

**LETTER OF UNDERSTANDING
REGARDING THE SUBDIVISION APPROVAL PROCESS
Within the ISLANDS TRUST AREA**

BETWEEN the Ministry of Transportation and Highways as represented by the
Provincial Approving Officer and District Highways Manager

AND the Office of the Executive Director of the Islands Trust

1. PURPOSE

To delineate respective roles, clarify processes, and promote consultation in areas of mutual interest concerning the subdivision approval process within the Islands Trust Area.

2. PRINCIPLES

Both parties acknowledge the following:

- the legislative authority of the two agencies is recognized;
- actions taken on the basis of this letter of understanding must be within the context of current legislation; and
- procedural certainty within the subdivision approval process is beneficial to the public as well as both agencies.

3. ROLE STATEMENTS

- 3.1 The Ministry of Transportation and Highways Provincial Approving Officer is appointed by Cabinet under the *Land Title Act* to make decisions on the subdivision of land. The function for the Islands Trust Area is undertaken by two Provincial Approval Officers, one is located in Nanaimo and one is located in New Westminster. Staff support for this function is located in the District Highways Managers' offices. The Provincial Approving Officer has the authority to approve subdivision plans. The Provincial Approving Officer seeks input from various Provincial Ministries, local governments and other agencies prior to considering the issuance of Preliminary Layout Approval for subdivision applications. The Provincial Approving Officer is also charged with the responsibility to approve the final plan of subdivision if it is not considered to be against the public interest to do so. He or she is consulted before the issuance of a Preliminary Layout Approval and signs the final subdivision plans. The *Land Title Act*, the *Municipal Act*, the *Condominium Act* and the *Local Services Act* also give the Provincial Approving Officer discretionary powers including the right to refuse the approval of a subdivision if:

the subdivision does not conform to all applicable provisions of provincial legislation or local government's bylaws, or the subdivision plan is, in his or her opinion, against the public interest.

- 3.2 The Islands Trust's object is to "preserve and protect the Trust Area and its unique amenities and environment for the benefit of the residents of the Trust Area and of the province generally, in cooperation with municipalities, regional districts, improvement districts, and other persons and organizations, and the government of the Province."
- 3.3 The Islands Trust is the authority responsible for land use planning in the Gulf Islands. Authority for Islands Trust activities is set out in the *Islands Trust Act* and the Islands Trust Policy Statement sets out the general policies of Islands Trust Council which are designed to support the object of the Islands Trust. Local trust committees provide local land use planning and regulation and respond to the concerns of island communities. Land use planning is implemented through the Official Community Plans, Rural Land Use Bylaws, Zoning Bylaws, and Subdivision Bylaws of the fourteen local trust committees (Figure 1).
- 3.4 It is through these functions that local trust committees can communicate their concerns with respect to the public interest for consideration by the Provincial Approving Officer.

4.0 COMMON INTERESTS

- 4.1 The Ministry of Transportation and Highways and the Islands Trust staff will work towards common objectives including: consistency in the subdivision approval process; and

consideration of the local and provincial public interest through referral processes to the Islands Trust (for transmittal to local trust committees) and appropriate government agencies.

5.0 SUBDIVISION APPROVAL PROCESS

The Ministry of Transportation and Highways and Islands Trust staff will deal with subdivision applications in the manner described below and depicted in Figure 2.

5.1 Subdivision Applications

- i. Upon receipt of referrals from the District Highways Manager, the Islands Trust will advise the applicant that the subdivision application has been received for review and will also request the applicable fee payable by the applicant to the Islands Trust. Islands Trust planning staff do not commence their review until this fee has been paid.
- ii. Islands Trust staff will endeavour to respond to subdivision referrals within 60 days unless otherwise mutually agreed. If the time line cannot be met, Islands Trust staff will notify the Ministry of Transportation and Highways staff prior to the expiry date to request an extension to the time period. Requests are to be in

writing and shall advise of reasons for the extension. The Provincial Approving Officer will review the requests, consider the validity, and will advise through the Ministry of Transportation and Highways District staff if an extension to the time period will be granted. The Provincial Approving Officer may adjudicate the subdivision without the benefit of input from the Trust, if the response time is delayed.

