

Community Housing Background Report & Recommendations

Prepared for the Islands Trust
SSI Local Trust Committee

by

**the Salt Spring
Community Housing Task Force**

December 7, 2005

Community Housing Background Report & Recommendations

	<i>Table of Contents</i>	<i>page</i>
Acknowledgements		
PART 1	Introduction	1
	<i>Chart 1: Creating Community Housing—Process Flow Chart</i>	3
	<i>Chart 2: Creating Community Housing—Tasks and Timelines</i>	4
PART 2	Recommendations	
	1. General	5
	2. Small-scale (three units or less) Community Housing providers	6
	3. Larger-scale (four units or more) Community Housing projects	8
	4. Environmental considerations	8
	5. Other cases, miscellaneous	9
	6. Definition of Affordability	9
	7. Qualification Criteria for occupants	10
	<i>Table 1: Recommended guidelines for Community Housing categories based on household size and income</i>	12
PART 3	Background Report	
	I. Purpose	13
	II. Defining acceptable housing	13
	a) Affordability	13
	b) Suitability	16
	c) Adequacy	16
	III. Housing Needs Assessment	16
	a) Identified need	17
	b) Existing housing stock	17
	c) Qualification criteria	22
	d) Wait list	23
	e) Qualification Certificates	23
	IV. Environmental, agricultural and sustainability issues	24
	a) Location of community housing	24
	b) Densities	25
	c) Construction standards	26
	d) Infrastructure options	26
	e) Alternative housing options	27
	V. Quantifying community benefit and developer benefit	27
	VI. Housing Agreements	30
	a) General Instrument / Developer Agreement	31
	b) Housing Agreement	31
	VII. Salt Spring Community Housing Agency	32
	a) Functions	32
	b) Organisation	33
	c) Funding and Staffing	33
	d) Enforcement	33
	VIII. Disposition of community / public lands / assets	33
	a) Proposal selection process	34
	b) Request for Expressions of Interest (REOI)	34
	c) Request for Proposals (RFP)	35

Community Housing Background Report & Recommendations

Table of Contents (cont)

page

APPENDIX A — Needs Assessment outline	37
APPENDIX B — Whistler Standard Housing Agreement, 219 Covenant & Rent Charge & Indemnity	
APPENDIX C — Whistler Standard Right of First Refusal & Option to Purchase	

Acknowledgements

The Salt Spring Community Housing Task Force is an appointed body established in 2004 by the Islands Trust Salt Spring Local Trust Committee.

The Community Housing Background Report and Recommendations were prepared by the Task Force over a fourteen month period beginning in the Fall of 2004.

We would like to thank Trustee Kimberly Lineger and Planner Cathy McNamara for their assistance with the work. Our special thanks to CRD Director Gary Holman for acting as the ex-officio Chair of the Task Force.

Members of the Salt Spring Community Housing Task Force:

Janis Gauthier
Patricia (Neddy) Harris
Laura Morrison (to August, 2005)
Elizabeth White
Gordon Ellis
Tanya Lester
Joanne Van Pelt (to September, 2005)
Ragnhild Flakstad
Gary Holman (CRD Regional Director, ex-officio member)

Introduction

Creating Community Housing on Salt Spring is a challenge, given rapidly escalating real estate values, a limited and largely privately-owned land base, and the need to protect ecological values and natural resources. Outlined in the following pages is a Salt Spring solution which builds on successful examples from other jurisdictions. Our model encourages a broad diversity of Community Housing initiatives, largely within the existing framework of the OCP. Because of the strong economic pressures of the marketplace, Community Housing must be legally protected and there will be associated administrative requirements. We are proposing here an independent Housing Agency—probably under the umbrella of an existing organization—with a small staff, overseen by a volunteer elected or appointed board. However the success of Community Housing will depend on the participation of many individuals, non-profit groups, businesses and volunteers in true Salt Spring style.

What is Community Housing?

Community Housing is deed-restricted and/or rent-controlled housing that provides affordable, suitable and adequate accommodation. It includes everything from shared rental rooming houses and small rent-subsidized studio apartments to ownership-model three bedroom family homes. Community Housing is restricted in terms of who qualifies to live in it—apart from income and asset restrictions, there are also qualification criteria in terms of length of Salt Spring residency and/or employment, and in some cases urgency, plus the need to match the applicant with suitable accommodation. Community Housing is also restricted in terms of its initial and resale price or rent.

Who Lives in Community Housing?

Community Housing is geared primarily for Salt Spring households of median income or less. Qualifying households would include renters, homeowners, singles, families, and seniors — members of the community unable to find affordable and suitable housing on the open market.

Who provides Community Housing?

Community Housing can be provided by individual homeowners who agree to rent a suite or cottage to a qualifying tenant at a pre-approved rent. Community Housing can also be provided by non-profit groups or agencies that may build or acquire housing and sell or rent it to qualified households. And Community Housing may be provided by for-profit developers, acting either as project managers or as contractors for a non-profit agency, or as traditional landowner-developers. This latter model in particular requires complete transparency and cooperation between the developer and the regulatory agencies, which should establish an appropriate mix of unit types, sale prices, rental rates, acceptable profit, and default mechanisms.

What are Salt Spring's Community's Housing Needs?

We “know” based on anecdotal evidence and some basic housing market and demographic data, that there is a strong need for Community Housing on Salt Spring, and it appears that the greatest current need is in the rental sector, in the \$450—\$750 range. A good way to address this need in our view is by allowing homeowners to create affordable rental suites within their existing dwellings. Other affordable rentals may be created by allowing seasonal cottages to be converted to affordable rental accommodation. Incentives should be used to encourage homeowners to create additional affordable housing, particularly within the village containment boundaries.

We also “know” that there is a need for deed-restricted ownership-model Community Housing. The current price range for affordable ownership units appears to range from \$120,000—\$200,000. However the experience from Whistler is that when this type of housing is first introduced, there is some resistance because it is not market housing. Therefore it would be prudent to offer a very small number of these units initially, say three—five houses in the first year, and / or to have presales in place prior to construction to confirm demand and buyer acceptance

In our view, there is no doubt that Salt Spring has reached the point where Community Housing is needed. The gap between market housing prices and household income is growing and is not likely to diminish. Affordable market rentals are in very short supply, to the point of being almost non-existent in the lowest price category. In order to provide Community Housing, a number of steps need to be taken. These include the setting of housing policies and the establishment of an administrative body—a Salt Spring Community Housing Agency (or Housing Authority). In the short-term, tasks may be undertaken by existing bodies, but a Housing Agency is the logical way to coordinate housing delivery and is the model used by communities across North America.

Community Housing should be driven by demonstrated need, ie based on data from the Wait List and a regularly updated Housing Needs Assessment, not by expediency. Larger projects should be mixed in terms of size and type of unit, price range and ownership / rental.

Role of the OCP Review and other issues

The OCP review process provides an opportunity to make the minor adjustments needed to implement the CHTF recommendations. It also provides an opportunity to address current weaknesses in the OCP which may be fueling the fires of real estate speculation. For example a meaningful restriction on the maximum size of dwellings may be advantageous in eliminating the potential for ‘monster home’ STVRs. Any measures that reduce real estate speculation assist in the provision of affordably-priced housing for island residents.

The CHTF is aware there are many other issues that may impact affordable housing on Salt Spring—e.g. the lack of a bus service, and availability of adequately compensated employment on the island. However these issues are beyond the CHTF terms of reference.

