

Provincial Approving Officer's Comments

The following comments are based upon information received by the Ministry up to August 2, 2011.

The applicant has provided copies of the both the decision of Justice Rice with respect to the division of D.L. 1375 and the decision of the B.C. Court of Appeal. These documents were not used for consideration in the review of the subdivision application.

1. Public Submissions Regarding the Application

Most of the public submissions (including a petition with 825 names) call for the preservation of D.L. 1375 in its entirety so it can continue to be used as green space by the island residents and visitors.

Submissions in support of the subdivision are asking that a property owner's land rights not be unfairly impeded by the environmental lobby.

2. Proposed Lot Layout

Letters received from the Ministry of Natural Resource Operations and from BC Parks both suggest that the four lot proposal be rejected and that a two lot subdivision splitting the property into north and south lots divided along the former airstrip be approved with the south lot (which includes the dune ecosystem) being under the control of the Nature Trust of BC. The two lot layout is being promoted by the Savary Island Lands Trust Society (SILTS) and the layout attached to the correspondence received from the two agencies is exactly the same as the SILTS proposal. This proposal is not supported by the Sahlin family.

Further correspondence with these agencies has revealed that while the four lot proposal is less than ideal from their perspective, their primary goal is retention of the unique ecological features of the lot. This can be achieved through restrictions placed upon the proposed lots in the form of covenants and/or development permit requirements.

The Board resolution received from the Powell River Regional District (PRRD) in response to the Ministry's subdivision referral states that they do not support the four lot proposal and they have instead recommended a two lot division of the property. The PRRD did not provide reasons other than citing environmental concerns for not supporting the four lot proposal. The PRRD did not suggest a particular lot layout nor did they state which owner should own what lot.

Both the Schedule A and the Land Use Report attached to the Board resolution indicate that the four lot layout complies with the Savary Island OCP. The OCP contains a number of requirements relating to land use and building density that the PRRD requires be addressed. The PRRD has a development permit requirement in place on D.L. 1375 which allows them to review any proposed construction on the property and requires the property owner to address environmental issues. The Land Use Report indicates that there are no zoning bylaws applicable to this lot.

Section 87 of the *Land Title Act* requires that I consider all applicable regional district bylaws regulating the subdivision of land and rezoning. The PRRD does not have a zoning bylaw governing D.L. 1375 and nothing in the OCP would preclude to subdivision of D.L. 1375 in to four lots as proposed.

3. Proposed Road Layout

3.1. Vancouver Boulevard (Existing Road)

The subdivision proponents have proposed a re-alignment of Vancouver Boulevard to move the road from the back side of the dunes and reduce the possible impact of traffic on the dune structure and ecosystem. The reports prepared by Golder & Associates Ltd. (Golder) in 1998 and 1999 provide several recommendations on how new and upgraded roads should be constructed to reduce impact upon the dunes and decrease the likelihood of wind erosion. The re-alignment will remove a long straight stretch of road which complies with Golder's recommendations, but this road has existed on its current alignment for many decades without causing the problems Golder identified.

Schedule C, Transportation Plan of the Savary Island OCP shows the retention of Vancouver Boulevard on the existing alignment and is an indication of the local community's preference. The response from the PRRD includes a requirement that the existing alignment be retained.

Widening of the Vancouver Boulevard right-of-way, thinning and appropriately disposing of right-of-way vegetation and increasing sight lines have been included in Recommendation 20 of the Savary Island Community Wildfire Protection Plan (CWPP) prepared by B.A. Blackwell and Associates Ltd. dated March 2009. The CWPP also includes a recommendation to widen roads used as evacuation routes to accommodate two-way traffic (Recommendation 18).

The proposed re-alignment is not supported by the Ministry's local Area Manager, Roads. He has indicated that the existing alignment should be maintained and that improvements to Vancouver Boulevard need to be undertaken to allow for two-way traffic and improve drainage.

