

DATE OF MEETING: September 26, 2022  
TO: Mayne Island Local Trust Committee  
FROM: Narissa Chadwick, Island Planner  
Southern Team  
COPY: Robert Kojima  
SUBJECT: MA-RZ-2020.1 (MIHS) – Defining the Amenity

## RECOMMENDATION

1. That the Mayne Islands Local Trust Committee accept the draft Housing Agreement associated with MA-RZ-2020.1 (MIHS) and designate the Chair of the Local Trust Committee to sign the Housing Agreement.
2. That the Mayne Island Local Trust Committee Bylaw No. 182 cited as “Mayne Island Housing Agreement Bylaw No. 182, 2022” be read for the first time.
3. The Mayne Island Local Trust Committee Bylaw No. 182 cited as “Mayne Island Housing Agreement Bylaw No. 182, 2022” be read for the second time.
4. The Mayne Island Local Trust Committee Bylaw No. 182 cited as “Mayne Island Housing Agreement Bylaw No. 182, 2022” be read for the third time.
5. That the Mayne Island Local Trust Committee Bylaw No. 182 cited as “Mayne Island Housing Agreement Bylaw No. 182, 2022” be sent to the Islands Trust Executive Committee with Bylaw No. 181, cited as 'Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021' and Bylaw No. 183, cited as 'Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021'.
6. That the Mayne Island Local Trust Committee considers that the donation of the proposed Lot 3 to represent an amenity under OCP policy 2.10.2. .
7. That the Mayne Island Local Trust Committee request staff remove Section 18 from the draft s. 219 covenant and send the covenant to legal counsel for review and inclusion of a clause restricting building on Lot 2 until proposed Lot 3 has been subdivided and transferred to the MIHS.
8. That the Mayne Island Local Trust Committee request staff to organize a special meeting to review and endorse the updated s. 219 covenant prior to the scheduling of the Community Information Meeting.
9. That the Mayne Island Local Trust Committee request staff to schedule a Community Information Meeting and Public Hearing for MA-RZ-2020.1 to be scheduled for October 31, 2022.

## REPORT SUMMARY

The purpose of this staff report is to:

- Provide the LTC with the Housing Agreement for review and endorsement;
- Recommend amendments to the MIHS's proposed revisions to the Section 219 Covenant;
- Encourage a final decision from the LTC related to the identification of the amenity required in order for building on the proposed Lot 2 to move forward; and
- Identify next steps.

## BACKGROUND

At the June 27, 2022 regular meeting the LTC gave first reading to the bylaws supporting the rezoning of 375 Village Bay Road to allow for subdivision into three lots and to support the development of 10 units of rental housing. The LTC requested staff schedule a Community Information Meeting and Public Hearing following the receipt of final drafts of the Housing Agreement and Covenant.

Related resolution are as follows:

### **MA-2022 – 04**

**It was Moved and Seconded, 9** that the Mayne Island Local Trust Committee Bylaw No. 181, cited as 'Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021' be read for a first time.

### **MA- 2022- 050**

**It was Moved and Seconded,** that the Mayne Island Local Trust Committee Bylaw No. 183, cited as 'Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021' be read for a first time.

### **MA-2022-051**

**It was Moved and Seconded,** that the Mayne Island Local Trust Committee request staff to schedule a Community Information Meeting and a separate Public Hearing for Bylaw No. 181, cited as 'Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021' and Bylaw No. 183, cited as 'Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021'.

### **MA-2022- 052**

**It was Moved and Seconded,** that the Mayne Island Local Trust Committee request staff to schedule the Community Information Meeting and Public Hearing for Bylaw No. 181, cited as 'Mayne Island Official Community Plan Bylaw No. 144, 2007, Amendment No. 1, 2021' and Bylaw No. 183, cited as 'Mayne Island Land Use Bylaw No. 146, 2008, Amendment No. 1, 2021' following the receipt of final drafts of the Housing Agreement and s. 219 Covenant.

At the July 25, 2022 LTC meeting, staff identified to the LTC that determining the amenity provided in order for building on Lot 2 to move forward was critical to proceeding. As identified below, the LTC resolved to refer this matter to the APC.

### **MA-2022-071**

**It was Moved and Seconded,** that the Mayne Island Local Trust Committee refer Mayne Island Affordable Housing Proposal to the Advisory Planning Commission for consideration of what would constitute an appropriate community amenity.

The following questions were sent out to the APC:

1. What should be considered the community amenity in order for construction of any buildings or structures on Lot 2 to commence ?
2. Is there another community amenity that could be considered in order for construction of any buildings or structures Lot 2 to commence?
3. If it is determined that the housing on Lot 2 cannot go forward until there is demonstration of development of the affordable multi-family housing on Lot 3 and many years pass without construction of the housing project on Lot 3, what other options should be considered for Lot 3 to enable development on Lot 2 to move forward? If another community amenity has been considered and development on Lot 2 has commenced, is it necessary to have a “sunset clause” for Lot 3?

The APC adopted the following Resolutions:

***Motion 1:*** *Donation of land for affordable housing is considered to be an adequate community amenity for the purpose of the proposed rezoning*

***Motion 2:*** *The proposed Sec 219 covenants on lots 2 and 3 are sufficient to ensure that protection and remediation of sensitive ecological areas will occur*

***Motion 3:*** *that the 5 year no development clause on lot 2 is adequate to provide certainty to the McHugh family*

The LTC had also asked staff to come back with details related to the option of the lands identified on Lot 2 on the proposed site plan as forest protection being part of a separated conservation covenant. Staff consultation with the Islands Trust Conservancy identified that this approach would be complicated, take time and that given limited size of the area and the residential nature of the lot it would not be desirable from a conservation perspective.

## **ANALYSIS AND DECISION POINTS**

### **Endorsing the Housing Agreement**

A draft housing agreement was been presented to the LTC at their May 30, 2022 regular meeting. At that time the MIHS was still resistant to place Sean McHugh as party to the agreement. Following discussion with staff this issue was resolved. A housing agreement including additional edits was provided to staff in June. This draft of the housing agreement has passed through legal review with some small edits made (see highlighted wording in Attachment 1).

The housing agreement is similar to the housing agreements written for two affordable housing projects on Galiano Island. The proposed rental structure is as follows:

- a) Rent for 1-bedroom Rental Housing Units in a calendar year will on average be at or below 30% of the average of:
  - a. Income of One-Person Households; and
  - b. Income of Couples without Children.
- b) Rent for 2 and 3-bedroom Rental Housing Units in a calendar year will on average be at or below 30%

of the average of:

- a. Income of Couples with Children; and
- b. Income of Lone-Parent Families.

Staff are supportive of this approach. It is important that the Housing Agreement provide flexibility as funding programs evolve to address housing affordability needs. Staff are also supportive of the connection made in the Housing Agreement to Stats Canada Census income group categories. This is an effective and reliable way to determine shifts in income levels that may influence rental rates in the future.

### **Defining the Amenity in the Covenant**

The LTC should address the amenity to be provided before building on proposed Lot 2 can go forward. This needs to be captured in the s. 219 covenant. At the June 21, 2021 meeting the LTC resolved that the built housing is the amenity. As indicated in the resolution below, the LTC resolved that the construction of the rental housing proceed before building on lot 2 could commence.

#### ***MA-2021-038 (June 21, 2021)***

*that the Mayne Island Local Trust Committee request that the owner of Lot B, Plan 27091 grant to the Local Trust Committee a suitably worded Section 219 covenant **which would restrict development of proposed lot 2 until the construction of rental housing on proposed Lot 3 is completed** and that the S.219 covenant be registered on title as a condition of rezoning and that building site for Lot 2 should be that identified as 'A' on map dated July 15, 2020 and wetlands area is to be preserved as shown on same map.*

Since this resolution was passed there have been discussions about whether there are other options for amenities. Other options discussed have included water access and land for conservation. Staff have determined these options to be complicated and not worth pursuing. The MIHS has identified the McHugh family's interest in having some certainty related to the timing of building on Lot 2. The LTC now has recommendations from the APC regarding what they consider to be the amenity.