Chart 1: *Creating Community Housing—Process Flow Chart*

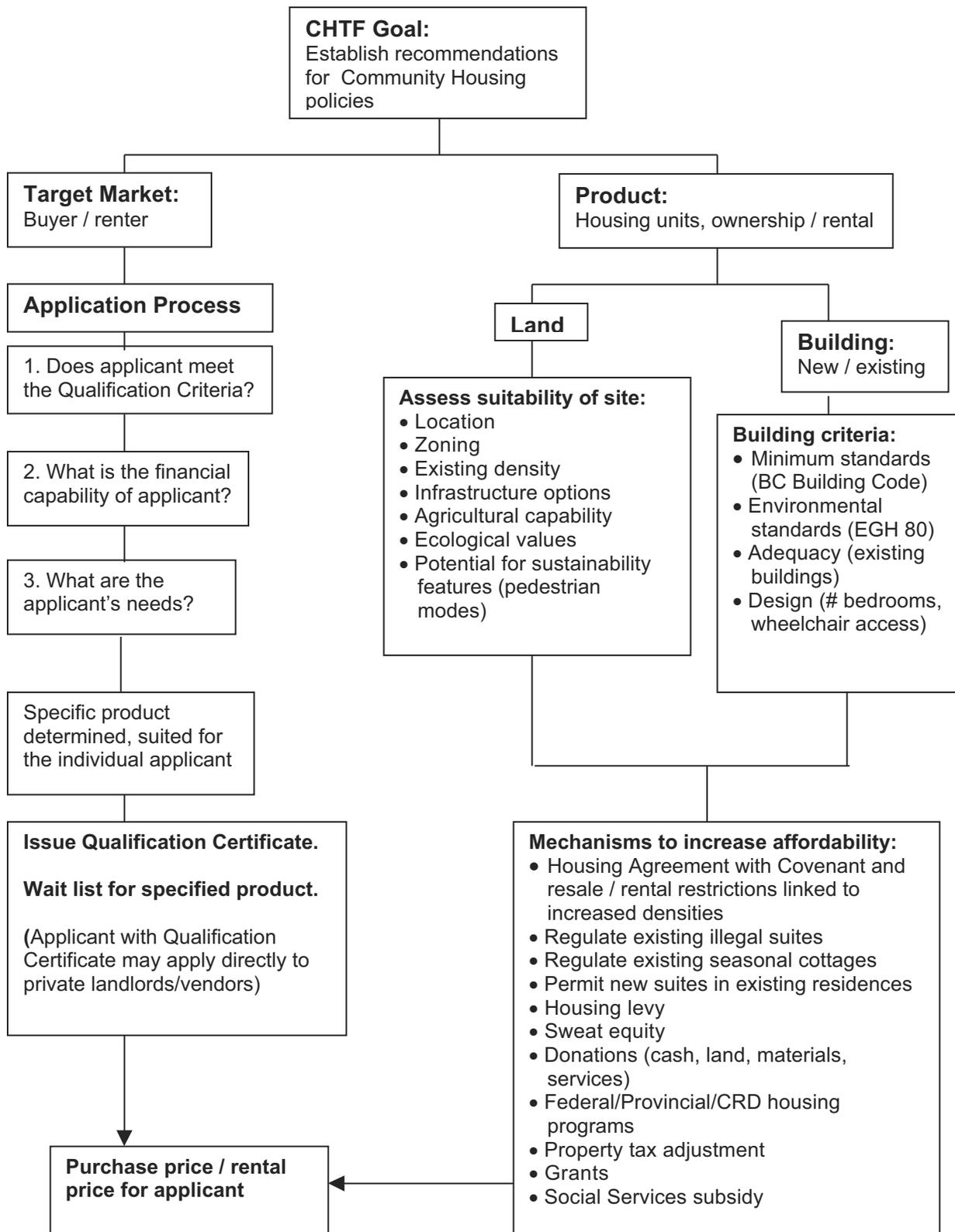
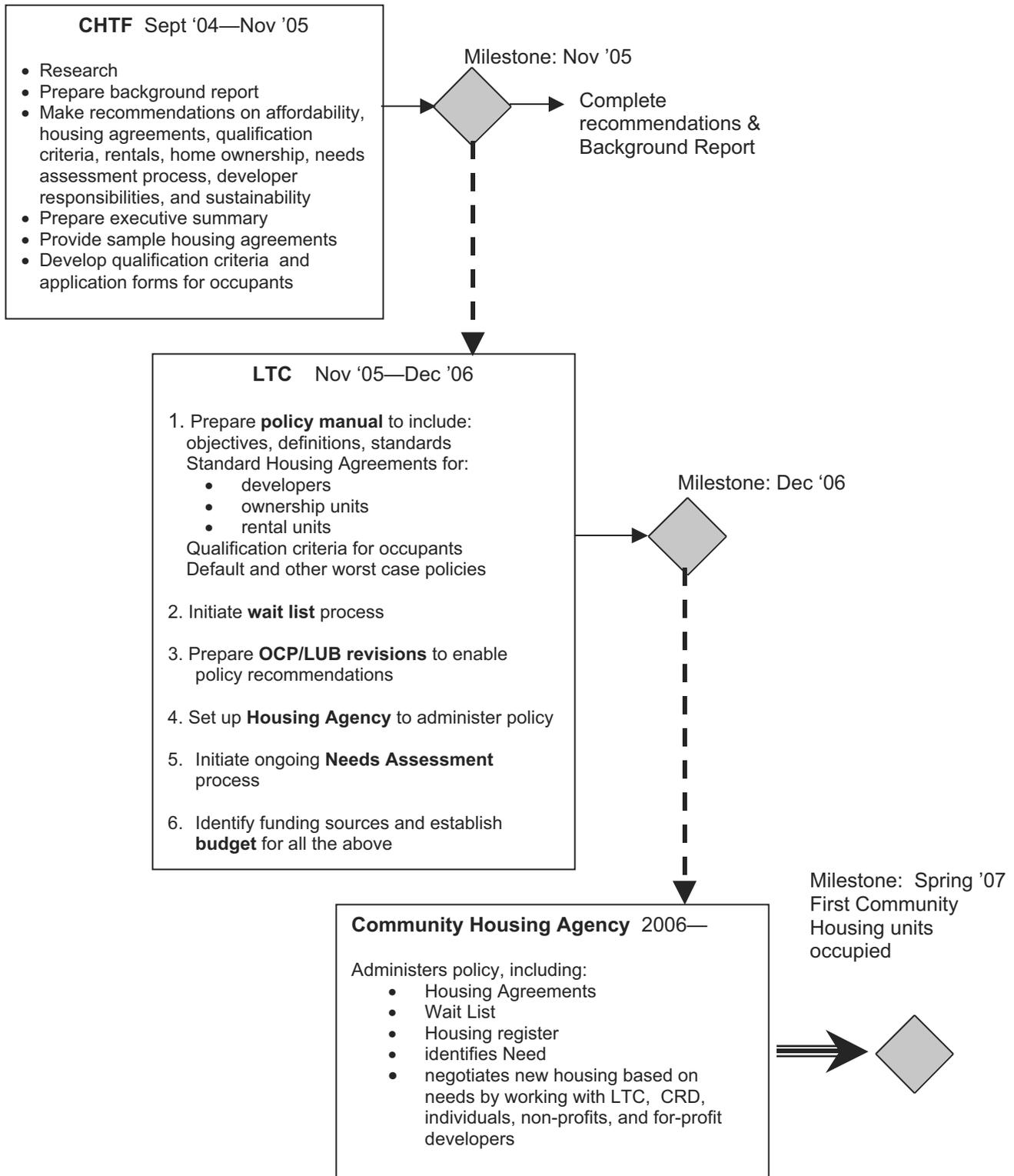


