

**PROTOCOL AGREEMENT REGARDING THE PROVISION
OF PARKLAND BETWEEN
THE SOUTH PENDER ISLAND LOCAL TRUST COMMITTEE
AND THE PENDER ISLAND PARKS AND RECREATION COMMISSION
REPRESENTING
THE CAPITAL REGIONAL DISTRICT**

WHEREAS the South Pender Island Local Trust Committee (the "Trust Committee") and the Pender Island Parks and Recreation Commission (the "Commission") consider it in the public interest to coordinate their administrative procedures to ensure the acquisition and development of appropriate lands for community parks, given the powers of the Trust Committee regarding the provision of parkland at the time of subdivision, and the responsibility of the Commission to develop, operate, and maintain community parks for recreation purposes;

AND WHEREAS the Trust Committee's jurisdiction includes:

- i) the authority, through the Official Community Plan (the "OCP"), to generally state broad objectives and policies respecting the form and character of existing and proposed parkland use, and to designate the approximate location and type of present and proposed parkland use, and to designate the approximate location and type of present and proposed public park facilities, pursuant to Section 945 of the *Municipal Act*; and
- ii) the authority to designate lands for park use in regulatory bylaws, pursuant to Section 963 of the *Municipal Act*; and
- iii) the power to require, at the time of subdivision, that park land be provided, or cash-in-lieu be paid, pursuant to Section 992 of the *Municipal Act*;

AND WHEREAS the Capital Regional District has jurisdiction over the community parks pursuant to Division XIV of its Letter Patent and as such is entitled to the possession and control of land on South Pender Island dedicated to the public for a park or public square, pursuant to Section 992 of the *Municipal Act*, and has the authority to acquire, develop, operate and maintain community parks;

AND WHEREAS the Capital Regional District pursuant to its Supplementary Letters Patent dated (27th day of February, 1976), established the Commission by Bylaw 1577 (Oct 28/87) and in such bylaw delegated to the Commission all of the administrative powers of the Regional Board with respect to the development, maintenance and operation of all community parks on South Pender Island;

AND WHEREAS the Commission has an interest in providing community parks for recreational purposes and the Trust Committee has an interest in identifying community parklands which 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 the Commission;

NOW THEREFORE both parties agree as follows:

1. The intent of the Commission and the Trust Committee is to improve the coordination of administration procedures between the Commission and the Trust Committee with respect to the Trust Committee's powers in relation to the provision of parkland, pursuant to Section 992 of the *Municipal Act*, and to facilitate the dedication of parkland or cash-in-lieu payments for acquisition of parkland to be operated, developed and maintained by the Commission.
2. The Trust Committee and the Commission agree that the purpose of Section 992 of the *Municipal Act* is to provide dedicated parkland or cash-in-lieu for future acquisition of parkland.
3.
 - i) The Commission has adopted by resolution, a Parks and Recreation Master Plan (the "Master Plan") that includes recommendations on development, maintenance and operations of community parks and trails created pursuant to Section 992, and trails and ocean accesses, the recommendations having been developed by a process providing for public participation at various stages, and in the context of and explicit recognition of the Trust Committee's role in the Trust's legislated object to preserve and protect the Trust Area and its unique amenities and environment for the benefit of the residents of the Trust Area and the Province generally, in cooperation with municipalities and the government of the Province, pursuant to Section 3 of the *Islands Trust Act*.
 - ii) When revising or reviewing the OCP, the Trust Committee will consult with the Commission on matters pertaining to community parks, trails, ocean accesses and other park-related policies, from a land use planning perspective and with respect to appropriate policies and strategies relating to parkland dedication versus cash-in-lieu payments, and will give due consideration to the recommendations of the Commission.

- iii) Both parties agree to collaborate in their respective planning initiatives through cross-representation on plan preparation committees, background study information, circulation of drafts, community forum hosting and other similar mutually beneficial measures. The Commission agrees to make all reasonable efforts to appoint Parks Commissioners from South Pender Island to any committees or other initiatives that are created by these collaborations.
4. Upon receipt of any amendments to the Master Plan, the Trust Committee will give due consideration to those recommendations pertaining to community parkland use and trail network designation, with a view to incorporating appropriate and relevant provisions into the OCP and associated regulatory bylaws.
 5. The Trust Committee will refer to the Commission all those applications for rezoning or subdivision of land having potential for community parks, trails or ocean accesses, together with reports that outline whether the subject lands have been designated in the OCP as being desirable for parks, trails or ocean accesses.
 6. The Commission will review and comment on the applications referred to it by the Trust Committee, in writing within 30 (thirty) working days of receipt, and, in its responses, advise whether it has interest in purchasing or negotiating rights to such lands, and where parkland is requested, will identify the means by which parkland is to be secured. The Commission shall make all reasonable efforts to insure that the Parks Commissioners from South Pender Island are involved in the review and comment.
 7. The Trust Committee will exercise its statutory powers with due consideration for the recommendations of the Commission and with full respect for Section 992 of the *Municipal Act*. The Trust Committee will endeavour to maintain close communications with, and be open to advice from the Commission. The Commission acknowledges that the statutory responsibility of the Trust Committee in this regard cannot be delegated, nor can any discretion be fettered by reference to another body such as the Commission.
 8. The Trust Committee and the Commission will investigate and will strive to implement, whenever possible to the extent permitted by applicable law, procedural policies designed to ensure that a phased approach to property development is not used as a means of circumventing the requirements of Section 992 of the *Municipal Act*;
 9. The Trust Committee will provide to the Commission concurrent copies of its recommendations to the Ministry of Transportation and Highways, regarding its final determination of parkland dedication or cash-in-lieu requirements in response to applications which invoke Section 992 of the *Municipal Act*;
 10. Where appraisal costs are incurred pursuant to Section 992 (7) of the *Municipal Act*; those costs will be borne by the applicant and the Commission.
 11. The Commission will refer to the Trust Committee, for its consideration and comment, all recommendations for purchasing of parkland or disposal of surplus parkland, prior to referral to the Capital Regional District Board for preparation and consideration of the required bylaw(s). The Trust Committee acknowledges that this statutory responsibility of the Capital Regional District, through the Commission, cannot be further delegated nor can any discretion be fettered by reference to another body such as the Trust Committee.
 12. The Commission will, prior to any development of parkland; and in recognition that such development shall be in accordance with the Master Plan and any zoning regulations that pertain to such use; commit to secure public input from the community prior to the development of any management plan for a park or any development of a park.
 13. The Trust Committee and the Commission will confirm all verbal communication in writing and will forward all written communication to the following addresses by mail, fax or personal delivery to the Local Trustees or Commissioners.
 14. The Trust Committee and the Commission agree that this Protocol Agreement may be amended at any time by mutual consent and agree to jointly review the Protocol Agreement on an annual basis.
 15. The Trust Committee and the Commission acknowledge and agree that this agreement will not be interpreted as prejudicing or affecting the rights and powers of the Trust Committee, the Trust Council, the Commission or the Board of the Capital Regional District in the exercising of their functions under any public or private statute, regulation or bylaw.