5.3.iii. Policy & Procedure

ACQUISITION OF COMMUNITY PARK LAND UNDER SECTION 941 OF THE *MUNICIPAL ACT*

Trust Council: May 29, 1996

A: PURPOSE:

1. The purpose of this policy is to delineate the scope and options available for Local Trust Committee (LTC) involvement in the acquisition of community park land under Section 941 of the *Municipal Act*.

B: REFERENCES:

1. *Municipal Act*: Section 941

C: DEFINITIONS:

1. **Public Open Space -** Areas of public domain including Provincial, Federal, Regional and community parks, right of ways, unalienated crown land, easements granting public rights of use, covenants preserving open space for public benefit etc.

2. **Park -** Provincial, Regional and Community Park.

3. **Community Park -** Section 941 park created at time of subdivision, whether taken by the Regional District or not, and park acquired by a Regional District through grant, purchase etc. for community park purposes.

4. **Acquisition -** land acquired by Regional District through dedication or other means of acquisition for community park purposes or dedicated as park under Section 941 in the absence of Regional District acquisition and held as crown land for park.

D: POLICY:

1. Policy Statement

This policy is guided by elements of the Islands Trust Policy Statement which deal with parks, recreation, trails and natural protection.

2. Official Community Plans(OCP) and/or Rural Land Use Bylaws (RLUB)

2.1. Official Community Plans and/or Rural Land Use Bylaws should clearly delineate areas of ecological, scenic or recreational significance requiring protection as public open space, park and community park and the circumstances under which acquisition of such areas would be desirable. The Local Trust Committee may consult with the public, the Advisory Planning Commission, and the Parks and Recreation Commission (if formed) to determine parks policies and designations for an OCP/RLUB.

2.2. The LTC shall determine the acceptability of any proposed community park location pursuant to section 941 (1) (a) of the *Municipal Act* as follows:

i. In the absence of OCP policies and designations for park dedications, in accordance with the Trust Mandate, Trust Policy statement, and advice from the community as deemed necessary.

ii. When an OCP provides policies and designations for park dedications, in accordance with those requirements to determine precise locations.

3. Zoning Regulations

Zoning regulations can be enacted on community park land on or after the park land dedication pursuant to Section 941 of the *Municipal Act* and can bind any user of land except the province itself, but includes any occupier of Crown land. Zoning regulations may permit particular parks uses. The Regional District (if applicable) should be consulted in the development of park land zoning given their role in management of parks subject to permitted uses. Zoning of land for parks purposes must go through the public hearing process.

4. Regional District involvement

Upon initiation of discussions regarding OCP community park land policies, park land zoning or park land dedication under the provisions of Section 941 of the *Municipal Act*, the Regional District and its representative Commission should be notified and kept informed with respect to their areas of jurisdiction. Letters of Understanding between the Islands Trust and the Regional District should be developed to facilitate this consultative process.

E: PROCEDURE FOR COMMUNITY PARK DEDICATION UNDER SECTION 941 OF THE *MUNICIPAL ACT*:

1. Role of the OCP/RLUB in Community Park land Dedication

1.1. The OCP/RLUB should designate, in words or by map, areas of ecological, scenic, or recreational significance requiring protection as community park land and should indicate which types of land have priority. The OCP/RLUB could include the following direction:

i. Where land not directly affected by the map designations set out in Schedule "_____" is proposed to be subdivided, the owner of the land shall dedicate (except in those circumstances described in Section 941(5) of the *Municipal Act*) as park 5% of the land in the following circumstances:

1) where the subdivision is of such a size and at such a location that the _____ Local Trust Committee considers that a park for community recreation is or will be required in the area being subdivided, in which case the location of the community park land shall be determined by the _____ Local Trust Committee; and

2) where the land proposed to be subdivided contains a site that the _____ Local Trust Committee considers is of local scenic or ecological importance, the location of the community park land shall be the scenic or ecological site; and/or

3) where the land proposed to be subdivided contains a site that the _____ Local Trust Committee considers would contribute to a trail network, whether or not the trail network is identified in the Official Community Plan, then the location of the park land to be dedicated shall be the area required for the trail network

ii. Where none of the circumstances in Section 1.1. i. exist, the owner of the land shall provide cash in lieu of dedicating park land, unless the owner wishes to provide park land.