Chart 2: *Creating Community Housing—Tasks and timelines*



CHTF Recommendations

1.0 General

- 1.1 The CHTF recommends that the LTC undertake the following tasks immediately:
- Prepare a **policy manual** to include: objectives, definitions, standards; Standard Housing Agreements for: developers, ownership units, and rental units; Qualification criteria for occupants; Default and other worst case policies;
 - Initiate a **wait list** process, with qualification criteria;
 - Prepare **OCP/LUB revisions** to enable policy recommendations;
 - Set up a **Salt Spring Community Housing Agency** to administer policy;
 - Initiate an ongoing **Housing Needs Assessment** process;
 - To facilitate immediate implementation, some tasks—e.g. wait list, qualification certificates, development and administration of housing agreements—should be undertaken on a temporary basis by an existing organization, such as the Capital Regional Housing Corporation or the SSI Community Services Society;
 - The Capital Regional Housing Corporation should assist with the development of local capacity with the intent to transfer tasks and responsibilities for the Housing Agency to a local entity as soon as local capacity is demonstrated;
 - Identify funding sources and establish a **budget** for all of the above.
- 1.2 All Community Housing—ownership and rental—is to be protected by means of a Housing Agreement and / or a covenant registered on title.
- 1.3 The creation of Community Housing is to be driven by demonstrated need, i.e. based on data from a Wait List and a regularly updated Housing Needs Assessment.
- 1.4 Densities for Community Housing are to be provided wherever possible from existing densities. If additional densities are required, they are to be provided by the Islands Trust, i.e. free of charge in exchange for covenant on title in perpetuity.
- 1.5 Applicants for Community Housing are to meet Qualification Criteria (SSI residency, income, asset base, and need, see 7 below) and are to be in possession of a current Qualification Certificate.
- 1.6 In the short-term, focus efforts on increasing the amount of affordable rental accommodation. (See 2. below).
- 1.7 Larger projects (four units or more) should be mixed in terms of size and type of unit, price range and ownership / rental.
- 1.8 Information about Community Housing policies, grants, procedures and current need and availability is to be publicized and made readily available to housing providers—including homeowners, non-profit groups and agencies, and for-profit developers—and to those in need of housing on Salt Spring.
- 1.9 Proposals from non-profit housing providers to be encouraged and supported through waived or reduced rezoning / permit fees.
- 1.10 Priority and greater incentives should be given to projects that address lower income and harder-to-house residents.
- 1.11 All Community Housing is to meet health, safety and other regulatory requirements. The CHTF encourages the Islands Trust, CRD and other regulatory bodies to support innovative and less costly solutions where appropriate.
- 1.12 Priority be given to the establishment of a local, independent non-profit Housing Agency, with ongoing tax support provided by Islands Trust and CRD, plus funding from other sources, to administer the

recommendations provided in this document, supplemented by research from Islands Trust, CRD and other agencies.

- 1.13 The Board of the Housing Agency should be comprised of volunteers, at least one of whom should be a Community Housing resident, appointed by CRD and Islands Trust local elected officials. Board terms should be staggered and limited.

2.0 Small-scale (three units or less) Community Housing providers

- 2.1 Establish a mechanism for existing secondary suites and cottages to be approved for Community Housing. Existing secondary suites and seasonal cottages already provide inexpensive rental accommodation and should be permitted, with the following benefits and restrictions:

- Rezoning / permit fees to be reduced or waived;
- Housing Agreement, to ensure affordability in perpetuity and stipulating maximum chargeable rent, to be placed on each rental unit;
- Each rental unit to be registered with the Salt Spring Housing Agency;
- Tenants to be qualified (from wait list or with Qualification Certificate);
- Reduced annual property taxes through grant mechanism for complying homeowners.

Minority Opinion: CRD Building Inspections and VIHA are encouraged to provide a one-year grace period to upgrade units to meet health and safety standards should be provided to homeowners applying for approval of existing secondary suites and cottages, except in drinking watersheds, where immediate inspection is required.

Minority Opinion: Establish a mechanism for existing secondary suites and cottages to be approved for Community Housing in all zones except in drinking watersheds.

- 2.2. a) Change the OCP so that 'seasonal cottages' may be rented for residential use, subject to the provisions of 2.1.
- 2.2. b) Seasonal cottages in new subdivisions should be restricted to Community housing.
- 2.2. c) Subdivision developers should be encouraged to meet the definition of hamlet as defined in the OCP.

Minority Opinion: Seasonal Cottages in new subdivisions where lots are less than 10 acres should be restricted to Community Housing.

Minority Opinion: Some Seasonal Cottages should be permitted to be 720 square feet where need is proven, provided they contain at least 2 bedrooms.

- 2.3 Allow Community Housing density bonuses for smaller properties (single family lots) in residential zones. Salt Spring homeowners could provide additional Community Housing in the form of a secondary rental suite (within the existing dwelling or in an outbuilding), or cottage, or conversion to duplex or triplex. Additional densities should be permitted with the following benefits and restrictions:

- Housing Agreement to ensure affordability in perpetuity and stipulating maximum chargeable rent, to be placed on each rental unit;
- Rezoning / permit fees to be reduced;
- Each rental unit to be registered with the Salt Spring Housing Agency;
- Tenants to be qualified (from wait list or with Qualification Certificate);
- Reduced annual property taxes through grant mechanism for complying homeowners;
- Provision of density bonus contingent upon proof of adequate services (water, etc.);
- Provision of density bonus contingent upon proof of need (wait list data);
- Provision of more than one additional density restricted to locations in or near the villages and hamlets.

Minority Opinion: to encourage homeowner participation, mechanisms less permanent than covenants registered on title should be considered for secondary rental suites.

Minority Opinion: Allow Community Housing density bonuses for smaller properties (single family lots, under 1.2 hectares) in all zones except drinking water sheds.

Minority Opinion: Allow Community Housing density bonuses for more than one additional density as per flex unit provisions currently in the OCP, and in other zones outside the village containment boundaries on a case by case basis.

- 2.4. a) Current flex housing provisions in the OCP must be changed to require a housing agreement.
- 2.4. b) Make provision for Rooming Houses as provided for in the Residential Tenancy Act within the OCP/LUB, recognise existing Rooming Houses and allow conversions to Rooming Houses. Rooming Houses provide a private room with shared bathroom and kitchen facilities for an inexpensive monthly rental fee. The landlord or representative lives on the premises. There are currently no provisions in the OCP or LUB for rooming houses. Rooming houses should be specifically addressed in LUB 355 to ensure their access to CMHC funding. Rooming houses should be permitted with the following benefits and restrictions:
- Housing Agreement to ensure affordability to be placed on Rooming House;
 - Rezoning / permit fees to be reduced or waived;
 - Each rental room to be registered with the Salt Spring Housing Agency;
 - Tenants to be qualified (from wait list or with Qualification Certificate);
 - Reduced annual property taxes through grant mechanism for complying owners;
 - Rezoning contingent upon proof of adequate services (water, etc.);
 - Rezoning contingent upon proof of need (wait list data).

Minority Opinion: Create incentives and a provision in the OCP/LUB for bed-unit rentals in shared rental housing to become dedicated Community Housing. Rentals where an individual rents a private room (bed-unit) with shared bathroom and kitchen facilities allow for an inexpensive monthly rental fee. The terms of dedication would include:

- A housing agreement to ensure affordability;
- Rooms to be registered with the Housing Agency;
- Tenants to be required to qualify, with a Qualification Certificate from the Housing Agency.

The Housing Agency should periodically review how this type of housing, often referred to as a Rooming House, is working for the benefit of the community to determine if further regulations are required.

Restrictions should only be placed on this type of housing if there becomes an unhealthy balance in neighbourhoods This regularly happens in communities with much larger populations, where bylaws specifically relating to rooming houses are implemented.

- 2.5 Allow subdivision of smaller properties (single family lots) within the village containment boundaries for deed-restricted ownership-model Community Housing. Salt Spring homeowners could provide additional Community Housing in the form of strata-ownership suite, cottage, duplex, or triplex. Additional densities should be permitted with the following benefits and restrictions::

- Housing Agreement registered on title to ensure affordability in perpetuity and stipulating maximum sale and resale price, to be placed on each unit;
- Each unit to be registered with the Salt Spring Housing Agency;
- Purchasers to be qualified (on wait list or with Qualification Certificate);
- Provision of density bonus contingent upon proof of adequate services (water, etc.);
- Provision of density bonus contingent upon proof of need (wait list data);
- The developer vs. community benefit provisions of 3.5 shall apply.

