

BUILDING PERMIT LITIGATION

**LETTER OF UNDERSTANDING
BETWEEN STAFF ADMINISTRATIONS OF**

**THE ISLANDS TRUST
AND
THE CAPITAL REGIONAL DISTRICT**

JANUARY 2002

BUILDING PERMIT LITIGATION

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

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

AND WHEREAS the Islands 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 the Southern Gulf Islands electoral areas of the Capital Regional District;

AND WHEREAS the Capital Regional District has functional jurisdiction on Salt Spring Island and the Southern Gulf Islands for Building Inspection under Building Regulation Bylaw #1042 (*Local Government Act* Part 21);

AND WHEREAS the Capital Regional District Board and the North Pender, South Pender, Mayne, Salt Spring, Galiano, and Saturna Island Local Trust Committees entered into a Protocol Agreement July 20, 1999 to provide for cooperation regarding administrative and jurisdictional issues;

AND WHEREAS the staff of the Islands Trust and the Capital Regional District wish to make an agreement at the administrative level to facilitate the cost sharing of litigation of building permits as follows:

1. The Executive Director or designate of the Capital Regional District (hereafter called the "CRD") may initiate a request for joint defense and cost sharing when:
 - the CRD is given notice that a CRD Building permit will be challenged:
 - the CRD is of the view that the Building Permit is being challenged because of the content of the relevant local trust committee bylaw or activity on behalf of the Islands Trust.
 - The Islands Trust is of the view that a Trust Bylaw is challenged because of a building permit being issued by the CRD in error which is contrary to the Trust Bylaw.
2. Both parties as mutually agreed will share legal information as deemed appropriate to discuss joint litigation options.
3. Both parties will agree on the following for joint litigation efforts:
 - the degree of information and legal advice that will be shared;

- the lead law firm and inter law firm communications;
 - the scope of costs to be shared (CRD legal, Islands Trust legal, organizational costs and other expenses); and
 - cost sharing mechanics (billing frequency)
4. Withholding a Permit:
- Where a local trust committee has directed the CRD to withhold a permit under section s.929(4) of the *Local Government Act*, the Trust bears the sole responsibility for any liability for damages claimed arising from that action.
 - Where the CRD believes that a permit should be withheld under section s.929(4) of the *Local Government Act*, the District will refer such permit application to the Trust for confirmation of withholding.
 - Where the CRD believes a legal opinion is necessary to decide if a permit should be withheld, the Trust shall be responsible for obtaining that opinion from its legal counsel.
5. If the Executive Directors disagree, then the matter will be referred to the Trust Council and CRD Board for resolution.
6. Correspondence pursuant to this Agreement will be forwarded to the following addresses:

Islands Trust

Director of Local Planning Services
Suite 200, 1627 Fort Street
Victoria, BC V8R 1H8
405-5165 Fax 405-5155

Capital Regional District

Manager of Engineering and Scientific Services
524 Yates Street
Victoria BC V8W 2S6
360-3045 Fax 360-3047