2. General procedures

2.1. Community park acquisition by dedication (transfer of land to the Crown for possession and control by a Regional District) is initiated by the subdivision application and referral process through the Ministry of Transportation and Highways (MOTH). Except as noted in Section 2.2, the Approving Officer cannot approve a plan of subdivision, including bare land strata subdivisions under the Condominium Act, unless Section 941 of the *Municipal Act* is satisfied.

2.2. The following types of subdivisions are exempt from providing community park:

i. fewer that three additional lots are being created.

ii. all proposed lots are greater than 2 hectares (5 acres).

iii. consolidation of parcels (lot line cancellation).

2.3. The LTC should request that MOTH withhold Preliminary Layout Approval until Section 941 requirements are dealt with and advise MOTH/the applicant of their preference regarding community park dedication before any land alteration begins.

3. Community park dedication where adequate OCP/RLUB policies and/or designations exist:

3.1. The LTC establishes the percentage amount and the "acceptable" location of land to be dedicated. The LTC should request that park be dedicated entirely in the first phase. If this is not possible, as when a phased development is planned, the LTC may request that park be dedicated sequentially. In this case, an agreement relating to sequential dedication must be filed with the Registrar of Land Titles under Section 941(10) of the *Municipal Act*. The agreement must specify when the subsequent parks will be created and what happens if the timing condition is not met.

3.2. Although 5% of the total land area of the subdivision is the maximum figure a LTC can require, the appropriate amount may vary by mutual agreement. For example, park of a particularly high value may be suggested in a lesser amount or the total amount may include the park and essential buffer areas or trails to the park. If less than 5% or a combination of park and cash equivalent to 5% is accepted by the LTC, a resolution indicating the acceptability must be given. If 0% land is desired by the LTC, a resolution must be given stating that no land is required.

4. Procedure under Section 941 where OCP/RLUB policies and/or designations are insufficient

4.1. Where the OCP/RLUB contains insufficient policies/designations and where the Regional District exercises a power to provide a community parks function, the owner of land being subdivided must determine whether to provide, without compensation, community park or payment to the Regional District in the amount determined under section 4.3.

4.2. The LTC establishes the percentage of the land's market value (at time of subdivision application) to be paid or the percentage amount and the "acceptable" location of land to be dedicated in consultation with the owner. Where payment is to be given, a payment deferral agreement is possible between the LTC and the owner. Where park land is to be given, the LTC should request that community park be dedicated entirely in the first phase. If this is not possible, as when a phased development is planned, the LTC may request that community park be dedicated sequentially. In this case, an agreement

relating to sequential dedication must be filed with the Registrar of Land Titles under Section 941(10) of the *Municipal Act*. The agreement must specify when the subsequent parks will be created and what happens if the timing condition is not met.

4.3. Although 5% of the total land area of the subdivision is the maximum figure a LTC can require and 5% of the market value of the land is the typical amount when payment is required, the appropriate amount may vary by mutual agreement. If less than 5%, or a combination of park and cash equivalent to 5%, is accepted by the LTC, a resolution indicating the acceptability must be given. If 0% land is desired by the LTC, a resolution must be given stating that no land is required.

4.4. Where a disagreement arises between the owner and the LTC regarding the land's market value, Provincial regulations provide a binding decision on the market value to be set by a jointly appointed appraiser.

4.5. Where an amount of payment is established, a letter from the Regional District to the LTC is required confirming that cash payment has been received in order for the LTC to advise MOTH that conditions for final approval have been completed. Cash payment should be in the form of a bank draft or certified cheque. Where land is provided, land dedication should only be acceptable if the Approving Officer ensures that this is undertaken concurrently with (or prior to in the case of a bare land strata subdivision) registration of the subdivision at the Land Titles office or as stated in the registered agreement.

4.6. Where a Regional District does not operate a Community Parks function, the applicant does not have the option to pay cash. In this situation, the land (subject to acceptance of amount and location by the LTC) is dedicated on the subdivision plan as "park" but remains in the control of the Crown until a Regional District assumes a Community Parks function.

5. Regional District considerations

5.1. If the Regional District provides a Community Parks function in the electoral area that encompasses the particular island involved, it is entitled to "Possession and Control" of dedicated park land (s.613) and assumes liability on that park land.

5.2. The Regional District can (by public notice, bylaw and provincial approval), exchange or sell park land, with the cash receipts to be deposited in the park land acquisition reserve fund.

6. Provision of land by other means

The percentage of land calculated by the LTC for S. 941 purposes is exclusive and separate from other public lands and amenities that may be provided within a subdivision. However, these sources can be taken into consideration by a LTC when setting the amount or location of land to be dedicated.