Minority Opinion: Subdivisions for Community Housing should be permitted within easy walking distance of the main roads to be serviced by public transportation, as per B.2.3.1.3 of the OCP.

Minority Opinion: Allow Seasonal Cottages to be sold for deed-restricted Community Housing, in the form of a building strata. The owner of the land and the non-deed restricted density could have Right of First Refusal as a way of ensuring that a new purchaser is a good match. This would take place along the lines of B.2.2.2.7 of the OCP.

3.0 Larger-scale (four units or more) Community Housing projects

- 3.1 The proposed unit mix (size, type, ownership/rental, and sale prices / rental rates) should be recommended to the Trust by the Housing Agency based on demonstrated need, in consultation with the housing provider.
- 3.2.a) Upzoning is to be contingent upon registration of a Developer's Housing Agreement which specifies the developer's commitments to the community, including but not limited to unit mix, selling prices, allowable profit, completion dates, default provisions, and which requires the placement of individual Unit Housing Agreements with covenant on each Community Housing unit at completion.
- 3.2. b) Selection of projects by the Housing Agency to use a standard template, to be based on adopted housing policy including current needs assessment data.
- 3.3 Each unit to be registered with the Salt Spring Housing Agency.
- 3.4 Housing applicants to be selected from wait list and/or hold current Qualification Certificate.
- 3.5 The calculation of return on investment should be clearly defined. All costs should be transparent and readily substantiated. To ensure transparency, the housing provider should pay for all appraisals and quantity surveys (these costs should be included in the "cost base"), but the client should be the Housing Agency or the Islands Trust. The intent is to quantify developer and community benefit in order to ensure maximum community benefit.
- 3.6 Larger-scale Community Housing projects should be located within the village containment boundaries, or within new or existing hamlets to avoid sprawl (see 4.2).

Minority Opinion: Location of new subdivisions for Community housing should be permitted within easy walking distance of the main roads.

- 3.7 Larger-scale Community Housing projects may include a variety of tenure types and housing forms including: Rental; free-hold ownership; strata; co-op; co-housing; serviced housing such as the Meadowbrook and Abbeyfield models; rental units on rental lots or pads; and ownership units on rental lots or pads such as the Brinkworthy and proposed ecovillage models. Innovative tenures that support community housing should be encouraged.

4.0 Environmental considerations

- 4.1 The following locations are not suitable for community housing:
 - land in a drinking watershed;
 - sites where sensitive ecosystems would be threatened by adjacent development;
 - sites where rare or endangered species would be disturbed by adjacent development;
 - land zoned for agriculture and / or in the ALR, except for community housing projects with an active agricultural component, and / or which employ other measures to ensure no net loss of agricultural potential;
 - sites adjacent to sources of pollution, including air and water borne chemical and biological contaminants and EMFs, which might pose elevated health risks to occupants, especially to young children.
- 4.2 Community Housing, especially larger projects, should preferably be located within clearly defined village containment boundaries.
 - Existing village and hamlet areas such as Vesuvius, Maliview-Fernwood, and other developed areas should be officially designated in the OCP as villages or hamlets suitable for Community Housing if services such as water and sewer are available or planned for, and if mixed-use zoning is provided so that residents have pedestrian access to a corner store;
 - The Trust should review and clearly define the village containment boundaries;

- New or existing hamlets, as defined in the OCP, are also suitable for Community Housing;
- Planned trail networks from and within the villages should be completed and expanded to ensure pedestrian access to greenspace and services for community housing residents;
- Community Housing projects with active food-growing components, which can be maintained over time through covenant or similar mechanism, may be located outside the village containment boundaries.

- 4.3 For Community Housing only, LUB 355 Table 9.9.2 should be reviewed with the intent to increase maximum densities and decrease maximum lot coverage for residential zones within the village containment boundaries. The village areas where three storey buildings are permitted should also be reviewed with the same intent.
- 4.4 A minimum energy performance standard, EnerGuide for New Houses (EGNH) rating of 78, with 80 or over preferred, is suggested for new Community Housing.
- 4.5 Community Housing projects should incorporate infrastructure and servicing measures to reduce impact of development on energy, water, and other resources.
- 4.6 Alternative Community Housing projects demonstrating environmental sustainability, such as ecovillages, should be encouraged by planning staff and the Local Trust Committee.

5.0 Other cases, miscellaneous

The following should be addressed to increase the availability of a range of low-cost Community Housing options:

- 5.1 Make provision within the OCP/LUB to support innovative Community Housing models such as the Abbeyfield and co-housing models.
- 5.2 Make provision within the OCP/LUB to accommodate for purposes of Community Housing appropriate 'Legal non-conforming' rental units, to encourage owners to maintain them.
- 5.3 Make provision within the OCP/LUB to allow alternative accommodations such as dormitories, yurts, teepees, and other units without all amenities such as stoves or showers, at rates below median affordable rental rates and subject to health and safety approval, specifically for seasonal employment housing.
- 5.4 Make provision within the OCP/LUB to allow for year round Community Housing for farm workers where there is demonstrated agricultural need, subject to annual monitoring such as a declaration of use by the property owner.

Minority Opinion: Housing for low, and moderate income earners, and for emergency situations is severely lacking on SSI. All these types of housing are equally and urgently needed. Because low income housing is most difficult to provide, incentives should be given to ensure that low income housing is ALWAYS considered, even in plans directed towards moderate income earners.

Minority Opinion: Opportunities should be sought to provide emergency shelter. One way may be to allow a private homeowner to provide emergency shelter, beyond their allowable density, with a temporary use permit, provided the tenants come through the SSI Housing Agency and are designated an emergency.

6.0 Definition of Affordability

Community Housing is deed-restricted and/or rent-controlled housing that is "acceptable", meaning it provides affordable, suitable and adequate accommodation according to family income, size and composition.

- 6.1 The CHTF recommends a multi-level definition of affordability using Salt Spring Island median household income as the upper limit of housing affordability on a weighted average basis within a project, as well as the basis for the various housing categories. (See Table 1.)

- 6.2 Every Community housing development over five units should include a mix of income categories (see Table 1), ideally in proportion to current need. Rental units are encouraged for all developments and must be included for developments over ten units where the land has been donated for Community housing.

Minority opinion: Rental units must be included for developments over ten units where land and/or densities have been donated for Community housing.

- 6.3 Suggested categories with weighted average income targets are presented below, as a starting point for consideration. The information presented below and in Table 1 will require ongoing updates from the Wait List and Housing Needs Assessment.

- **Subsidized Community Rental Housing**—tenants pay 30% of their income on rent with the balance made up from subsidy; units may be Community Rental Housing One or Community Rental Housing Two—target those with incomes of up to 65% of median income.
- **Community Rental Housing One**—older and/or smaller existing rent-restricted accommodation—target those with incomes of up to 75% of median income.
- **Community Rental Housing Two**—newer and/or larger or new rent-restricted accommodation—target those with incomes of up to 90% of median income.
- **Community Ownership Housing One**—smaller new or existing freehold or strata—target those with incomes of up to 85% of median income.
- **Community Ownership Housing Two**—new or existing freehold or strata—target those with incomes of up to 100% of median income.
- **Community Ownership Housing Three**—new or existing freehold or strata—“gap” housing.

Note: Provisions are needed for the following:—coop, co-housing, ecovillage, and serviced housing such as Abbeyfield.

- 6.4 Initial rental rates and allowable maximum rental rate increases consistent with the Provincial Residential Tenancy legislation should be referenced in the Housing Agreement.

- 6.5 Affordability for ownership category housing must be maintained by deed-restricted allowable resale price increases no greater than 3% or CPI annually, whichever is less, plus a percentage of eligible improvements as defined in the Housing Agreement.