The proposed re-alignment will require the removal of a number of trees on the property and it is debateable whether this impact upon the tree inventory of the lot is more of an environmental issue than having the road on the back side of the dunes.

Should the subdivision proponents want to advance the re-alignment concept, additional information (including an environmental review of both alignments) may be necessary to justify the proposed work to the Ministry and the PRRD. The PRRD has indicated that a development permit is required for any road construction and that a qualified professional (QP) must be hired to evaluate the existing alignment and to set out road construction standards to minimize the road's impacts. Road standards proposed must be approved by the Designated Highways Official.

A 20 meter wide road right-of-way must be established for Vancouver Boulevard on the subdivision plan. In the vicinity of Duck Bay, the south edge of the right-of-way shall be aligned with the back side of the dunes. This will result in the existing road being offset to the south in the right-of-way but will allow for any future improvements to occur north of the dunes.

3.2. Savary Island Road (Proposed Road)

Several submissions have expressed concerns about or asked for the rejection of the extension of Savary Island Road through D.L. 1375. Of concern is the impact the proposed alignment could have on existing old growth trees and lands to the east of D.L. 1375 held by B.C. Parks.

The extension of Savary Island Road is supported by the principles of the Savary Island OCP (Section 6.2.b), is consistent with the recommendations in the CWPP to provide access to isolated areas (Recommendation 20) and is identified in the Savary Island Transportation Study prepared by Delcan Corporation dated April 2009. The intent of the road is to allow for an alternate access route across the island, improve evacuation routes in case of emergency and give access to the north side of D.L. 1375 for fire protection. Of concern is that the OCP and the Transportation Study recommend that a parallel east-west route to Vancouver Boulevard be established across all of D.L. 1375.

The proposed subdivision plan only includes the extension of Savary Island Road to the middle of the lot where it will connect with Vancouver Boulevard. The west side of D.L. 1375 contains the dunes and there is a grade change that Vancouver Boulevard climbs with an S-curve. An extension of Savary Island Road west would require construction through the dunes.

The PRRD does not support the creation of Savary Island Road as proposed because it does not meet the objectives of the OCP. They have not indicated if a revised alignment meeting the OCP should be examined as part of this subdivision application.

While it would be ideal to have Savary Island Road extend fully across D.L. 1375, the provision of a parallel route for even a portion of the lot should not be dismissed as it will provide connectivity between several trails and emergency access to the north side of D.L. 1375, which is currently lacking. The alignment should be extended west to the start of the dune ridge.

The subdivision proponents have proposed that the extension of Savary Island Road be constructed to a lower standard than that found in Section 1400 of the Ministry's BC Supplement to TAC Geometric Design Guide and that use of Savary Island Road be restricted to pedestrians, bicyclists and emergency vehicles only. A reduced standard was recommended for this route in the Transportation Study; however, any modification of the road standard will need approval from the Designated Highways Official. The proponents will need to provide details of the proposed road standard to the Ministry for review and acceptance.

While a lower road standard will be considered for Savary Island Road, a 20 meter wide road right-of-way must still be shown on the subdivision plan.

4. Public Access to Water and Trails

4.1. Beach Access

An on-site inspection of D.L. 1375 indicated the main access point to the beach currently used by the public is Duck Bay on the south side of Vancouver Boulevard. There are also several other areas on the north and south shores that are visited by the public, but these are more difficult to access due to the existing terrain. The proposed subdivision plan includes a 70 meter wide road dedication for access at Duck Bay, centered on the property line between the proposed Lots 3 and 4.

There is an environmentally sensitive area to the west of Duck Bay and a known archaeological site to the east. The public access may need to be relocated or redesigned slightly to avoid these areas. As part of the establishment of the beach access, parking will need to be addressed as current activity is impacting the dunes. A parking area needs to be established on the north side of Vancouver Boulevard and additional right-of-way beyond the 20 meters indentified in Item 3.1 may be required.