Remaining options for amenity definition for the LTC to consider include the following:

- **The donation of land for affordable housing** – The APC resolution suggests that the donation of land for affordable housing is sufficient to meet the amenity provisions in the OCP. In this case building on lot 2 could move forward after subdivision and transfer of land. This condition would need to be written into the covenant. The LTC has required a finalized s.219 covenant before a community information meeting and public hearing are scheduled. The APC has identified that they feel the provisions in the draft covenant are “sufficient to ensure that protection and remediation of sensitive ecological areas”.
- **The rezoning of land for affordable housing** – This is an option that could be considered but is not recommended. In this case the land would not need to be subdivided and transferred. This scenario opens up the possibility of a split zoned lot with no guarantee of use or transfer of land for the proposed affordable housing.
- **Demonstration that building is being provided on Lot 3** - If the LTC continues to consider the provision of housing as the amenity enabling development on Lot 2 to go ahead, the LTC needs to determine what will be a sufficient indication that the housing is being provided. This will need to be written into the covenant. The proposed covenant recently amended by the MIHS (Attachment 2) currently identifies 5 units completed to be the demonstration of housing being provided before building can commence. The LTC can choose to support this or choose a different measure (eg. a different number of buildings

constructed, water system developed, funding acquired, building permits received). If the LTC choose this approach the demonstration of housing being provided must be easily measured.

- **Demonstration that housing is being provided on Lot 3 with an expiration of restriction on building on Lot 2 after a period of time** – This is the options that has been put forward by the MIHS. It has been highlighted in the draft covenant in Attachment 2 and identified below. While the draft covenant identified 5 units completed to be the demonstration of housing being provided before building on Lot 2 can commence, it also suggests an expiration of this restriction in 5 years after the date of subdivision.

#### **MIHS' Proposed Covenant Language:**

*The Owner of Lot 2 shall not start the construction of any building or structure on Lot 2 until the Owner of Lot 3 has completed the construction of, and received any occupancy permit required by the Capital Regional District for, at least 5 units of affordable housing, on Lot 3. This restriction shall expire five (5) years after the date when the Land is subdivided in accordance with the Subdivision Plan.*

**Staff Recommendation** – Staff recommend that the LTC support the APC's identification of donated land as the amenity enabling the building on Lot 2 to move forward. To support this staff also recommend the proposed Section 18 in the draft s.219 covenant (Attachment 2) be removed and replaced with a clause that restricts building on Lot 2 until after subdivision and transfer of land. Staff rationale is as follows:

- The APC which represents a mixture of community member perspectives has identified the donation of land as a sufficient amenity;
- Given the way the amenity guidelines are written in the OCP, the subdivision and transfer of land to a non profit society focused on the provision of affordable housing accompanied by a housing agreement and covenant could be interpreted as a community amenity;
- The restrictions that will be placed on Lots 2 &3 through the s. 219 covenant are very specific and focussed on land preservation and remediation;
- The Housing Agreement is very restrictive ensuring the provision of affordable housing;
- Given the restriction placed on the land, if the MIHS is unable to provide the proposed housing the land will likely sit untouched until a different housing provider agrees to take on the project or the land is rezoned and the covenant and housing agreement discharged (processes requiring significant analysis, time and public engagement).
- If the LTC decides that the donation of land is the amenity, Section 18 of the proposed s.219 covenant as written is redundant. It will need to be rewritten to restrict building on Lot 2 until after subdivision and transfer of land.
- In this currently climate of rising land prices, land that is pre-zoned for multi-family, rental and affordable housing will become increasingly important in restricting future land speculation and retaining land to help address the affordable housing crisis in the Islands Trust Area.

#### **ALTERNATIVES**

1. **The LTC could define the amenity required prior to permitting building on Lot 2 as something other than the donation of land.**

In this case, the LTC will need to be very specific about what they are identifying the amenity to be. This will need to be clearly acknowledge in the covenant.

*"That the Mayne Island Local Trust Committee recognize....to be the amenity needed to permit building on Lot 2"*

**2. The LTC could identify different timing for the scheduling of the Community Information Meeting and the Public Hearing.**

This timing could include identification of a process that is desired prior of the identification of a date. Identification of a date need to take into the account time needed for the legal update and review of the s. 219 as well and the timing required for the publication and of public hearing notice .

**3. Request further information**

The LTC could request that the application submit additional information. The information need to be specified in the resolution.

**NEXT STEPS**

If the LTC supports the staff recommendations:

- Staff will send the s.219 covenant for legal review and revision of Section 18 in the current draft.
- Draft covenant language will be discussed with the MIHS to ensure they are agreeable.
- An electronic LTC Special Meeting will be organized to consider s.219 covenant endorsement.
- Staff undertake public notice re: CIM and PH .
- CIM and Public hearing for Bylaws 181(OCP) and 183 (LUB)
- Consideration of second and third reading for Bylaws 181 and 183.
- Bylaws 181 (OCP) and 183 (LUB) and 182 referred to EC for approval.
- If approved by EC Bylaw 181 will be sent to the Minister of Municipal Affairs for approval.
- the s. 219 covenant will be registered at the Land Title Office.
- If approved by the Minister, Bylaws 181, 182 and 183 will come back to the LTC for consideration of adoption.
- Once bylaws are adopted notice of the housing agreement will registered on title.

Submitted By:	Narissa Chadwick, Island Planner	September 14, 2022
Concurrence:	Robert Kojima, Regional Planning Manager	September 14, 2022

**ATTACHMENTS**

1. Bylaw 182 and Housing Agreement (Draft reviewed by legal)
2. Section 219 Covenant ( with MIHS amendments)

MAYNE ISLAND LOCAL TRUST COMMITTEE  
BYLAW NO. 182

\*\*\*\*\*  
A Bylaw to Authorize a Housing Agreement  
\*\*\*\*\*

WHEREAS the Mayne Island Local Trust Committee is the Local Trust Committee having jurisdiction on and in respect of the Mayne Island Local Trust Area, pursuant to the *Islands Trust Act*,

AND WHEREAS Section 483 of the *Local Government Act* and Section 29 of the *Islands Trust Act* permit the Local Trust Committee to enter into a housing agreement;

AND WHEREAS the Mayne Island Local Trust Committee wishes to enter into a Housing Agreement;

NOW THEREFORE the Mayne Island Local Trust Committee enacts in open meeting assembled as follows:

- 1. This Bylaw may be cited for all purposes as “Mayne Island Housing Agreement Bylaw No. 182, 2022”.
2. Any one Trustee of the Mayne Island Local Trust Committee are authorized to execute an agreement in the form attached to this Bylaw with [owner]

READ A FIRST TIME this X day of month, year  
READ A SECOND TIME this X day of month, year  
READ A THIRD TIME this X day of month, year

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this  
X day of month, year

ADOPTED this X day of month, year

\_\_\_\_\_  
SECRETARY CHAIRPERSON

*LAND TITLE ACT*

TERMS OF INSTRUMENT – PART 2

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**Housing Agreement**

THIS AGREEMENT DATED FOR REFERENCE THE \_\_\_\_\_ DAY OF, 20\_\_\_\_, IS BETWEEN:

**SEAN MCHUGH**, of 375 Village Bay Road, Mayne Island, V0N 2J2

(the “Owner”);

AND:

**MAYNE ISLAND LOCAL TRUST COMMITTEE**, a corporation under the *Islands Trust Act*,  
having an office at 2<sup>nd</sup> Floor, 1627 Fort Street, Victoria, B.C., V8R 1H8

(the “Local Trust Committee”)

WHEREAS:

- A. The Owner is the registered owner of land on Mayne Island, British Columbia, more particularly described as:

PID: 002-552-256

Lot B Plan VIP 27091 Section 7, Land District 16, Portion Mayne Island

(the “**Lands**”);