- iii. Islands Trust staff will clarify whether the proposed subdivision meets Official Community Plan or Rural Land Use Bylaw conditions, Zoning and Subdivision Bylaw conditions, as well as provisions established by restrictive covenants.
- iv. Where proof of potable water is required by bylaw, the information will be provided to Islands Trust staff by the applicant. Trust staff will advise the Provincial Approving Officer of bylaw compliance based on the information provided. If proof of potable water is not required by bylaw, the criteria for potable water will be set by the Provincial Approving Officer. The applicant will supply the information to the Ministry of Transportation and Highways District staff who will forward that information to the Provincial Approving Officer for assessment.
- v. Comments of local trust committee members with regard to whether the subdivision of land is consistent with the object of the Island Trust under the *Islands Trust Act*, the *Islands Trust Policy Statement*, and the local trust committee's Official Community Plan or Rural Land Use Bylaw, Zoning and Subdivision Bylaw conditions will be forwarded to the Provincial Approving Officer through the Islands Trust staff.
- vi. If a local trust committee has recognized an issue of public interest, it may submit a statement of its view to the Provincial Approving Officer for consideration to determine the public interest. This statement should be submitted to the Provincial Approving Officer at the same time as Trustee comments are provided in a staff report.
- vii. Once conditions are established by preliminary layout approval, it is the responsibility of the applicant to ensure that the appropriate authorities are notified and are monitoring the conditions.
- viii. If the status of a subdivision which has received preliminary layout approval is required, this information may be accessed by either trustees or staff by calling the District Highways technician and providing the file number.
- ix. If a subdivision application relates to a current zoning or subdivision bylaw amendment acceptable to the applicant, the applicant at his or her option may advise the Provincial Approving Officer and request that the subdivision application be held in abeyance until the amendment process is complete. Note: This will not suspend the rights of the applicant pursuant to Section 993 of the Municipal Act.

- x. The Islands Trust and the Ministry of Transportation and Highways will provide copies of all correspondence regarding local trust area subdivisions to each other provided the information is not protected by the Freedom of Information Act.

5.2 180 Day Extensions to Preliminary Layout Approvals

- i. The District Highways Manager will advise the Islands Trust where first and second 180 day extensions are granted, and will refer the application for extension to the Islands Trust for comments on any extensions applied for after that.
- ii. On receipt of notice of an extension, Islands Trust staff will advise the District Highways Manager if any bylaw amendment has occurred, and whether Section 993 of the *Municipal Act* applies.

5.3 Final Applications

- i. If an applicant submits a final plan without having gone through the preliminary layout approval process, the Provincial Approving Officer will notify the Islands Trust of the need for a rapid response as the Provincial Approving Officer, by legislation, only has two months under Section 85 of the Land Title Act to consider approval or rejection of the plan.
- ii. Where the Provincial Approving Officer deems that there is a substantive change (for example, if additional lots are to be included, or if a lot line is moved thereby causing a non-conformity with a bylaw (e.g. 10% frontage) to the plan, the revised application will be referred to the Islands Trust for comment.

5.4 Closing of Files

- i. When final approval is given to a subdivision and agencies are notified, the Islands Trust will be notified and sent copies of the final plan of subdivision and any relevant covenants.

6.0 CONSULTATION

- 6.1 The Letter of Understanding will be reviewed annually by the Manager of Local Planning and the Provincial Approving Officers, upon notice by the Manager of Local Planning, or upon the request of either party.
- 6.2 Where differences result regarding processes, these will be addressed through discussion between the Manager of Local Planning Services and the Provincial Approving Officer.
- 6.3 Where differences result regarding issues relating to a subdivision application, the Provincial Approving Officer will receive expressions of concern from the Islands Trust staff.

- 6.4 Islands Trust and Ministry of Transportation and Highways will refer legislative initiatives that affect each other's jurisdiction within the Islands Trust Area to each other for comment.

7.0 OTHER MATTERS

- 7.1 The Islands Trust will examine opportunities for cooperation with the Ministry of Transportation and Highways Provincial Approving Officer and the District Highways Manager in ensuring that environmental assessment of subdivision proposals is carried out under the provisions of Section 86 (1)(c.)(vi) of the *Land Title Act* and will examine the possibility of developing criteria by which to determine whether such an assessment should be carried out.

During the subdivision approval process, the Islands Trust and the Ministry of Transportation and Highways will take into account protocols developed with other government agencies.