7.0 Qualification Criteria for occupants

- 7.1 To be eligible for Salt Spring Community Housing, all applicants must be a Canadian citizen or landed immigrant and meet the household income criteria described in Table 1.

- 7.2 All applicants must meet net asset requirements. Preliminary recommendation as follows:
Net household assets of applicant not to exceed \$50,000, excluding RRSPs and tools of the trade.

- 7.3 Applicants must also meet one of the following three residency / employment categories:

- Salt Spring current resident for minimum two years;
- Commuter to Salt Spring for three-quarter to full-time employment for minimum two years;
- Salt Spring Essential Services worker (to be defined by the Housing Agency).

Exceptions to the above will be considered on a case-by-case basis by the Housing Agency. Such exceptions might include those with strong ties to Salt Spring and local family obligations (need to care for aging parents, etc.) or mental or physical disabilities.

Another exception where residency requirements may be relaxed would be where ongoing Community Housing vacancies exist with no appropriate qualified potential occupants.

Minority Opinion: Applicants must be a Salt Spring resident one year (not two) in cases where they are employed for a minimum of 20 hours a week.

Salt Spring Community Housing Task Force
PART 2 Recommendations

December 7, 2005

Minority Opinion: Applicants who intend to rent a bed-unit in a dedicated shared rental house are not required to meet the residency requirements of 7.3 provided they have current employment on Salt Spring.

Minority Opinion: Applicants for homeownership should be on a First Come First Served basis, after an initial sorting, that could be a lottery or a one-time sorting by need, length of residency etc, for the purpose of creating a feeling of stability for the prospective owners.

Minority Opinion: Asset base cut-off recommendations should be studied in depth, for the purpose of restricting the ownership of other real estate.

Minority Opinion: Employers should be encouraged to supply affordable housing for their employees on a continuous basis at Community Housing rental rates. Where an employer is supplying the housing, the residency requirement could be waived, but must be employed for a minimum of 20 hours a week.

These Recommendations, including Table 1 below, were approved by the CHTF by consensus February 16, 2006

Table 1: Recommended guidelines for Community Housing Categories based on household size and income

<i>Household size</i>	<i>Min. income</i>	<i>Max. income</i>	<i>Max. payment</i>	<i>Unit size</i>	
Subsidized Community Rental Housing					
1 person	\$0	to \$16,979	\$424.48	studio	<i>Rent subsidized to match household income</i>
2 persons	\$0	to \$21,224	\$530.60	1 bedroom	
3 persons	\$0	to \$26,396	\$659.90	2 bedroom	
4 persons	\$0	to \$31,952	\$798.80	3 bedroom	
5 persons	\$0	to \$35,718	\$892.95	4 bedroom	
Community Rental Housing One					
<i>Household size</i>	<i>Min. income</i>	<i>Max. income</i>	<i>Max. rents</i>	<i>Unit size</i>	
1 person	\$16,980	to \$18,000	\$450	studio	<i>Older rental units</i>
2 persons	\$21,225	to \$24,000	\$600	1 bedroom	
3 persons	\$26,397	to \$30,000	\$750	2 bedroom	
4 persons	\$31,953	to \$33,000	\$825	3 bedroom	
5 persons	\$35,719	to \$36,000	\$900	4 bedroom	
Community Rental Housing Two					
1 person	\$18,001	to \$24,000	\$600	studio	<i>Newer or new rental units</i>
1 person	\$24,001	to \$28,800	\$720	1 bedroom	
2 persons	\$24,001	to \$28,800	\$720	1 bedroom	
3 persons	\$30,001	to \$35,200	\$875	2 bedroom	
4 persons	\$33,001	to \$38,100	\$950	3 bedroom	
5 persons	\$36,001	to \$42,000	\$1,050	4 bedroom	
Community Ownership Housing One					
<i>Suggested Household size</i>	<i>Min. income</i>	<i>Max. income</i>	<i>Price assuming 10% down payment</i>	<i>Unit size</i>	
1 person	\$ 22,000	to \$ 26,000	\$ 90,000	studio	<i>Basic new or existing</i>
2 persons	\$ 24,000	to \$ 34,000	\$110,000	1 bedroom	
3 persons	\$ 27,000	to \$ 35,000	\$120,000	2 bedroom	
4 persons	\$ 35,000	to \$ 41,000	\$ 150,000	3 bedroom	
5 persons	\$37,000	to \$50,000	\$163,000	4 bedroom	
Community Ownership Housing Two					
1 person	\$ 26,000	to \$ 33,000	\$ 110,000	studio	<i>new or existing</i>
2 persons	\$ 34,000	to \$ 43,000	\$ 137,700	1 bedroom	
3 persons	\$ 35,000	to \$ 46,000	\$ 150,000	2 bedroom	
4 persons	\$ 41,000	to \$ 54,000	\$ 180,000	3 bedroom	
Community Ownership Housing Three					
1 person	\$ 33,000	to \$ 42,000	\$ 128,000	studio	<i>new or existing</i>
2 persons	\$ 43,000	to \$ 54,000	\$ 150,000	1 bedroom	
3 persons	\$ 46,000	to \$ 76,000	\$ 180,000	2 bedroom	
4 persons	\$54,000	To \$76,000	\$220,000	3 bedroom	
5 persons	\$ 60,000	to \$ 76,000	\$ 250,000	4 bedroom	

I. Purpose

“The object of the Trust is 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, regional districts, improvement districts, other persons and organisations and the government of the Province.”

At a special meeting of the Community Housing Task Force (CHTF) held Oct 5, 2004 it was determined that, before the CHTF could make recommendations on individual applications referred to it by the Local Trust Committee (LTC), the CHTF needed background information regarding community housing — standards, objectives, delivery in other communities — and how community housing objectives might be met on Salt Spring. Six key areas were identified, and a seventh (existing rental stock) was added at a subsequent meeting.

The CHTF briefly researched, discussed, and summarized results for the key areas with the following objectives:

- To ensure that each member of the task force has background information on each of the key issues;
- To inform future recommendations of the Task Force.

This background report is a work-in-progress, intended to inform and guide the members of the CHTF in their future deliberations. It is not intended to be a comprehensive review, nor is it a policy document, although recommendations to assist in housing policy development have been included.

II. Defining acceptable housing

The OCP definition of Community Housing requires tightening:

“affordable housing—describes rental or owned housing that can be acquired with 30 per cent of the median gross income of families or individuals with moderate incomes.”

CMHC defines acceptable housing as:

- a. affordable (cost/income)
- b. suitable (size, etc.), and
- c. adequate (physical condition)

Individuals or families are deemed to be in "core housing need" if they cannot secure acceptable housing within 30% of their income

II a) Affordability

The CHTF had a great deal of difficulty coming up with a good definition of affordability. As other communities with high real estate prices have found, limiting affordable housing to those with less than 80% median income, or median income, or even average income, still leaves families with higher than average incomes without access to acceptable housing, especially the home ownership model. But if affordability is defined too loosely, the door opens wide to relatively high-priced, high-density for-profit development in the name of affordable housing. At the other end of the scale, there is the increasing problem of homelessness and the need for very low-cost subsidized social housing.

Different measures of income produce quite different results, as demonstrated using the following common benchmarks for affordability:

Median household income for SSI (StatsCan 2000) was \$48,948. Using median income, the MAXIMUM affordable price of a home is about \$174,000 (or \$1,223 monthly rental, including utilities).

Average household income for SSI from StatsCan data was \$57,255 in 2001. Using average income, the MAXIMUM affordable price of a home is about \$205,000, (or \$1,430 monthly rental, including utilities).

Average household full-time employment income was \$34,890 (StatsCan, 2001). Median income from employment (V8K postal code, BC Stats, from CCRA) was \$20,510 for males and \$15,138 for females. This would put homeownership virtually out of reach for a single working person (or single parent), and place the maximum affordable rental rates (including utilities) for employees in a range from \$378 to \$872.