- B. The Local Trust Committee is considering the adoption of Mayne Island Land Use Bylaw No. 146, 2008 Amendment No. 1, 2021 (the “Rezoning”), to permit a subdivision of the Lands, and the development of affordable multi-family rental housing on a portion of the Lands referred to in this Agreement as the “Lot 3 Equivalent”;
- C. Following the Rezoning and subdivision of the Lands, the Mayne Island Housing Society intends to develop and construct affordable multi-family rental housing on the Lot 3 Equivalent;
- D. The Mayne Island Housing Society intends to rent units on the Lot 3 Equivalent to Qualified Renters at affordable rates;
- E. The Local Trust Committee may pursuant to Section 29 of the *Islands Trust Act* and Section 483 of the *Local Government Act*, enter into an agreement with an owner of land that includes terms and conditions regarding the occupancy, tenure and availability to specified classes of persons of dwelling units located on those lands;
- F. Section 219 of the *Land Title Act* permits the registration of a covenant of a negative or positive nature in favour of the Local Trust Committee in respect of the use of land or construction on land;



- G. The Owner and the Local Trust Committee wish to enter into this Agreement to provide rental housing on the Lands on the terms and conditions of this Agreement to have effect as both a covenant under section 219 of the *Land Title Act* and a housing agreement under section 483 of the *Local Government Act*; and
- H. The Local Trust Committee has, by bylaw, authorized the execution of this Agreement and the Owner has duly authorized the execution of this Agreement.

THIS AGREEMENT is evidence that in consideration of \$1.00 paid by the Local Trust Committee to the Owner (the receipt of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Local Trust Committee and the Owner agree, as covenants granted by the Owner to the Local Trust Committee under Section 219 of the *Land Title Act*, and as a housing agreement between the Owner and the Local Trust Committee under Section 483 of the *Local Government Act*, as follows:

## Article 1: Definitions and Interpretation

### 1.1 Definitions – In this Agreement:

“Affordable Housing Funder”	means an entity with a mandate to create and promote affordable housing, such as BC Housing or CMHC, that provides a grant or preferential rate loan to support the development of Rental Housing Units on the Lands.
“Annual Household Income”	means the combined gross income of all adult members of a Household, as shown on line 150 of the preceding year’s T1 General Income Tax and Benefit return.
“BC Housing”	means the British Columbia Housing Management Commission or BC Housing’s successor in function.
“Business Days”	means Monday to Friday inclusive except for those excluded days declared by lawful authority as holidays.
“Building” or “Buildings”	Means any building located or constructed on the Lands containing a Rental Unit
“Census Profile”	means the most recently available census profile published by Statistics Canada for the Southern Gulf Islands, regional district electoral area census subdivision or, in the event that Southern Gulf Islands, regional district electoral area census subdivision is amended, eliminated or replaced, a successor census subdivision which includes Mayne Island;
“CMHC”	means Canada Mortgage and Housing Corporation or its successors in function.
“CPI”	means the All-items Consumer Price Index for British Columbia as calculated by Statistics Canada, or its successor in function.
“Dwelling Unit”	means a dwelling unit as defined in the Mayne Island Land Use Bylaw 146, 2008.

“Household”	means one or more individuals occupying the same Dwelling Unit.
“Income of Couples with Children”	means the median total income of couple economic families with children as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.
“Income of Couples without Children”	means the median total income of couple economic families without children or other relatives as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.
“Income of Lone-Parent Families”	means the median total income of lone-parent economic families as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.
“Income of One-Person Households”	means the median total income of one-person households as determined by Statistics Canada in the Census Profile, provided that this median total income is increased by the CPI for every calendar year since the Census Profile has been updated by Statistics Canada.
“Lands”	has the meaning ascribed in Recital A.
“Lot 3 Equivalent”	has the meaning ascribed to it in section 3.2(b).
“Low and Moderate Income Limits”	<p>means, as determined by BC Housing from time to time,</p> <ul style="list-style-type: none"> <li>a) for residential units with less than two (2) bedrooms, an Annual Household Income that does not exceed the median income for couples without children in British Columbia, as an example, for 2022 this figure is \$77,430; and</li> <li>b) for residential units with two (2) or more bedrooms, an Annual Household Income that does not exceed the median income for families with children in British Columbia, and as an example, for 2022 this figure is \$120,990.</li> </ul>
“Operating Agreement”	means an agreement that sets out the amount, duration, and conditions of the subsidy provided by the provincial and/or federal governments, or an Affordable Housing Funder for the construction and/or operation of Rental Housing Units.
“Owner”	means the registered owner of the Lands, provided however that upon the execution and filing of the Release with the Land Title Office, it means the registered owner of the Lot 3 Equivalent only.
“Permitted Housing Operator”	means the Mayne Island Housing Society, BC Housing, CMHC, a housing society, a non-profit housing corporation, or other entity approved by the Local Trust Committee in writing.

“Qualified Renter”	means a person who meets the eligibility criteria for tenancy as set out in Schedule B and who meets the occupancy criteria set out in Section 2.3 of this Agreement and the Operating Agreement, if any.
“Release”	Has the meaning ascribed in section 3.2(b).
“Rental Housing Unit”	means a Dwelling Unit on the Lands in respect of which the construction, tenure, rent, and occupancy are restricted in accordance with this Agreement.
“Residential Tenancy Act”	means the <i>Residential Tenancy Act</i> (British Columbia).
“Rezoning”	has the meaning ascribed in Recital B.
“Statistics Canada”	means the national statistics office or Statistics Canada’s successor in function.
“Subdivide”	means to divide, apportion, consolidate or subdivide the Lands or any Building on the Lands, or the ownership or right to possession or occupation of the Lands or any Building on the Lands, into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the <i>Land Title Act</i> , the <i>Strata Property Act</i> (British Columbia), or otherwise, and includes the creation, conversion, organization or development of “cooperative interests” or a “shared interest in land” as defined in the <i>Real Estate Development Marketing Act</i> (British Columbia).
“Tenancy Agreement”	means a written tenancy agreement as defined in, and subject to, the Residential Tenancy Act.
“Tenant Default”	has the meaning ascribed in section 2.3(d)(v).

## 1.2 Interpretation –

Reference in this Agreement to:

- a) A “party” is a reference to a party in this Agreement;
- b) A particular numbered “article” or “section” or to a particular lettered “schedule” is a reference to the corresponding numbered or lettered article, section, or schedule of this Agreement;
- c) An “enactment” is a reference to an enactment as defined in the *Interpretation Act* and is a reference to any revision, amendment or re-enactment of, or replacement for, that enactment;
- d) Wherever the singular or gendered language is used in this Agreement, it shall be deemed to include the plural or all genders, or the body politic or corporate, where the context or the parties so require; and
- e) The Local Trust Committee includes a reference to its successors in function, including a

municipality.

### **1.3 Headings**

The division of this Agreement into articles, sections and schedules is for convenience of reference only and does not affect its interpretation. The article and section headings used in this Agreement are for convenience of reference only and do not affect the interpretation of this Agreement.

### **1.4 Entire Agreement**

This is the entire agreement among the parties concerning its subject and may be amended only in accordance with section 3.16.

## **Article 2 – Rental Housing**

### **2.1 Agreement over the Lands**

Pursuant to section 219 of the *Land Title Act* and section 483 of the *Local Government Act*, the Owner covenants and agrees that:

- a) The Lands will not be developed, and no new Building or structure will be constructed on the Lands unless the Owner constructs Rental Housing Units in accordance with this Agreement, any development permit or rezoning issued by the Local Trust Committee, and any Building permit issued by the Capital Regional District.
- b) It will maintain the Rental Housing Units in a satisfactory state of repair and fit for habitation and will comply with this Agreement and all laws, including health and safety standards applicable to the Lands.
- c) If a Building is demolished or is otherwise replaced, this Agreement shall continue to apply to the Lands and the construction on the Lands shall be subject to the requirements of this Agreement.