4.2. Trails

The Nature Trust of BC has provided a map showing the existing trails on D.L. 1375 and SILTS has provided additional information. In lieu of providing access to water by 20 meter wide road rights-of-way every 400 meters as required by section 75(1)(c) of the *Land Title Act*, the PRRD has recommended that the trail system be established by 6.0 meter wide Statutory Rights-of-Way pursuant to section 218 of the *Land Title Act*. They also recommend that the trail system be limited to the best existing trails and that where a trail provides beach access, the right-of-way should be expanded at the end of the trail to create an area at least 20 meters wide. The PRRD has indicated that a development permit for the trails is required.

The PRRD has also recommended a public bike and walking route parallel to Vancouver Boulevard. There are several existing trails which may make the implementation of such a route a fairly easy task.

Given the environmental issues on the property and the geotechnical/erosion issues along the foreshore, this a reasonable compromise and I support this approach.

5. Environmental Issues

There are several unique and well documented environmental features found on D.L. 1375 including the dune structure and a red listed species, the contorted-pod evening-primrose. It was to protect these features that the PRRD implemented the requirement for a development permits for any improvements that are proposed for the property.

Parks Canada has prepared a recovery strategy for the contorted-pod evening-primrose and the subdivision proponents must comply with that strategy. The areas of significance have been defined and they will need to work with Parks Canada and the Ministry of Environment to ensure that their obligations under the *Species at Risk Act* are met.

The PRRD has requested that all parties work together to ensure that satisfactory arrangements are made to protect the dunes.

6. Land Use

The PRRD requires that a covenant pursuant to Section 219 of the *Land Title Act* be registered on the property to restrict land use as follows:

- Limit land use to residential, home occupation and conservation purposes.
- Limit the density of development to one single family dwelling per 2 ha.

They have indicated that development permits are still required for any development and that the number and location of residential units may be further restricted based on the review and recommendations of the QP.

7. Archaeology Sites

There are six known archaeology sites on D.L. 1375 (Borden Numbers DISe-11, DISe-12, DISe-40, DISe-46, DISe-47 and DISe-48); however, the Archaeological Branch has indicated that the Archaeological Impact Assessment (AIA) completed by Golder in 1999 focused on the shoreline and would not have taken into account any development plans for the interior of the lot. The subdivision proponents must retain a QP to review the areas that will be disturbed by road and trail construction and the QP will need to work with the Archaeology Branch to determine if an updated AIA is required.

8. Park Land Dedication

As noted in Item 1, many members of the public want to see all of D.L. 1375 protected as park. Two citizens made submissions to the Honourable Terry Lake, Minister of Environment asking for him to acquire the lands. The Minister responded that his Ministry recognizes the high natural, ecological, and recreational values of D.L. 1375 and that they had advised me of their interest in seeing the significant ecological values associated with the dune ecosystem on D.L. 1375 preserved.

The Minister also addressed the Province's role in protecting D.L. 1375 in one of the responses. As the lot is not presently for sale, there would be no acquisition, but if D.L. 1375 does become available for sale in the future, his Ministry will consider the potential acquisition of the property, subject to having available financial resources.

The PRRD has indicated that the property does not qualify for 5% park dedication under Section 942 of the *Local Government Act*.

There is no requirement for park dedication under the *Land Title Act*.

9. Water and Sewer

The Golder report prepared in 1998 indicates that there is a deep aquifer lying under D.L. 1375 that has been reviewed as part of two independent studies. They conclude that either individual wells or a community water system are considered suitable and to have no adverse impact on properties beyond D.L. 1375 for low density residential development.

Both the 1998 and 1999 Golder reports indicate that there are no issues with using in ground sewage disposal for low density residential development. Based upon the size of the lots proposed, the Vancouver Coastal Health Authority has not required the establishment of primary and reserve field areas or the registration of a covenant.

