

MINISTRY OF ENVIRONMENT INFORMATION NOTE

August 19, 2013

File: 280-30

CLIFF/tracking #:197099

PREPARED FOR: Honourable Mary Polak, Minister of Environment.

ISSUE: Trespass by adjacent land owner in Sun-Oka Beach Provincial parks and requirement for removal of a retaining wall structure.

BACKGROUND:

A boundary trespass issue at Sun-Oka Beach Park, involving property owned by s.22, was brought to BC Parks' attention late winter, 2011 by a complaint from s.22. At the time it was thought the trespass was fairly minor involving some cutting of limbs and small trees and installation of a bench. BC Parks staff met with property owner, s.22 and discussed the province's understanding of the location of the park boundary based on a legal description and a request was made that s.22 remove any improvements s.22 may have made and restore any disturbed areas to a natural state. s.22 disputed the location of the park boundary based on mapping from the regional district website and claimed that improvements were on s.22 property.

In September, 2011, BC Parks conducted a legal survey to confirm the boundary of s.22, which is the legal description of the portion of Sun-Oka Beach Park adjacent s.22 property. This legal survey confirmed the encroachment of improvements including a concrete block and sand bag retaining wall several metres into the park from the s.22 property (see Attachments 1 and 2). The concrete block wall was constructed by a previous land owner and s.22 placed sandbags in front of the wall to prevent the blocks from being eroded in high creek flows during spring runoff. Regional staff shared the legal survey information with s.22, requested that the works be removed from the park, and again failed to gain voluntary compliance.

s.22 (the portion of the park where the retaining wall is located) is owned by the federal Ministry of Agriculture. In 1988, the Government of Canada transferred s.22 to the province for a 49 year term, with a condition that the lands may only be used for a park picnic site.

An Order under the *Park Act* to remove the improvements by August 24, 2012, was served to s.22 in February, 2012. s.22 did not comply with the Order and BC Parks received a letter August 2, 2012, from s.22 lawyer disputing the legal survey, the trespass, and the Order. After review and discussions with the surveyor, the province believes the legal survey is correct and the trespass remained. A second Order under the *Park Act* was served to s.22 in October 2012, extending the date for removal to November 30, 2012. A second letter from s.22 lawyer was received on November 22, 2012, again disputing the legal survey and the trespass, but proposing that a possible solution could be the issuance of a park use permit by BC Parks to

s.22 for the improvements (retaining wall).

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s.22 contacted MLA Dan Ashton in June, 2013 for assistance in addressing the issue. BC Parks agreed that no action would be taken until the end of August to allow MLA Ashton time to review the issue. On July 5, 2013, s.22 MLA Ashton, and Acting Regional Director John Trewhitt met onsite to discuss the issue including:

- s.22 desire to leave and maintain the wall to protect s.22 property from stream bank erosion that may be caused by future flooding events,
- BC Parks' inability to issue a park use permit to authorize the structure as such would be inconsistent with the *Park Act* and the 1988 transfer agreement with the Government of Canada,
- any amendment to the park boundary would need to involve the Government of Canada as the lands are owned by the Government of Canada,
- potential options for flood protection structures on s.22 property, and
- removal of the concrete block and sandbags and minor re-sloping the bank was BC Parks' preferred solution.

This encroachment issue has been the subject of an FOI request (MOE-2012-00094).

DISCUSSION:

The *Park Act* provides direction on the issuance of park use permits and a permit issued for construction and ongoing maintenance of a retaining wall would be in contravention of the Act and therefore not available as a solution.

As the location of the retaining wall is on the inside bend of the creek, risk of stream bank erosion affecting s.22 property is very unlikely. Historical information actually suggests land is accreting in this area.

Issuance of an Order to remove the trespass structure is consistent with how BC Parks has managed other similar boundary trespass issues, however, it could be argued that as s.22 never constructed the original concrete wall he may not be responsible for its removal. The sandbags placed in front of the concrete wall by s.22 are deteriorating but the sandbag material appears to be biodegradable. The retaining wall in its current state is not a significant conservation concern.

SUMMARY:

Region has no immediate plans to remove the retaining wall but intends to issue a follow up letter to s.22 requesting that s.22 take no further action to maintain the structure or conduct or maintain other improvements in the park and that BC Parks may remove the structure in the future if its condition deteriorates and warrants removal.

Attachments

Attachment 1: Reference Plan of s.22

Attachment 2: Sun-Oka Park and s.22

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Pages 4 through 5 redacted for the following reasons:

s.22