### **2.2 Minimum Construction Requirements**

- a) All the Rental Housing Units will be designed and constructed to the same standard in terms of layout, skill, and materials.
- b) Rental Housing Units will consist of a mix of one-bedroom, two-bedroom and at least one three-bedroom units.

### **2.3 Occupancy of Rental Housing Units**

The Owner covenants and agrees that Rental Housing Units will only be occupied when all of the following criteria are met:

- a) the Household's Annual Household Income does not exceed the Low and Moderate Income Limits for the specified unit type at the time of application and initial occupancy;

- b) the Household is composed of at least one Qualified Renter;
- c) the Qualified Renter will occupy the Rental Housing Unit as its permanent, principal, and sole residence;
- d) the Qualified Renter has signed a Tenancy Agreement with the Owner, and the Tenancy Agreement includes;
  - i. a clause prohibiting subletting for short-term vacation rentals and in all other circumstances prohibiting subletting without obtaining prior Owner consent in accordance with section 2.6;
  - ii. notice of the existence of this Agreement and the occupancy restrictions applicable to the Rental Housing Unit, and notice that the Owner will provide to each Qualified Renter upon their request, a copy of this Agreement;
  - iii. a clause requiring the Qualified Renter to comply with the use and occupancy restrictions contained in this Agreement;
  - iv. a clause confirming that a breach by the Qualified Renter of any of the provisions set out in 2.3(f)(i) or 2.3(f)(iii) (each of which constitutes a “Tenancy Default”) will entitle the Owner to end the tenancy for cause, in accordance with the Residential Tenancy Act, as a failure to comply with a material term.

## **2.4 Management of Rental Housing Units**

The Owner covenants and agrees that:

- a) Rent for 1-bedroom Rental Housing Units in a calendar year will on average be at or below 30% of the average of:
  - i. Income of One-Person Households; and
  - ii. Income of Couples without Children.
- b) Rent for 2 and 3-bedroom Rental Housing Units in a calendar year will on average be at or below 30% of the average of:
  - i. Income of Couples with Children; and
  - ii. Income of Lone-Parent Families.
- c) It will not require any Qualified Renter under a Tenancy Agreement to pay any extra charges or fees for use of any common area or amenity, or for sanitary sewer, storm sewer, water utilities, property taxes and similar services. For clarity, this limitation does not apply to parking, cablevision, telecommunications, laundry, cleaning fee for private events, or gas or electricity utility fees or charges.

## **2.5 Policies/Rules and Regulations/Administration by Owner**

The Owner is authorized to make and administer rules, regulations and policies necessary to fully implement and achieve the policy goals set out in this Agreement. Such rules, regulations and policies may include, but are not limited to, the following:

- a) Establishing and maintaining a waiting list of potential Qualified Renters; and
- b) Establishing, administering and enforcing a rental policy applicable to the terms of this Agreement and in accordance with the *Residential Tenancy Act*.

## **2.6 No Sublease of Rental Housing Unit Unless Requirements Met**

The Owner will not consent to the sublease of a Tenancy Agreement, except in accordance with this Agreement, the Residential Tenancy Act, and the Owner's rules, regulations and policies. For greater clarity, the Owner will not consent to a sublease for the purposes of a short-term vacation rental, and the Owner will not otherwise consent to a sublease unless the sublessee meets the requirements set out in section 2.3.

## **2.7 Monitoring and Reporting to the Local Trust Committee**

The Owner must deliver to the Local Trust Committee once each year on or before July 1, a completed statutory declaration, substantially in the form attached as Schedule "A", sworn by the Owner. Additionally, the Local Trust Committee may request this statutory declaration up to one additional time in any calendar year, and the Owner must complete and supply the completed statutory declaration within 10 Business Days of receiving a request from the Local Trust Committee. The Owner irrevocably authorizes the Local Trust Committee to make reasonable inquiries it considers necessary in order to confirm compliance with this Agreement.

## **2.8 Owner May Request Revision of Terms**

The Owner may request that the Local Trust Committee modify the terms of this Agreement, aside from section 2.1 and 2.2, in order to meet requirements imposed by an entity that has conditionally agreed to provide the funding to the Owner to construct the Rental Housing Units or operate the Rental Housing Units, or to do both, so that the terms of this Agreement do not conflict with such requirements.

## **2.9 Operating Agreement Prevails**

Notwithstanding section 2.8, the provisions in section 2.3 and 2.4 apply except if the Rental Housing Units are subject to an Operating Agreement which conflicts with all or any of them, in which case the Operating Agreement prevails to the extent of the conflict only.

Prior to execution of an Operating Agreement that the Owner expects to conflict with the provisions in section 2.3 and 2.4 of this Agreement, the Owner shall provide the draft Operating Agreement to the Local Trust Committee. The Local Trust Committee may request that Affordable Housing Funder modify the terms of the Operating Agreement so that its terms do not conflict with section 2.3 and 2.4 of this Agreement.

## **Article 3 – General Terms**

### **3.1 Management**

The Owner covenants and agrees that:

- a) it will furnish, or cause a Permitted Housing Operator to furnish, good and efficient management of the Lands and the Rental Housing Units on the Lands;
- b) if and when the Local Trust Committee has reasonable grounds to believe that a continuing breach of this Agreement exists, it will permit the Local Trust Committee to inspect the Lands and any Buildings at any reasonable time with reasonable notice, subject to the notice provisions of the Residential Tenancy Act; and
- c) the Owner will, or if the Owner is not the Permitted Housing Operator, the Owner will cause the Permitted Housing Operator to, administer, manage and operate the Rental Housing Units in accordance with all of the restrictions and requirements of this Agreement, and the Owner's obligations under this Agreement. For clarity, the Owner's engagement of a Permitted Housing Operator pursuant to this Agreement will not relieve the Owner from any of the Owner's obligations under this Agreement or any of the restrictions or requirements of this Agreement.

### **3.2 Discharge**

- a) After the Rezoning, the Owner intends to subdivide the Lands as shown on the proposed subdivision plan attached hereto as Schedule "C" to create parcels equivalent in size and configuration to those labelled Lot 1, Lot 2, and Lot 3.
- b) Upon Subdivision of the Lands and creation of a legal parcel equivalent in size, location and configuration of the parcel shown as Lot 3 on the proposed subdivision plan attached hereto (the "Lot 3 Equivalent"), if the Local Trust Committee, acting reasonably, is satisfied that the Lot 3 Equivalent is reasonably equivalent to the Lot 3 shown on the proposed subdivision plan and that, after a release is filed, this Agreement will remain on title and continue to bind the owner of the Lot 3 Equivalent, the Local Trust Committee will prepare and execute a release of this Agreement on any parcel that is not the Lot 3 Equivalent as soon as practicable (the "Release").
- c) Upon receipt of the executed Release from the Local Trust Committee, the owner of any parcel that is not the Lot 3 Equivalent may file the Release in the Land Title Office.
- d) Once the Release has been executed and filed, any reference to Lands in this Agreement shall be construed as a reference to the Lot 3 Equivalent and not any parcel that is not the Lot 3 Equivalent.

### **3.3 Order to Comply**

If the Owner is in default of the performance or observance of this Agreement, the Local Trust Committee may give the Owner a notice of default requiring the Owner to comply with this Agreement within the reasonable time stated in the notice. The Owner agrees that any breach or default in the performance of this Agreement on its part must be corrected, to the satisfaction of the Local Trust

Committee, within the time stated on the notice of default provided to the Owner by the Local Trust Committee.

### **3.4 Society Standing**

If the Owner is a society, the Owner must maintain its standing as a society under the *Society Act* and must not amend its Constitution in any manner that would prevent, or adversely affect, the ability of the Society to perform its obligations under this Agreement.