10. Geotechnical/Erosion Issues

The reports prepared in 1998 and 1999 by Golder indicate that the foreshore areas can be subject to erosion, especially where the existing overlying vegetation is disturbed. Golder has made

recommendations regarding setback from the top of slope and the natural boundary for both the north and south shores.

The current application does not contemplate any building construction and as noted in the PRRD's submission, any future development requires the issuance of a Development Permit.

To ensure that any future development plans adequately address erosion issues, a restrictive covenant pursuant to Section 219 of the *Land Title Act* shall be registered on the proposed lots to establish "no build" areas and restrict the removal of vegetation. The subdivision proponent's surveyor will need to prepare a Reference Plan showing the restriction areas recommended by Golder. A copy of the Reference Plan must be included in the covenant document.

11. Conclusions

The proposed subdivision complies with the OCP with respect to lot size and density.

Other agencies, local community groups and individual citizens are opposed to subdivision based upon the environmental significance of D.L. 1375.

Section 86(1)(vi) of the *Land Title Act* allows the approving officer to reject a proposed subdivision plan for environmental reasons; however, where protection of the environmentally significant portions of a lot can be achieved through other mechanisms, I suggest that they be used.

In the case of D.L. 1375, the PRRD has already instituted a process whereby development permits must be obtained for any changes proposed to the lot and Parks Canada has developed a recovery strategy for the contorted-pod evening-primrose. Furthermore, covenants will be placed on the proposed lots restricting the land use, density and building areas.

Some parties have also asked me to consider rejecting the proposed subdivision using Section 85(3) of the *Land Title Act* as they feel the subdivision is not in the public interest. In my opinion, the proposed subdivision is not against the public interest as protective measures to preserve the ecological features of the lot have been or will be implemented and the provision of public road rights-of-way and trail statutory rights-of-way will allow the public to use the beaches, roads and trails, activities which are currently occurring.

12. Action

Preliminary Layout Approval of the subdivision shall be granted, subject to the following conditions:

The lot layout shall generally comply with the preliminary submission.

- 1) A 70 meter wide road dedication shall be provided to allow for public access to Duck Bay. A parking area large enough to accommodate three vehicles shall be provided on the north side of Vancouver Boulevard. A barrier to traffic shall be placed on the south side of Vancouver Boulevard to ensure the vehicles do not park on the dunes.
- 2) Vancouver Boulevard shall be maintained on the existing alignment. A 20 meter wide road right-of-way for Vancouver Boulevard shall be shown on the plan and the improvements to the S-curve

right-of-way as shown on the preliminary plan shall be included. Where Vancouver Boulevard runs parallel to the dunes (near the east property line of the proposed Lot 2) the south edge of the right-of-way shall be placed at the back side of the dunes with a 3.0 meter offset from the south edge of the existing road.

Vancouver Boulevard shall be widened to accommodate two-way traffic. The Powell River Regional District requires that a development permit be obtained for any road improvements and that a qualified professional be hired to evaluate the environmental impact of the existing road alignment and to recommend road construction standards. The final design and standards proposed must be accepted by the Designated Highways Official prior to construction.

