

**WITHHOLDING OF BUILDING PERMITS
LETTER OF ADMINISTRATIVE UNDERSTANDING
BETWEEN STAFF ADMINISTRATIONS OF
THE ISLANDS TRUST
AND
THE CAPITAL REGIONAL DISTRICT**

WITHHOLDING OF BUILDING PERMITS

LETTER OF ADMINISTRATIVE UNDERSTANDING BETWEEN STAFF ADMINISTRATIONS OF THE ISLANDS TRUST AND THE CAPITAL REGIONAL DISTRICT

WHEREAS the Island Trust (Trust) has jurisdiction over an area that has been established as a provincial land trust under the *Islands Trust Act*;

AND WHEREAS the Trust, through its Local Trust Committees, has local government jurisdiction under Section 27 of the *Islands Trust Act* for land use regulation in those local trust areas within the 'Salt Spring Island' and 'Outer Gulf Islands' electoral areas of the Capital Regional District;

AND WHEREAS the Capital Regional District (District) has functional jurisdiction on Salt Spring Island and the Outer Gulf Islands for Building Inspection under Building Regulation Bylaw No. 1042 (*Municipal Act Part 21*);

AND WHEREAS the Local Trust Committees are in an inter-dependent relationship with the Regional District Board on the matter of withholding of building permits, under Section 35 of the *Islands Trust Act*, in order to exercise the powers conferred on the Local Trust Committees through application of Section 981 of the *Municipal Act*;

AND WHEREAS the staff of the Trust and the District wish to make an agreement at the administrative level to facilitate the proper performance of the obligations of the Trust and the District within their respective spheres of jurisdiction;

NOW THEREFORE both parties agree in principle as follows:

1. The intent of the Trust and the District is to improve communication between the Trust and the District, and to state mutual understanding with respect to the withholding of Building Permits pursuant to Section 981 of the *Municipal Act*.
2. The Trust and the District agree that the broad purpose of Section 981 of the *Municipal Act* is to provide machinery to prevent developments, which comply with existing zoning but will be in conflict with proposed zoning, from being advanced during the time-period required to enact a bylaw that is under preparation.
3. Time is of the essence for the withholding of a permit pursuant to Section 981 of the *Municipal Act*.
4. The Trust acknowledges the need for, and undertakes to give, early notice and full disclosure to the District of any:
 - a) Rezoning application or Local Trust Committee resolution that directs the preparation of a bylaw amendment that would have the effect of creating a conflict between potential developments proposed in any application for a building permit and the proposed bylaw or rezoning application.
 - b) Contemplated action or enactment of resolutions to withhold building permits for 30 days and, potentially, for a further 60 days pursuant to Section 35 of the *Islands Trust Act*.
5. The District acknowledges the need for the Capital Regional District to give early notice and full disclosure to the Trust of any application for a building permit that would be subject to any notice or disclosure provided in Section 4 of this Letter of Administrative Understanding, and further undertakes to not issue a building permit until the Trust has responded to the District's notice and disclosure.
6. The parties acknowledge that:
 - a) To calculate time in relation to the 30 days and the 60 days, Section 2 of the *Municipal Act* states Section 25 of the *Interpretation Act* applies to the calculation of time. Section 25 of the *Interpretation Act* excludes the first day and includes the last day, and if the time falls or expires on a holiday, it is extended to the next day that is not a holiday. If the time for doing an act in a business office falls or expires on a day when the office is not open during the regular business hours, the time is extended to the next day that the office is open.
 - b) To calculate time in relation to the "at least 7 days prior" reference in Section 981(2) of the *Municipal Act*, both the first and last days are excluded.