### **3.5 Specific Performance of Agreement**

The Owner agrees that the Local Trust Committee is entitled to obtain an order for specific performance of this Agreement and a prohibitory or mandatory injunction in respect of any breach by the Owner of this Agreement, in view of the public interest in restricting the occupancy of the Rental Housing Units. The Owner further acknowledges that a breach of this Agreement may constitute a breach of the Local Trust Committee's Land Use Bylaw.

### **3.6 Assignment**

The Owner acknowledges that the Local Trust Committee may delegate or assign the administration and management of this Agreement to a third party, and, in that event, any reference in this Agreement to the Local Trust Committee shall be interpreted as a reference to that party provided that the Local Trust Committee has so advised the Owner.

### **3.7 Indemnity**

The Owner shall indemnify and save harmless the Local Trust Committee and each of its elected officials, officers, directors, employees, and agents from and against all claims, demands, actions, loss, damage, costs, and liabilities for which any of them may be liable by reason of any act or omission of the Owner or its officers, directors, employees, agents or contractors or any other person for whom the Owner is by law responsible in relation to this Agreement, unless resulting from the respective gross negligence or unlawful acts of the Local Trust Committee or its elected officials, officers, directors, employees, and agents.

The Local Trust Committee shall indemnify and save harmless the Owner and each of its officers, directors, employees, agents or contractors or any other person for whom the Owner is by law responsible in relation to this Agreement, from and against all claims, demands, actions, loss, damage, costs and liabilities for which any of them may be liable by reason of any act or omission of the Local Trust Committee or its elected officials, officers, directors, employees, or agents, unless resulting from the respective gross negligence or unlawful acts of the Owner or its officers, directors, employees, agents or contractors or any other person for whom the Owner is by law responsible in relation to this Agreement.

This clause will survive the termination of this Agreement.

### **3.8 Release**

The Owner releases and forever discharges the Local Trust Committee and each of its elected officials,



officers, directors, employees, and agents and each of their heirs, executors, administrators, personal representatives, successors and assigns from all claims, demands, damages, actions, or causes of action arising out of advice or direction respecting the ownership, lease, operation or management of the Lands or the Rental Housing Units which has been or at any time after the commencement of this Agreement may be given to the Owner by all or any of them, unless resulting from the respective gross negligence or unlawful acts of the Local Trust Committee or its elected officials, officers, directors, employees, and agents and each of their heirs, executors, administrators, personal representatives, successors and assigns.

The Local Trust Committee releases and forever discharges the Owner and each of its officers, directors, employees, agents and contractors, and any other person for whom the Owner is by law responsible in relation to this Agreement and each of their heirs, executors, administrators, personal representatives, successors and assigns from all claims, demands, damages, actions, or causes of action arising out of advice or direction respecting the ownership, lease, operation or management of the Lands or the Rental Housing Units which has been or at any time after the commencement of this Agreement may be given to the Local Trust Committee by all or any of them, unless resulting from the respective gross negligence or unlawful acts of the Owner or its officers, directors, employees, agents and contractors, and any other person for whom the Owner is by law responsible in relation to this Agreement and each of their heirs, executors, administrators, personal representatives, successors and assigns.

This clause will survive the termination of this Agreement.

### **3.9 Local Trust Committee Powers Unaffected**

This Agreement does not limit the discretion, rights, duties or powers of the Local Trust Committee under any enactment or the common law, impose on the Local Trust Committee any duty or obligation, affect or limit any enactment relating to the use of the Lands, or relieve the Owner from complying with any enactment.

### **3.10 No Public Law Duty**

Wherever in this Agreement an act, determination, consent, approval or agreement of the Local Trust Committee is provided for, such act, determination, consent, approval or agreement may be done or made in accordance with the terms of this Agreement and no public law duty, whether arising from the principles of procedural fairness or the rules of natural justice shall have any application.

### **3.11 No Waiver**

No condoning, excusing or overlooking by a party of any default under this Agreement of the other party, nor any consent, approval, or agreement whether written or otherwise shall be taken to operate as a waiver by the non-defaulting party of any subsequent default or of the necessity for further consent, approval or agreement in respect of a subsequent matter requiring it under this Agreement, or in any way to defeat or affect the rights or remedies of the non-defaulting party.

### **3.12 Dispute Resolution**

Any matter in dispute between the parties under this Agreement, including any disputes as to whether a particular individual is eligible to occupy a Rental Housing Unit, must be referred to a single arbitrator if the parties can agree on one, and otherwise to three arbitrators, one to be appointed by each of the

parties and the third by those two so appointed, and the matter must be resolved in accordance with the provisions of the *Arbitration Act* (British Columbia).

### **3.13 Notice on Title**

The Owner acknowledges and agrees that this Agreement constitutes both a covenant under Section 219 of the *Land Title Act* and a housing agreement under Section 483 of the *Local Government Act*, the Local Trust Committee is required to file a notice of housing agreement in the Land Title Office against title to the Lands, and once such a notice is filed, this Agreement binds all persons who acquire an interest in the Lands as a housing agreement under Section 483 of the *Local Government Act*.

### **3.14 Covenant Runs with the Land**

Every obligation and covenant of the Owner in this Agreement constitutes both a contractual obligation and a covenant granted by the Owner to the Local Trust Committee in accordance with section 219 of the *Land Title Act* in respect of the Lands and this Agreement burdens the Lands and runs with it and binds the Owner's successors in title and binds every parcel into which it is consolidated or subdivided by any means, including, by subdivision or by strata plan.

### **3.15 Limitation on Owner's Obligations**

The Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lands, provided that once the Release has been executed and filed in accordance with section 3.2, the Owner is only liable for breaches of this Agreement that occur while the Owner is the registered owner of the Lot 3 Equivalent.

### **3.16 Amendment and Termination**

This Agreement may not be modified or amended except by bylaw of the Local Trust Committee, upon an agreement in writing between the Local Trust Committee and the Owner.

### **3.17 Notices**

Any notice required to be given pursuant to this Agreement shall be in writing and shall be given to the Owner or the Local Trust Committee, as the case may be, at the address first above written, or to any other address of which either the Owner or the Local Trust Committee may advise the others in writing in accordance with this paragraph. Notice to the Local Trust Committee must be addressed to the Secretary of the Islands Trust. If given in person or by facsimile transmission, such notice will be deemed to be received when delivered and, if mailed, such notice will be deemed to be received only when actually received by the party to whom it is addressed.

### **3.18 Enurement**

This Agreement is binding upon and enures to the benefit of the parties and their respective successors and permitted assigns.

### **3.19 Remedies Cumulative**

The remedies specified in this Agreement are cumulative and are in addition to any remedies of the parties at law or in equity. No remedy shall be deemed to be exclusive, and a party may from time to time have recourse to one or more or all of the available remedies specified herein or at law or in equity.

### **3.20 Severability**

If any term or provision of this Agreement, or its application to any person or circumstance shall to any extent be found to be invalid and unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

### **3.21 Joint and Several**

In the case of more than one Owner, the grants, covenants, conditions, provisions, agreements, rights, powers, privileges and liabilities of the Owner shall be construed and held to be several as well as joint.

### **3.22 Further Acts**

The parties will do everything reasonably necessary to give effect to the intent of this Agreement, including execution of further instruments.

### **3.23 Governing Law**

This Agreement shall be governed by and construed in accordance with the laws of the province of British Columbia.

### **3.24 Joint Venture**

Nothing in this Agreement shall constitute the Owner as an agent, joint venture or partner of the Local Trust Committee or give the Owner any authority or power to bind the Local Trust Committee in any way.

### **3.25 Time of Essence**

Time is of the essence in this Agreement.

### **3.26 Further Assurances**

The parties shall execute and do all such further deeds, acts, things and assurances as they reasonably require to carry out the intent of this Agreement.

### **3.27 Priority**

The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement is registered against title to the Lands with priority over all financial charges, liens and encumbrances registered or pending at the time of application for registration of this Agreement.

### **3.28 Deed and Contract**

By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement under seal by executing Part 1 of the *Land Title Act* Form C to which this Agreement is attached and which forms part of this Agreement.