Since there is very little or no market housing available on Salt Spring for under \$250,000, families with annual incomes of \$70,000 or more may be unable to purchase suitable housing, and may find themselves “in core housing need”. To address a similar problem regarding defining affordability, Ontario’s Halton Region¹ proposed separate definitions for Assisted Housing and Affordable Housing:

- **Assisted housing** with on-going government subsidies where tenants pay rent equivalent to 30% of their gross income;
- **Affordable housing** is modestly priced housing (without subsidies) where low-to-middle income households pay rent or mortgage (including utilities) equivalent to 30% of their gross income.

Median income is used in the current Salt Spring OCP to define affordability. The CHTF considers **median income** to be a suitable indicator of affordability for a “typical” household because, by definition, 50% of households have higher incomes and 50% have lower incomes. Average income can be skewed upward or downward by very high or very low-income households.

The CHTF suggests a mix of housing size, tenure (i.e. rental / co-op / owned) and prices in larger developments in order to address the range of needs on Salt Spring, and to avoid any “ghetto” effects. A range of housing prices could still be accommodated by the above definition of affordability as long as the weighted average price was equal to or less than the maximum price. This could allow the development of some more expensive housing, as long as a sufficient amount of lower-priced housing was also produced, such that the weighted average price was within the maximum stipulated (\$174,000).

In general, the difficulties of securing affordable housing are greater for families. And affordable rental accommodation on Salt Spring is particularly scarce. The CHTF therefore recommends that larger affordable housing developments include a proportion of housing for lower income families (i.e. families with incomes lower than the median for SSI as a whole), and that some of the units should be rental housing.

RECOMMENDATIONS	
6.0	Definition of Affordability
6.1	The CHTF recommends a multi-level definition of affordability using Salt Spring Island median household income as the upper limit of housing affordability on a weighted average basis within a project, as well as the basis for the various housing categories. (See Table 1.)
6.2	Every Community housing development over five units should include a mix of income categories (see Table 1), <u>ideally in proportion</u> to current need. Rental units are encouraged for all developments and must be included for developments over ten units where the land has been donated for Community housing.
<i>Minority opinion: Rental units must be included for developments over ten units where land and/or densities have been donated for Community housing.</i>	

For illustrative purposes, the following tables demonstrate the applicability of the proposed categories, as they relate to median income, unit type/size, and rents/prices targeted. The decision about the mix of each category of unit, as well as the numbers of each developed should be based on relative need, as demonstrated on an ongoing basis from the Wait List and Housing Needs Assessment data.

See **Table 1: Recommended guidelines for Community Housing Categories based on household size and income** (page 12) for the detailed recommendations.

¹ Halton Region 2002 Official Plan Review ‘A new approach to defining assisted and affordable housing’.

Home ownership model — figures for discussion purposes only

Income Required - CMHC insured high-ratio financing @ 6% interest, 25 yr amortization, 32% GDS²

Price	125,000	150,000	175,000	200,000	225,000	250,000	275,000	300,000
Minimum annual income	35,409	42,485	49,561	56,636	63,771	70,906	78,041	85,176

Rental model— figures for discussion purposes only

Income required for various rents not to exceed 30% of income³

Monthly gross rent (incl. utilities)	500	550	600	650	700	750	800	850
Minimum annual income	20,000	22,000	24,000	26,000	28,000	30,000	32,000	34,000

Ensuring that the Community Housing stock remains affordability over the long-term is key for a healthy and sustainable community. There must be, however, mechanisms in place that allow owners of rental properties a means to recover reasonable cost increases over time, as well as those that permit some price escalation in owned homes. These increases must be modest, and are designed to remove Community Housing from the speculative market.

RECOMMENDATIONS	
6.0	Definition of Affordability
6.3	<p>Suggested categories with weighted average income targets are presented below, as a starting point for consideration. The information presented below and in Table 1 will require ongoing updates from the Wait List and Housing Needs Assessment.</p> <ul style="list-style-type: none"> • Subsidized Community Rental Housing —tenants pay 30% of their income on rent with the balance made up from subsidy; units may be Community Rental Housing One or Community Rental Housing Two—target those with incomes of up to 65% of median income • Community Rental Housing One —older and/or smaller existing rent-restricted accommodation—target those with incomes of up to 75% of median income • Community Rental Housing Two —newer and/or larger or new rent-restricted accommodation—target those with incomes of up to 90% of median income • Community Ownership Housing One— smaller new or existing freehold or strata—target those with incomes of up to 85% of median income • Community Ownership Housing Two—new or existing freehold or strata— target those with incomes of up to 100% of median income • Community Ownership Housing Three—new or existing freehold or strata— “gap” housing <p>Note: Provisions are needed for the following:—coop, co-housing, ecovillage, and serviced housing such as Abbeyfield.</p>

¹ For homeowners, maximum for CMHC insured mortgage is 95% of value, with up to 32% of gross income for total housings costs (mortgage payments, property taxes, utilities, municipal costs, strata fees). This is the GDS (gross debt service ratio). If other consumer debt is present (credit cards, car payments, student loans, etc) a maximum TDS (total debt service) of 42% applies.

² StatsCan 2001 Census Highlights, Islands Trust Area:

- Average household income is \$57,255
- Average employment income, 15 and up is \$34,890
- Average value of dwelling is \$274,821
- 3275 owner households of which 695 >30% of income on major household payments (21%)
- 855 tenant households of which 375 >30% of income on gross rent (44%)

³ For rental housing, housing costs should not exceed 30% of income. Rental housing costs include rent, utilities, and any other municipal costs.

RECOMMENDATIONS

6.0 Definition of Affordability

6.4 Initial rental rates and allowable maximum rental rate increases consistent with the Provincial Residential Tenancy legislation should be referenced in the Housing Agreement.

6.5 Affordability for ownership category housing must be maintained by deed-restricted allowable resale price increases no greater than 3% or CPI annually, whichever is less, plus a percentage of eligible improvements as defined in the Housing Agreement.

II b) Suitability

National occupancy standards are as follows:

- Single person or couple – 1-bedroom
- Couple with 1 child – 2 bedrooms
- Couple with 2 children under 5 years – 2 bedrooms
- Couple with 2 children (same gender) 5 years or older – 2 bedrooms
- Couple with 2 children (different genders) 5 years or older – 3 bedrooms
- Parents and children do not share bedrooms.

Presumably unrelated adults sharing accommodation each require a bedroom.

Other factors that determine suitability might include:

- Special needs such as wheelchair access or support services
- Location (access to school bus routes for families with children, proximity to farmland for agricultural workers, proximity to village core for households without transportation).

Note: Whistler does not use the Canadian Occupancy standards. For rentals the limit is 2 people to a bedroom (allowing a single parent and one child to share a one-bedroom apartment). For home ownership 2 people per bedroom is recommended.

II c) Adequacy

CMHC states that housing should be safe, in a reasonable state of repair, and have basic plumbing. On Salt Spring, we suggest that new community housing should ideally exceed code with respect to energy efficiency and water conservation. The PITE formula (principal, interest, taxes and energy) may result in energy efficient dwellings being more affordable than minimally insulated dwellings. (See section 4). Lower energy costs may also allow a homeowner to qualify for a larger loan amount.

III. Housing Needs Assessment

Various target groups of residents have been identified as in need of housing in the community, including but not limited to young families, lower income individuals, employees, single parents, disabled persons, homeless persons, persons living in sub-standard housing, and the elderly. This is a *perceived* need, based on local knowledge and anecdotal evidence. It is important that this perception be confirmed and quantified in order to ensure that priority is given to the greatest housing need, and that policies encourage the development of appropriately designed, located and priced housing to target these groups.