7. The Trust and the District understand that the regular District Board meetings are normally held on the second and fourth Wednesday of the month at 1:30 p.m., except in July and August, when the meetings are held on the second Wednesday of these months. The Trust may access the Board at short notice by relaying withholding resolutions through the General Municipal Services Committee, which meets in the morning of all regular District Board meetings.
8. The Trust and the District agree that the District has authority for building regulations pursuant to Building Regulation Bylaw 1042 and subsequent amendments thereto.
9. The Trust and the District agree that Building Regulation Bylaw No. 1042 provides that the authority having jurisdiction shall issue a permit or permits for which:
 - a) A completed application has been made,
 - b) The proposed work set out in the application conforms with the Building Regulation Bylaw No. 1042, the Building Code and any other applicable bylaw, and
 - c) The applicant for a permit has Paid the fees set out in Appendix A to the Building Regulation Bylaw No. 1042.
10.
 - a) The Trust and the District agree that the Senior Building Inspectors of the District have sole discretion to decide whether or not an application for a Building Permit is complete (as determined by the *Taina Developments vs. City of New Westminster* case).
 - b) The Trust and The District agree that, where the District is uncertain as to whether the proposed use of a building or structure that is the subject of a Building Permit application is permitted by the relevant Trust bylaw, it will so advise the Trust, and the Trust will, within five working days, advise the District whether the proposed use should be considered a permitted use under the bylaw.
11. The Trust and the District agree that a Local Trust Committee has the authority to advise the Capital Regional District, by Resolution, that a Building Permit be withheld pursuant to Section 981 of the *Municipal Act* and that the District Board will consider the advice at the next regular Board meeting as a matter of administrative convenience in these regards pursuant to Section 981 of the *Municipal Act*.
12. The Trust and the District agree that the District Board requirement to consider the advice of the Trust as a matter of administrative convenience does not preclude District staff from upholding the purpose of Section 981 of the *Municipal Act* during the review of a Building Permit application between the time the District receives notification of a resolution to withhold a building permit from the Trust and when the Board meets to consider such advice provided that it does not fetter the responsibilities of the District.
13. The Trust and the District agree that, during the 30 day period referred to in S. 981 (1), consultations between staff representatives shall be scheduled to review the likelihood of direction to withhold for a further 60 days, or to consider granting the permit, with the imposition of mutually agreed-upon conditions relative to the public interest, having regard for the plan or bylaw under preparation.
14. The Trust and the District agree to keep each other fully advised on any decisions or anticipated actions as soon as possible, given the time limitations established by Section 981 of the, *Municipal Act*.
15. The Trust and the District agree that they will immediately notify the other party, by phone and fax correspondence, of any extra third party agreement, pertinent to a withholding permit action, with respect to implementation of Section 35 of the *Islands Trust Act* or Section 981 of the *Municipal Act* or C.R.D. Building Regulation Bylaw No. 1042 (*Municipal Act*, Part 21).
16. The Trust and the District agree that while a Building Permit application can be received in the absence of an associated necessary Development Variance Permit, the District Building Inspector will not issue the Building Permit until the Development Variance Permit has been issued by the Local Trust Committee having jurisdiction.
17. The Trust and the District agree that while a Building Permit application pertaining to a designated Development Permit Area can be received in the absence of an associated necessary Development Permit, the District Building Inspector will not issue a Building Permit until the required Development Permit has been issued by the Local Trust Committee having jurisdiction.
18. The Trust and the District agree that while a Building Permit application pertaining to a property that is the subject of a Board of Variance appeal can be received in the absence of an associated necessary variance allowance, the District Building Inspector will not issue a Building Permit until any required variance is allowed by the Board of Variance having jurisdiction.

19. The Trust and the District agree that an application for a Commercial, Institutional, Industrial or Multi-Family Building Permit must conform with all applicable Trust and District Bylaws, as well as: the requirements of the Ministries of Environment, and Health, and Transportation and Highways; local Fire Department requirements for local access; water supply and evidence of adequate potable water; satisfactory design of site services including roads, parking, site drainage, water and sewer services; Islands Trust confirmation in writing that the proposal is consistent with the provisions of the zoning bylaw and that Development Permits or Amendments to the Development Permits, or other necessary permits (e.g. Development Variance Permits, Temporary Commercial and Industrial Use Permits, Board of Variance Approvals, etc.), have been issued.
20. The Trust acknowledges that it, and not the District, bears the sole responsibility for any liability for damages claimed under s. 981 (4) of the *Municipal Act*.

The Trust's responsibility under ss. 981 (1) and (3) extends to the payment of the District's costs and expenses and any damages awarded against the District in third party mandamus actions or claims for damages brought against the District as a result of the District withholding permits under s. 981 (4) as directed by a local trust committee.

The District acknowledges that it bears the sole responsibility for costs and damages attributable to the failure of the District to follow statutory requirements or to negligent acts or omissions of the District.

21. In recognition of the administrative basis of this understanding, it is acknowledged that nothing in this agreement between staff precludes the Trust or the District from seeking legal recourse against the other party for exceeding or improperly exercising its jurisdiction.
21. Correspondence pursuant to this agreement will be confirmed in writing and by Fax.