**SCHEDULE "A"**

**OWNER STATUTORY  
DECLARATION**

CANADA

PROVINCE OF BRITISH COLUMBIA

IN THE MATTER OF A HOUSING AGREEMENT  
WITH THE Mayne Island ISLAND LOCAL  
TRUST COMMITTEE ("Housing Agreement")

I, \_\_\_\_\_

declare that:

1. I am the \_\_\_\_\_ [director, officer, employee] of the Owner of the land known as \_\_\_\_\_, Mayne Island, legally described as  
Parcel Identifier: \_\_\_\_\_  
Legal Description: \_\_\_\_\_  
(the "Lands")
2. I make this declaration to the best of my personal knowledge.
3. This declaration is made pursuant to the Housing Agreement registered against the Lands.
4. For the period from \_\_\_\_\_ to \_\_\_\_\_, the Rental Housing Units were used only by Qualified Renters (as defined in the Housing Agreement).
5. At no time during the last year were any of the Rental Housing Units used as a short-term vacation rental.
6. The rental payments charged for the Rental Housing Units were in compliance with the Housing Agreement.
7. No subletting of the Lands has been permitted.
8. I acknowledge and agree to comply with all of the Owner's obligations under the Housing Agreement, and other charges registered against the Lands and confirm that the Owner has complied with all of its obligations under these Agreements.
9. I make this solemn declaration conscientiously believing it to be true and knowing that it is of the same force and effect as if made under oath and pursuant to the *Canada Evidence Act*.

DECLARED BEFORE ME at \_\_\_\_\_, British Columbia, this \_\_\_\_ day of \_\_\_\_\_.

\_\_\_\_\_  
A Commissioner for taking Affidavits  
in British Columbia

\_\_\_\_\_  
Signature of person making declaration

## **SCHEDULE "B"**

### **Eligibility Criteria for Tenancy**

A Qualified Renter means a person aged 19 years or older who meets the financial and other requirements of the Housing Agreement (the "Agreement") and fits into at least one of the following categories, subject to the Operating Agreement, and which are not listed in any particular priority order:

- 1) Residents of Mayne Island;
- 2) Indigenous peoples with rights and responsibilities in and around what is known as Mayne Island, or, is considered by members of these First Nation communities to be part of the First Nation community.

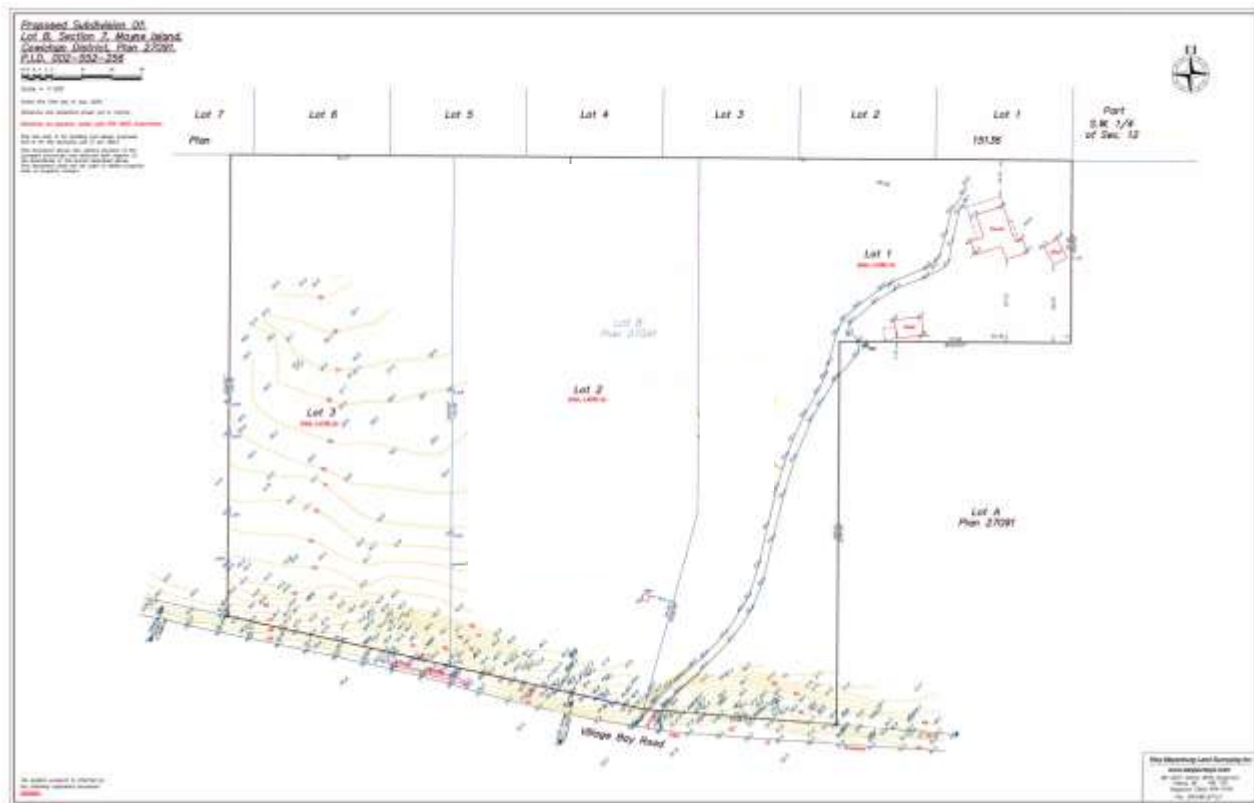
Except that where there are no persons meeting the categories specified in clause 1 or 2 above, who make an application to rent an available unit and the lack of applications from the categories specified above would result in a unit being vacant for more than one month, then a Qualified Renter may be a person aged 19 years or older who meets the financial and other requirements of the Agreement and fits into at least one of the following categories, which are not listed in any particular priority order:

- a. Previous resident of Mayne Island who has lived away from the island for a maximum of three consecutive years; or
- b. Non-resident who is hired to begin at least half-time work (20 hours per week) on Mayne Island; or
- c. Person with immediate family already living on Mayne Island. For greater clarity, immediate family means an individual to whom the person is related by blood, or by marriage, or common-law relationship, or by adoption.

Except that where there are no persons meeting the categories specified in clause 1 or 2, nor a, b, or c above, who make an application to rent an available unit and the lack of applications from the categories specified above would result in a unit being vacant for more than one month, then a Qualified Renter may be any person permitted by the Operating Agreement who meets the financial and other requirements of the Agreement.

## SCHEDULE "C"

## Proposed Subdivision Plan



**PART 2 - TERMS OF INSTRUMENT**

**SECTION 219 COVENANT**

This Agreement dated for reference \_\_\_\_\_ is between:

**SEAN MCHUGH**, of 375 Village Bay Road, Mayne Island, V0N 2J2

(the "**Owner**")

AND:

**MAYNE ISLAND LOCAL TRUST COMMITTEE**, a corporation under the *Island Trust Act*, R.S.B.C. 1996, c. 239, having an office at Suite 200, 1627 Fort Street, Victoria, British Columbia, V8R 1H8

(the "**Local Trust Committee**")

GIVEN THAT:

A. The Owner is the registered owner of the Land situated on Mayne Island, British Columbia, and legally described as:

PID: 002-552-256

Lot B Plan VIP 27091 Section 7, Land District 16, Portion Mayne Island

(the "**Land**");

B. The Owner proposes to subdivide and develop the Land for residential use.

C. The Owner wishes to grant the Local Trust Committee and the Capital Regional District a covenant under s. 219 of the *Land Title Act* (British Columbia) to regulate the use of the Land.

