additional information please do not hesitate to contact Bonita Wallace at (250) 751-7248 or by email at Bonita.Wallace@gov.bc.ca .

Sincerely,



Greg Gage
Director of Authorizations

File Copy

August 26, 2016

Mr. G. Gage
Director of Authorizations
Ministry of Forests, Lands and Natural Resource Operations
142-2080 Labieux Road
Nanaimo, B.C.
V9T 6J9

File 12800-20/0126457

Dear Mr. Gage:

Thank you for your letter dated August 24, 2016 providing the options available to the Denman Island Residents Association (DIRA) regarding the lease offer on the site of the Denman Island Community Dock. DIRA has chosen to proceed with your Option A and we have been in contact with Ms. Wallace to arrange the final documents required to complete the lease.

Both FLNRO and Telus have indicated they have no responsibility for the gate adjacent to the Community Dock, which was installed in June 2016. DIRA contends that the gate was installed to comply with legal and contractual agreements it had with FLNRO and Telus.

In 2009 an agreement was made between Telus and DIRA for the installation of a permanent concrete barrier to prevent shellfish growers driving over the cable. At this time BC Ministry of Agriculture and Lands stated that if a barrier is installed it must include a gate with a key available to emergency first responders. The inclusion of this requirement in the Tenure Offer dated August 12, 2009 indicates Agriculture and Lands knew of and accepted the fact that a gate or some other form of barrier was to be constructed. There was no indication in the Tenure Offer that the existing temporary use permit would require modification. As the gate was required to fulfill DIRA's contractual agreement with Telus it is a requirement for "community dock purposes".

In November 2015 the current DIRA Board was made aware of these requirements and that a barrier had not been placed. As a considerable length of time had elapsed since the original agreements were entered into DIRA contacted Telus to determine if they still required the barricade. On April 6, 2016 Telus stated they required the permanent barrier be installed. On May 3, 2016 FLNRO stated in their Notice of Final Review that DIRA must continue to maintain the barricade to protect the Telus right-of-way.

In June 2016 DIRA installed a gate adjacent to its community dock to comply with these contractual and legal requirements.

After receiving numerous complaints from affected parties both FLNRO and Telus reversed their positions on the requirement for a barricade and have implied that DIRA was acting on its own volition when it installed the gate. FLNRO now states, in your letter dated August 24, 2016, that gate was not authorized even though the August 12, 2009 Tenure Offer clearly recognizes that a barrier was contemplated and indicates the manner in which it must be constructed to provide access for emergency vehicles. This initial acknowledgement of the barrier was further reinforced in the FLNRO Notice of Final Review dated May 3, 2016 that stated DIRA must continue to maintain the barricade.

Telus has taken the position that they wanted bollards and a concrete barrier so therefore they have no connection to or responsibility for the gate being installed. This rationalization of the situation to try to avoid having to acknowledge their stated and documented requirements is not what one expects from a company of Telus' stature. Additionally Telus stated in a letter dated July 18, 2016 to the B.C. Shellfish Growers Association that they "would hope that all legitimate holders of shellfish leases and tenures would have unfettered access to the foreshore". This is a reversal of their original requirement stated in 2009 and confirmed April 3, 2016 that a barrier is required to prevent shellfish growers driving over their cable. Telus has never acknowledged their original requirement for the barrier in correspondence with complainants.

The FLNRO and Telus reversals of position without acknowledging responsibility for the original requirements for the barrier has left DIRA having to respond to numerous complaints from various parties on both sides of the issue. Fortunately the circumstances around the installation of the gate are well documented and DIRA is able to support its actions. It's unfortunate that the two major organizations associated with this issue, FLNRO and Telus, will not accept responsibility for their actions.

There have been numerous problems created when DIRA installed the gate to fulfill its agreement with Telus and comply with FLNRO's stated requirements. I would like to acknowledge the courtesy and professionalism shown by Ms. Wallace at FLNRO, which allowed us to bring this issue to a satisfactory conclusion that meets the needs of the residents of Denman Island and the requirements of FLNRO.

Sincerely,

Ronald Shepherd
Denman Island Residents Association

Attachments: Telus email April 28, 2009, DIRA agreement to Telus conditions May 5, 2009, Ministry of Agriculture and lands Tenure Offer August 12, 2009, Telus letter April 6, 2016, FLNRO Notice of Final Review May 3, 2016, Telus letter to B.C. Shellfish Growers July 18, 2016

Cc Bonita Wallace: FLNRO

File Copy

Denman Island Residents Association

PO Box 17, Denman Island, B.C. V0R 1T0
dira@denmanresidents.com

August 31, 2016

Mr. Terry Tawse
Telus Real Estate Division
1-15079-64 Avenue
Surrey, B.C.
V3SV 1X9

Dear Mr. Tawse:



In 2009 the Denman Island Residents Association entered into an agreement with Telus to provide a permanent concrete barrier to protect the Telus cable adjacent to the Denman Island Public Dock. The wording in the agreement specifically references "Shellfish growers vehicles".

In 2009 The Ministry of Agriculture and Lands stated, as a part of our tenure requirements, that "if a barrier is placed on the beach to prevent vehicles driving over the Telus Cable, the barrier must include a gate with a key available to emergency First Responders."

In April and May 2016 respectively Telus and Forestry Lands and Natural Resources confirmed that the barrier was still required to protect the Telus infrastructure. DIRA installed, at its own expense, a gate that would conform to the stated Telus and FLNRO requirements.

Subsequent to the installation of the gate and in response to numerous public complaints Telus has stated, "We would hope that all legitimate holders of shellfish leases and tenures would have unfettered access to the foreshore..."

The agreement for the barrier entered into in 2009 specifically states the purpose of the barrier is to prevent shellfish growers vehicles crossing over the Telus cable. As Telus no longer requires a barricade to block shellfish growers from crossing over their cable DIRA has opened the gate and will be making arrangements to decommission it.

On July 27th, 2016 you responded to the above information stating "TELUS Communications Inc. has agreed to refer all further discussions on this subject to the Ministry of Forests Lands and Natural Resource Operations."

FLNRO has now advised DIRA that in order to secure the renewal of our lease agreement the gate must be decommissioned. This letter is to confirm that DIRA is not in a position to restrict vehicle access to the beach nor to prevent vehicles driving over the Telus cable located adjacent to the Denman Island public dock. If you feel that your infrastructure requires additional protection please contact FLNRO to determine what additional measures you can take.

Sincerely,

Ronald Shepherd
Co-Chair: Denman Island Residents Association