One of the primary techniques to objectively evaluate housing need is a **Housing Needs Assessment**, which is a housing market analysis that examines the community's supply and demand for housing. It provides a snap-shot and forecast of housing need, and is monitored and updated on a regular basis. It should be used to confirm (or modify) and quantify the *perceived* affordable housing needs. See Appendix A for a recommended outline of a Salt Spring Housing Needs Assessment.

Several **sources of data** are used to estimate and confirm/quantify this housing need – the primary sources typically are as listed below, and each contribute:

- Statistical data
- Survey data
- Waitlist data
- Anecdotal evidence

Most Housing Needs Assessments contain the same basic features, which typically include:

- Analysis of Demographics
- Analysis of Existing Housing Stock
- Identification of Gaps in Supply
- Prioritize Population Groups in “Core Housing Need”
- Policies that support the priorities identified
- Qualifying Criteria and Use of Waitlists

It should be noted that a Housing Needs Assessment is not a replacement for survey or waitlist data, but rather data from these sources form an important part of the needs assessment.

A Housing Needs Analysis is required to identify priorities and to guide policy. A limited-scope preliminary needs assessment could be performed immediately with locally available data to assist in the assessment of zoning applications currently underway. However, a professionally performed (or professionally designed, and volunteer conducted) assessment should form the basis of any policy decisions that have long-term or strategic implications.

RECOMMENDATION

1.0 General

- 1.1 The CHTF recommends that the LTC undertake the following tasks immediately:
- Prepare a policy manual to include: objectives, definitions, standards; Standard Housing Agreements for: developers, ownership units, and rental units; Qualification criteria for occupants; Default and other worst case policies;
 - Initiate a wait list process, with qualification criteria;
 - Prepare OCP/LUB revisions to enable policy recommendations;
 - Set up a Salt Spring Community Housing Agency to administer policy;
 - Initiate an ongoing Housing Needs Assessment process;
 - To facilitate immediate implementation, some tasks—e.g. wait list, qualification certificates, development and administration of housing agreements—should be undertaken on a temporary basis by an existing organization, such as the Capital Regional Housing Corporation or the SSI Community Services Society;
 - The Capital Regional Housing Corporation should assist with the development of local capacity with the intent to transfer tasks and responsibilities for the Housing Agency to a local entity as soon as local capacity is demonstrated;
 - Identify funding sources and establish a budget for all of the above.

III a) Identified need

Individuals or families are deemed by CMHC to be in "core housing need" if they cannot secure acceptable housing within 30% of their income. From StatsCan 2001, 21% of 3,275 owner households spend over 30% of income on major household payments and 44% of 855 tenant households spend over 30% of income on gross rent. From these figures, it appears that there are likely at least 700 owner households in core need, and at least 400 tenant households in core need.

III b) Existing Housing Stock

There are currently (May, 2005) probably about 5,350 dwelling units on Salt Spring. Between 1996 and 2003, the number of dwelling units increased by 31.5%, an average annual rate of increase of 4.5%.

Salt Spring Community Housing Task Force

PART 3 Background Report

December 7, 2005

Population and dwelling Units (from Baseline Report, Salt Spring Community Energy Strategy, May 2004)

	<u>1991</u>	<u>1996</u>	<u>2000</u>	<u>2001</u>	<u>2002</u>	<u>2003</u>
Population (1)	7,871	9,247	9,272	9,279	9,503	9,644
Dwelling Units, census (2)		4,014	4,565	4,913	5,156	5,278

1. StatsCan census 1991, 1996, 2001, Salt Spring Electoral Area.
2. CRD Regional Planning Services: StatsCan census data for 1996 and 2001. 2002-2003 figures from adding building permits to 2001 data.

In the Spring of 2004, Pat (Neddy) Harris undertook a Salt Spring Island Housing Survey. 1,048 responses were received, of which 155 (largely) online responses were rejected (corrupted data). Of the remaining 860, 636 were homeowners, 224 were renters and 26 reported alternate accommodation (boat, homeless, worktrade etc.). This represents a ratio of 72% owners, 25% renters and 3% alternate. For comparison, the StatsCan 2001 ratio is 80% homeowners to 20% renters. The responding households represent about 16% of the estimated 5,350 dwelling units on Salt Spring. The survey data probably provide a reasonable snapshot of the housing situation on Salt Spring in the Spring of 2004.

Homeowner respondents reported 70 suites and 51 cottages currently in long-term rental. If these numbers represent 16% of the total for Salt Spring, there are currently about 440 suites and 320 cottages in long-term rental. The latter is somewhat higher than the Trust estimate of 300 existing seasonal cottages.

The large majority—186 (89%) of 209—of renter households report their total household income to be less than the median household income for SSI of \$48,948 (StatsCan 2000). 73 (36%) of 204 renter households are spending more than 30% of their total income on housing. 43 (20%) of 213 are underhoused.

Table—Rental Housing and Renter Needs (from 2004 survey)

size of unit	# of units reported	# of units needed, based on household size	# of underhoused households	# of households paying >30% of income
# respondents	214	213	213	204
Studio	10	60		23
1 Bedroom	75	50		13
1 or 2 Bedroom		20	10	11
2 Bedroom	68	29	4	6
2 or 3 Bedroom		14	7	5
3 Bedroom	44	25	11	8
3 or 4 Bedroom		6	5	2
4 Bedroom	13	7	4	4
5 Bedroom	3	2	2	
6 Bedroom	1			
# Bedrooms unspecified				1
Total responses	214	213	43	73

From the renter responses, based on household size, most of the rental stock should be fairly evenly divided between studio, one bedroom, and two bedroom dwellings, with the balance in three bedroom and larger units.

Salt Spring Community Housing Task Force

PART 3 Background Report

December 7, 2005

Table: Monthly rents reported by tenants (from 2004 Housing Survey).

# Bedrooms	studio	one	two	three	four
Average \$	\$472	\$561	\$752	\$842	\$952
Median \$	\$450	\$600	\$750	\$825	\$900
Total # Renters	10	73	69	43	12

Note: Respondents were asked for total monthly rent, some rents may not include utilities

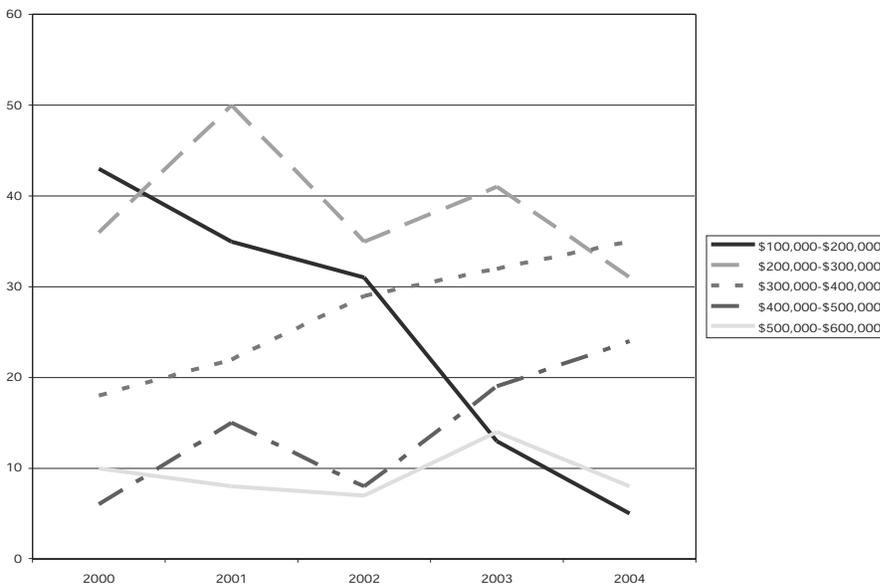
Table: Availability of single family homes in various price categories

year	\$100,000- \$200,000	\$200,000- \$300,000	\$300,000- \$400,000	\$400,000- \$500,000	\$500,000- \$600,000
2000	43	36	18	6	10
2001	35	50	22	15	8
2002	31	35	29	8	7
2003	13	41	32	19	14
2004	5	31	35	24	8
(4 mths 2005	2	8	16	9	7

Source: MLS database. Single family homes, all types of structures, on freehold lots.