NOW THEREFORE, in consideration of the payment of \$2.00 by the Local Trust Committee to the Owner (the receipt and sufficiency of which is acknowledged by the Owner), and in consideration of the promises exchanged below, the Owner covenants and agrees with the Local Trust Committee in accordance with s. 219 of the *Land Title Act* (British Columbia) as follows:

Definitions

1. In this Agreement:

- (a) "**Ecological Assessment Report**" means the report prepared by Keith Erickson and dated September 21, 2020, a copy of which is held on file at the offices of the Local Trust Committee;
- (b) "**Land**" has the meaning ascribed in Recital A and, for clarity, includes the parcels for Lots 2 and 3 into which it is subdivided by any means and any parcel into which the Land is consolidated;
- (c) "**Permitted Housing Operator**" means BC Housing or its successor in function, Canada



Mortgage and Housing Corporation or its successor in function, a housing society, a non-profit housing corporation, or other entity approved by the Local Trust Committee in writing.

- (d) "**potable**" means that the water is safe to drink and suitable for domestic purposes and, without limiting the foregoing, meets a standard for potability no less than that specified in both the Land Use Bylaw and the Guidelines for Canadian Drinking Water Quality, as those may be revised from time to time;
- (e) "**Septic Specialist**" means an authorized person as defined in the Sewerage System Regulation, BC Reg 326/2004, as amended or replaced from time to time;
- (f) "**Subdivision Plan**" means the proposed plan for the subdivision of the Land, a copy of which is attached to this Agreement as Schedule "A";
- (g) "**Water Specialist**" means a certified water treatment specialist having professional qualifications acceptable to the Local Trust Committee, acting reasonably;
- (h) "**Wetland Restoration Report**" means the report prepared by Robin Annschild and dated March 8 2021, as amended by the letter by Robin Annschild dated April 16, 2021, copies of which are held on file at the offices of the Local Trust Committee.

#### Approvals

- 2. Where this Agreement requires the approval of the Local Trust Committee, approval may be given by the Islands Trust's Regional Planning Manager, Southern Team and must, if given, be in writing.

#### Restriction on Use and Subdivision

- 3. The Owner shall not use or occupy the Land or any area into which the Land may be subdivided, for any residential or domestic purpose, unless the Owner is in full compliance with the terms of this Agreement.
- 4. The Land shall not be subdivided except to create lots having boundaries generally in accordance with the Subdivision Plan.
- 5. In this Agreement a reference to a numbered "Lot" is a reference to that Lot or area of the Land as shown on the Subdivision Plan, whether or not the Land has been subdivided.

#### Lot 3 Water Supply

- 6. No building or structure shall be constructed or developed on Lot 3 until the Owner of Lot 3 has submitted to the Local Trust Committee and received the Local Trust Committee's approval of, a design for a water treatment system (the "**Water Treatment System Design**") for Lot 3, such approval not to be unreasonably withheld.
- 7. The Water Treatment System Design shall be prepared by a Water Specialist and shall include recommendations for ongoing maintenance to ensure the system continues to function as designed and recommendations to ensure domestic water is potable and sufficient for residential uses on Lot 3.
- 8. Lot 3 may not be used or occupied for residential purposes, nor shall the Owner of Lot 3 request an occupancy permit for any building on Lot 3, until the Owner of Lot 3 has installed a water treatment

system in accordance with the Water Treatment System Design and provided to the Local Trust Committee written confirmation from a Water Specialist that the water treatment system is operating as designed, and in particular, is capable of delivering sufficient potable water for residential uses on Lot 3.

9. The Owner of Lot 3 shall maintain a water treatment system in accordance with the Water Treatment System Design and any manufacturer's instructions, as may be amended from time to time and when the water treatment system reaches the end of its life, the Owner of Lot 3 shall replace the water treatment system in accordance with the recommendations of a Water Specialist.
10. The Owner of Lot 3 shall ensure that any replacement water treatment system is capable of delivering sufficient potable water for residential uses on Lot 3 and shall maintain any replacement water treatment system in accordance with the recommendations of a Water Specialist, at the time of replacement, and any manufacturer's instructions, as may be amended from time to time.
11. The Owner of Lot 3 shall, within 30 days of receiving a written request from the Local Trust Committee, provide written confirmation from a Water Specialist that the water treatment system has been properly maintained and is functioning as designed and intended. The Local Trust Committee may make a written request not more than once every calendar year.

#### Lot 3 Septic

12. No building or structure shall be constructed on Lot 3 until the Owner of Lot 3 has had a design for a septic system prepared by a Septic Specialist that shall include recommendations for ongoing maintenance to ensure the system continues to function and to ensure the system is sufficient for residential uses on Lot 3 (the "Septic System Design").
13. The Owner of Lot 3 shall maintain a septic system in accordance with the Septic System Design and any manufacturer's instructions, as may be amended from time to time and when the septic system reaches the end of its life, the Owner of Lot 3 shall replace the septic system in accordance with the recommendations of a Septic Specialist.
14. The Owner of Lot 3 shall ensure that any replacement septic system is sufficient for residential uses on Lot 3 and shall maintain any replacement septic system in accordance with the recommendations of a Septic Specialist, at the time of replacement, and any manufacturer's instructions, as may be amended from time to time.
15. The Owner of Lot 3 shall, within 30 days of receiving a written request from the Local Trust Committee, provide written confirmation from a Septic Specialist that the septic system has been properly maintained and is functioning as designed and intended. The Local Trust Committee may make a written request not more than once every calendar year.

#### Lot 2 – Remediation, Preservation & Construction:

16. No building, land alteration, construction or development is permitted on Lot 2 except in accordance with the recommendations contained in the Ecological Assessment Report and the Wetland Restoration Report as applicable and set out in Schedule B.
17. No building or structure shall be constructed, placed, or located on Lot 2 except within the area of Lot 2 shown as "Building Zone" on the Subdivision Plan.

18. The Owner of Lot 2 shall not start the construction of any building or structure on Lot 2 until the Owner of Lot 3 has completed the construction of, and received any occupancy permit required by the Capital Regional District for, at least 5 units of affordable housing, on Lot 3. This restriction shall expire five (5) years after the date when the Land is subdivided in accordance with the Subdivision Plan.

**Commented [NC1]:** If it is determined that the zoning is the amenity this clause will need to be changed to require subdivision and donation of Lot 3 to housing society before Lot 2 can be built on. The expiration of the restriction will need to be removed.

19. Lot 2 may not be used or occupied for residential purposes until:

- (a) the Local Trust Committee has received written confirmation from a suitably qualified professional that the recommendations from the Ecological Assessment Report and the Wetland Restoration Report, as set out in section 16, have been adhered to and implemented where applicable to Lot 2.

#### Lot 3 – Remediation, Preservation & Construction:

20. No building, land alteration, construction or development is permitted on Lot 3 except in accordance with the recommendations contained in the Ecological Assessment Report and the Wetland Restoration Report as applicable and set out in Schedule B.

21. No building or structure shall be constructed, placed, or located on Lot 3 except in areas of Lot 3 outside of the wetland remediation zone on the Subdivision Plan in Schedule A.

22. Lot 3 may not be used or occupied for residential purposes until:

- (a) the Local Trust Committee has received written confirmation from a suitably qualified professional that the recommendations from the Ecological Assessment Report and the Wetland Restoration Report, as set out in section 20, have been adhered to and implemented where applicable to Lot 3.

#### No Effect on Laws or Powers

23. This Agreement does not

- (a) affect or limit the discretion, rights, duties or powers of the Local Trust Committee under any enactment or at common law, including in relation to the use or subdivision of the Land except as expressly set out herein;
- (b) impose on the Local Trust Committee any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement except as expressly set out herein;
- (c) affect or limit any enactment relating to the use or subdivision of the Land;
- (d) relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.

#### Limitation on Obligations

24. The Owner is only liable for breaches of this Agreement caused or contributed to by the Owner or which the Owner permits or allows. The Owner is not liable for the consequences of the

requirements of any enactments or law or any order, directive, ruling or government action thereunder. The Owner is liable only for breaches of this Agreement which occur while the Owner is the registered owner of any interest in the Land and then only to the extent of that interest.