- 3) As Vancouver Boulevard is being maintained in the existing alignment, the intersection of the proposed Savary Island Road with Vancouver Boulevard shall be redesigned to a 90 degree angle. The intersection may need to move west to avoid the existing wells. Use of Savary Island Road can be restricted to emergency vehicles, bicycles and pedestrians as proposed. The location of the old growth cedars on the proposed Lot 3 shall be confirmed by survey and the road alignment adjusted to avoid this area. The road design drawings, including the proposed road cross-section and any intended barriers to limit vehicular traffic to emergency vehicles only, must be submitted for acceptance by the Ministry prior to construction. Record drawings of the road must be provided to the Ministry prior to the final subdivision plans being submitted. As noted in Item 2, the Powell River Regional District requires a development permit for the road construction.
- 4) The trails highlighted on the attached map shall be protected by a 6.0 meter wide statutory right-of-way pursuant to Section 218 of the *Land Title Act*. At the foreshore, the right-of-way shall be expanded to create an area 20.0 meters wide. The Powell River Regional District requires that a development permit be completed for the trail system and may require that additional trails to those identified on the map be included as part of the trail system. Any additional trails identified during the development permit process must also be covered by a statutory right-of-way. A copy of the development permit shall be submitted to this office. The Minister of Transportation and Infrastructure and the Powell River Regional District shall be included as parties and all documents and plans necessary to implement the statutory rights-of-way must accompany the final subdivision plans.
- 5) A covenant pursuant to Section 219 of the *Land Title Act* shall be registered on the property to implement the setback requirements from the top of slope and natural boundary identified by Golder. A Reference Plan must be prepared showing the north and south setback areas and a copy of the Reference Plan must be included in the covenant document. The covenant shall contain the following restrictions:
 - a) No buildings or structures shall be constructed within the covenant areas.
 - b) Removal of existing vegetation from the covenant areas is prohibited.

The Minister of Transportation and Infrastructure shall be included as a party to the covenant and the document must accompany the final subdivision plans.

- 6) A covenant pursuant to Section 219 of the *Land Title Act* shall be registered on the property to restrict land use and density as follows:

- a) The land shall be used for residential, home occupation and conservation purposes only.
- b) Construction of buildings on the property is limited to a maximum density of one single family dwelling per 2 hectares.

The Minister of Transportation and Infrastructure and the Powell River Regional District shall be included as parties to the covenant and the document must accompany the final plans.

- 7) The property is affected by the Recovery Strategy for the Contorted-Pod Evening-Primrose prepared by Parks Canada. The applicant shall work with Parks Canada and the Ministry of Environment to implement the recover strategy and ensure compliance with the *Species at Risk Act*. Written confirmation from these agencies that this issue has been addressed to their satisfaction must accompany the final plans.
- 8) Provincial records indicate that development associated with this application may be in conflict with archaeological sites protected under the Heritage Conservation Act. It should be noted that there are sites identified as Borden Numbers DISe-11, DISe-12, DISe-40, DISe-46, DISe-47 and DISe-48 on or near the proposed development. The Archaeology Branch has indicated that the archaeological impact assessment completed by Golder & Associates Ltd. in 1999 focused on the shoreline and that additional review of the property will be required as road and trail construction is proposed.

Therefore, the Provincial Approving Officer requires that as a condition of PLA, the applicant hire a qualified archaeologist to determine the need for an updated archaeological impact assessment of the subject property. The purpose of the archaeological impact assessment would be to accurately identify the location(s) of the known archaeological site(s), to record any additional sites that may be present, and to recommend any action that may be needed to manage archaeological values in conflict with future development. This might include the placement of covenants to ensure that such sites are not disturbed without proper authorization from the Archaeology Branch.

If the archaeologist determines that an archaeological impact assessment is not required, the archaeologist must forward a written statement to this office and copy to the Archaeology Branch containing the reasons for eliminating this requirement.

If an archaeological impact assessment is required, you should be aware that applications for *Heritage Conservation Act* permits take in the order of 6 weeks to process. This includes allowance for a 30 day comment period from local First Nation(s). Processing time can be shortened accordingly if, at the time of application, supporting letter(s) are received from local First Nations.