#### No Liability in Tort

25. The parties agree that this Agreement creates only contractual obligations. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of or any default under or in respect of, this Agreement. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract.

#### Covenant Runs With the Land

26. Unless it is otherwise expressly provided in this Agreement, every obligation and covenant of the Owner in this Agreement constitutes a personal covenant and also a covenant granted under s. 219 of the Land Title Act (British Columbia) in respect of the Land. This Agreement burdens the Land and runs with it and binds the successors in title to the Land. This Agreement burdens and charges all of the Land and the parcels for Lots 2 and 3 into which it is subdivided by any means and any parcel into which the Land is consolidated.

#### Registration

27. The Owner agrees to do everything necessary at the Owner's expense to ensure that this Agreement is registered against title to the Land with priority over all financial charges, liens and encumbrances registered or pending registration in the Land Title Office at the time of application for registration of this Agreement.

#### Waiver

28. An alleged waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach. A waiver of a breach of this Agreement does not operate as a waiver of any other breach of this Agreement.

#### Severance

29. If any part of this Agreement is held to invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this Agreement and the rest of this Agreement remains in force unaffected by that holding or by the severance of that part.

#### No Other Agreements

30. This Agreement is the entire agreement between the parties regarding its subject and it terminates and supersedes all other agreements and arrangements regarding its subject.

#### Binding of Successors

31. This Agreement binds the parties to it and their respective successors, heirs, executors and administrators.

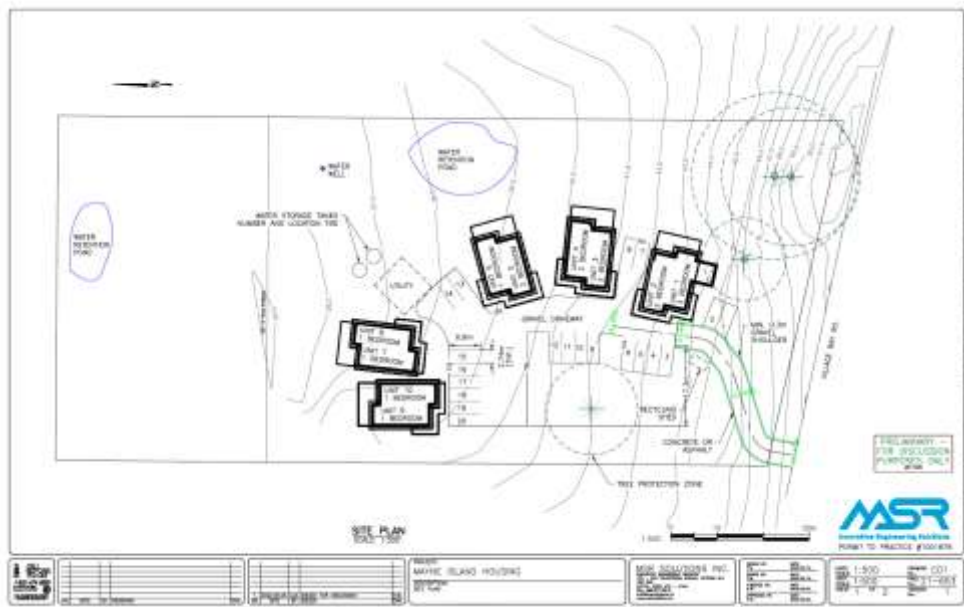
Execution Using Form C

32. As evidence of their agreement to be bound by the above terms, the parties each have executed and delivered this Agreement by executing Part 1 of the Land Title Act Form C to which this Agreement is attached and which forms part of this Agreement.

# SCHEDULE A SUBDIVISION PLAN

[NTD - this schedule to be finalized prior to execution]





**SCHEDULE B  
RECOMMENDATIONS FOR THE  
REMEDIATION AND PRESERVATION OF LOT 2 AND 3**

**1. Ecological Assessment Report**

- a) Reduce fragmentation of the forest by keeping the development compact and minimizing the footprint of structures and services. For example, bury power and communications lines under access driveway.
- b) Retain, and establish a Tree Protection Zone, around remaining old veteran trees on the property. To give a sense of a standard calculation of the Critical Rooting Zone or Tree Protection Zone, this report has created a Tree Protection Zone based on the trunk diameter method with every 1cm of tree diameter (at breast height) equaling 12cm of Protection Zone radius.
- c) Retain large diameter wildlife trees (dead standing trees).
- d) Recommend consulting with a certified arborist to:
  - (i) to determine the health the veteran trees, assess the impacts from the proposed development and provide recommendations for tree protection and establishing a critical rooting zone.
  - (ii) to determine safety considerations and setback requirements around these trees.
  - (iii) If necessary, top wildlife tree to reduce setback rather than remove completely.
- e) Minimize the encroachment of the development footprint into moist/wet ecosystems.
- f) Minimize disturbance to Douglas-fir / dull Oregon-grape Provincially red-listed ecological community within mapped Ecological Community 1-1. A large portion of this overlaps with recommended Tree Protection / Critical Rooting Zone in 2b).
- g) Focus development in and around areas where soils are already heavily disturbed and compacted as much as possible.
- h) Minimize area of impervious surfaces and area of soil compaction including during the construction phase and post-construction ongoing use.
- i) Recommend consultation with professional hydrologist to determine direct impacts to hydrology from development and to prescribe measures required to mitigate on-site and downslope impacts. Potential measures might include:
- j) Installation of bioswales, creation of rainwater gardens, constructed wetlands or retention ponds to promote infiltration of surface water and any diverted water into the ground.
- k) Installation of rainwater catchment and storage systems to reduce roof runoff and reduce pressure on groundwater resources.



- l) Retain as much forest structure and natural vegetation cover as possible.
- m) Minimize impacts to vegetation during the construction process, and immediately revegetate/restore any areas where temporary damage is necessary for construction purposes.
- n) Retain large diameter coarse woody debris within undeveloped areas of the property to provide critical wildlife habitat.
- o) Restore areas outside of the development footprint where soils have been previously compacted (skid roads, logging landing sites) through 'rough and loose' treatment.
- p) Incorporate 'wildlife zones' into the design where no ongoing use occurs. Restoration and wildlife enhancement measures should be focused in these areas.
- q) Monitor, evaluate and if necessary employ further mitigation measures during all phases of the development and construction process.

## **2. Wetland Restoration Report**

- a) Remove compaction & roads  
Old logging roads that are no longer needed may be restored to a forested wetland by removing the compaction through a technique known as rough and loose or "fluffing up" the soil from the road surface. Removing compaction will allow moisture from rain and snowmelt to penetrate the soil, reducing the risk of erosion. Loosening the soil also makes it easier for tree and plant roots to penetrate, increasing the rate and size of vegetation that may grow on the site.
- b) Restore micro-topography  
The smooth surfaces of roads, former pasture, old landings and other disturbed areas have reduced the variety of microsites available for different species of vegetation. As compaction is removed, the soil will be left in naturally appearing, undulating mounds and ridges to restore habitat diversity.
- c) Remove Ditches  
Ditch removal requires cleaning vegetation, roots and organic matter from the ditch and packing it with soil of a similar texture and level of compaction. A large volume of soil is required to fill ditches. Combining ditch removal with wetland construction makes sense. The soil removed from the wetland basins can be used to fill the ditches.
- d) Build Wetland Ponds  
Two sites are identified on the Subdivision Plan where small open water ponds 23 m x 16 m (Pond #1) and 9m x 17m (Pond #2) could be built
- e) Add Coarse Woody Debris  
Wetland restoration is an opportunity to re-purpose woody debris from site clearing to a necessary material for site restoration. Larger pieces of wood and smaller branches may be used in pond construction to provide habitat and incorporated into the former road surfaces when compaction is removed.
- f) Prioritize Forested Wetland Restoration
- g) The wetland restoration shall be supervised by a qualified professional.