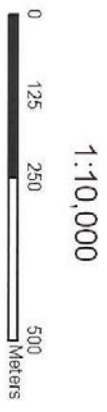
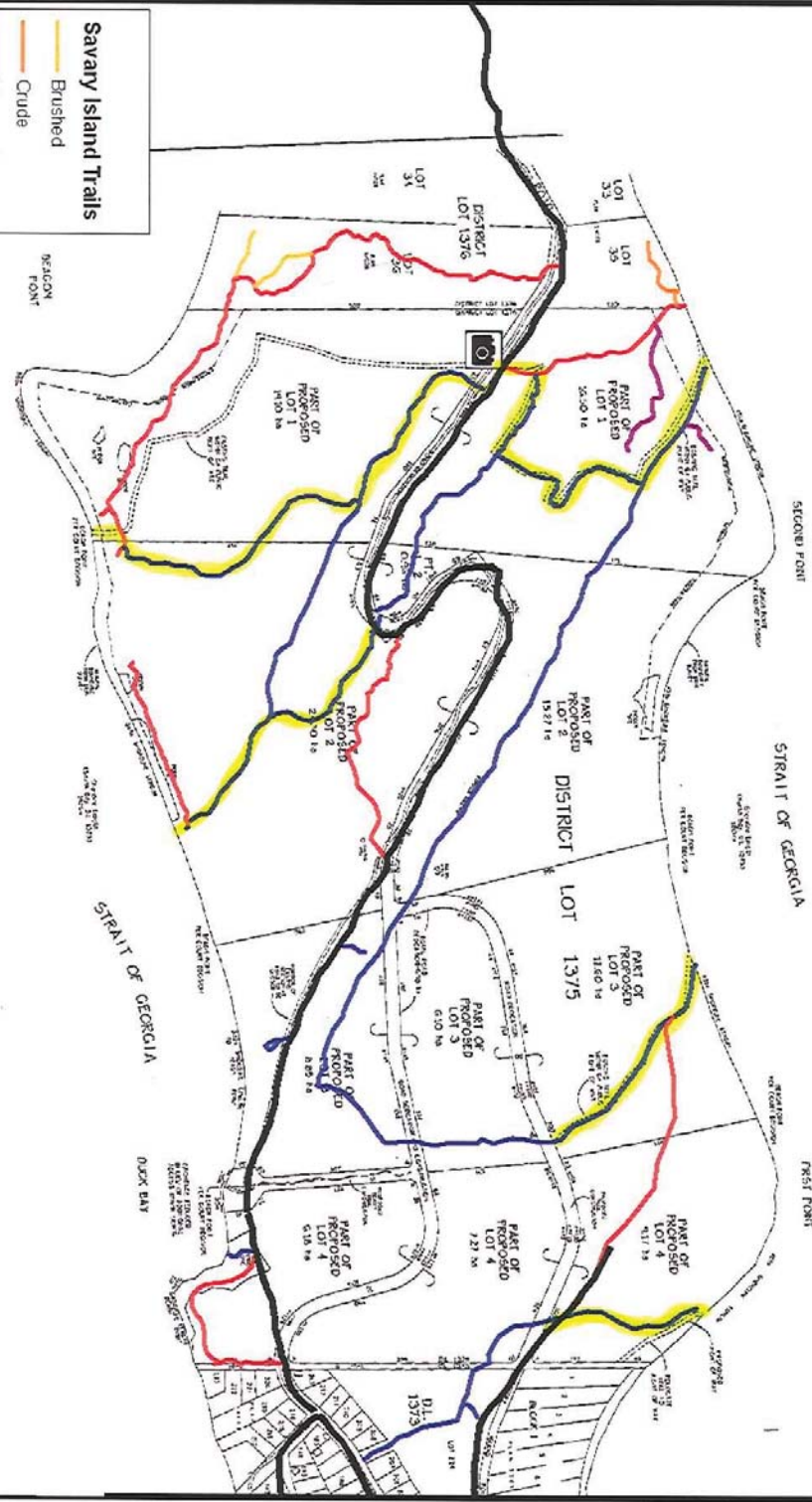
Information on archaeological consultants may be obtained by calling the B.C. Association of Professional Archaeologists at 250 656-4972 or by checking their web site (<http://www.bcapca.bc.ca/>). Archaeological consultants are also listed in the Yellow Pages.

Savary Island Trail Map



Savary Island Trails

- Brushed
- Crude
- Very crude
- Good
- Very good
- Public Road
- Photographs



July 22, 2010