Availability of houses in the \$100,000—\$200,000 price range has undergone a dramatic decline in the last five years; availability of houses in the \$200,000—\$300,000 range is also declining rapidly.

Chart: Availability of single family homes in various price categories



Existing Community Housing projects

The following is a list of Salt Spring's Community Housing projects. Note that all Community Housing Projects are currently targeted to seniors.

Pioneer Village – Apartments for seniors over 60 who have limited incomes; there are 18 one bedroom units with rents subsidized by senior levels of government, and geared to income (RGI). This produces rents as low as \$335.00 for one-bedrooms, and \$280.00 for bachelor units. The project and waitlist are operated by the Lions Club; it is currently full.

Croftonbrook – 20 units of subsidized housing for seniors (age 55+); currently has 50 people on the wait list. The wait list is maintained by the Croftonbrook board.

Meadowbrook – housing with supportive services for semi-independent seniors; full with wait list; waitlist for 10 subsidized units is held by the Vancouver Island Housing Authority.

Heritage Village – residence with supportive services for seniors.

Proposed – Norton Road Development - 26 units of homeowner units – price range \$225,000+

Proposed – Murakami Rainbow Road Development – 26-30 rental units – rent range \$538-\$975

Current Rental Situation

At this time there has been no needs assessment of renters on Salt Spring and the other Gulf Islands, other than a survey done by Neddy Harris in 2004. In this survey, of the 300 respondents that were currently renting, over half were determined to be in core need (paying over 30% of their income in housing costs). Rental housing has always been scarce and many units are inadequate. In addition, rental situations are made unstable due to the fact that secondary suites and cottages are illegal and may be reported by neighbours. No affordable rental units for the general public are being built at this time.

Affordability:

It is clear, based on local knowledge, survey results, and anecdotal evidence that there is a rental housing shortage – in terms of affordability, suitability (size relative to family size), and adequacy (condition).

Local governments should encourage diversity of housing types, income levels, etc. but should target the following in order to maximize the effectiveness of the measures in terms of affordability, suitability, adequacy, energy efficiency, greenspace, and other community needs:

- housing / rental prices that are less than the maximum defined by affordability criteria;
- emphasize higher density development (e.g., townhouses, row housing, duplex / triplex);
- in general, locations in or near villages (except for agricultural-oriented housing);
- including a minimum proportion of rental versus owned.

RECOMMENDATIONS

2.0 Small-scale (three units or less) Community Housing providers

2.1 Establish a mechanism for existing secondary suites and cottages to be approved for Community Housing. Existing secondary suites and seasonal cottages already provide inexpensive rental accommodation and should be permitted, with the following benefits and restrictions:

- Rezoning / permit fees to be reduced or waived;
- Housing Agreement, to ensure affordability in perpetuity and stipulating maximum chargeable rent, to be placed on each rental unit;
- Each rental unit to be registered with the Salt Spring Housing Agency;
- Tenants to be qualified (from wait list or with Qualification Certificate);
- Reduced annual property taxes through grant mechanism for complying homeowners.

Minority Opinion: CRD Building Inspections and VIHA are encouraged to provide a one-year grace period to upgrade units to meet health and safety standards should be provided to homeowners applying for approval of existing secondary suites and cottages, except in drinking watersheds, where immediate inspection is required.

Minority Opinion: Establish a mechanism for existing secondary suites and cottages to be approved for Community Housing in all zones except in drinking watersheds.

RECOMMENDATIONS

2.0 Small-scale (three units or less) Community Housing providers

- 2.2 a) Change the OCP so that ‘seasonal cottages’ may be rented for residential use, subject to the provisions of 2.1.
- 2.2 b) Seasonal cottages in new subdivisions should be restricted to Community housing
- 2.2 c) Subdivision developers should be encouraged to meet the definition of hamlet as defined in the OCP.

Minority Opinion: Seasonal Cottages in new subdivisions where lots are less than 10 acres should be restricted to Community Housing.

Minority Opinion: Some Seasonal Cottages should be permitted to be 720 square feet where need is proven, provided they contain at least 2 bedrooms.

- 2.3 Allow Community Housing density bonuses for smaller properties (single family lots) in residential zones. Salt Spring homeowners could provide additional Community Housing in the form of a secondary rental suite (within the existing dwelling or in an outbuilding), or cottage, or conversion to duplex or triplex. Additional densities should be permitted with the following benefits and restrictions:

- Housing Agreement to ensure affordability in perpetuity and stipulating maximum chargeable rent, to be placed on each rental unit;
- Rezoning / permit fees to be reduced;
- Each rental unit to be registered with the Salt Spring Housing Agency;
- Tenants to be qualified (from wait list or with Qualification Certificate);
- Reduced annual property taxes through grant mechanism for complying homeowners;
- Provision of density bonus contingent upon proof of adequate services (water, etc.);
- Provision of density bonus contingent upon proof of need (wait list data).

Provision of more than one additional density restricted to locations in or near the villages and hamlets.

Minority Opinion: to encourage homeowner participation, mechanisms less permanent than covenants registered on title should be considered for secondary rental suites.

Minority Opinion: Allow Community Housing density bonuses for smaller properties (single family lots, under 1.2 hectares) in all zones except drinking water sheds.

Minority Opinion: Allow Community Housing density bonuses for more than one additional density as per flex unit provisions currently in the OCP, and in other zones outside the village containment boundaries on a case by case basis.

- 2.4.a) Current flex housing provisions in the OCP must be changed to require a housing agreement.
- 2.4.b) Make provision for Rooming Houses as provided for in the Residential Tenancy Act within the OCP/LUB, recognise existing Rooming Houses and allow conversions to Rooming Houses. Rooming Houses provide a private room with shared bathroom and kitchen facilities for an inexpensive monthly rental fee. The landlord or representative lives on the premises. There are currently no provisions in the OCP or LUB for rooming houses. Rooming houses should be specifically addressed in LUB 355 to ensure their access to CMHC funding. Rooming houses should be permitted with the following benefits and restrictions: Housing Agreement to ensure affordability to be placed on Rooming House;
- Rezoning / permit fees to be reduced or waived;
 - Each rental room to be registered with the Salt Spring Housing Agency;
 - Tenants to be qualified (from wait list or with Qualification Certificate);

RECOMMENDATIONS

2.0 Small-scale (three units or less) Community Housing providers

2.5 Allow subdivision of smaller properties (single family lots) within the village containment boundaries for deed-restricted ownership-model Community Housing. Salt Spring homeowners could provide additional Community Housing in the form of strata-ownership suite, cottage, duplex, or triplex. Additional densities should be permitted with the following benefits and restrictions::

- Housing Agreement registered on title to ensure affordability in perpetuity and stipulating maximum sale and resale price, to be placed on each unit;
- Each unit to be registered with the Salt Spring Housing Agency;
- Purchasers to be qualified (on wait list or with Qualification Certificate);
- Provision of density bonus contingent upon proof of adequate services (water, etc.);
- Provision of density bonus contingent upon proof of need (wait list data);

The provisions of 3.5 shall apply.

Minority Opinion: Location of new subdivisions for Community housing should be permitted within easy walking distance of the main roads.

III c) Qualification criteria

Given the limited supply of land available for Community Housing, the requirements to qualify for this housing should first and foremost reflect the established priorities:

- Low-income families and individuals
- Moderate income families and individuals
- Essential service workers
- Employees forced to leave the community
- Single parents
- Elderly
- Youth
- Homeless and at-risk of homelessness
- Special needs and transition housing
- Urgent housing need
- Length of time on housing waitlist

In addition to the priority “Core Need” categories above, additional qualifying criteria should include:

- Income limits based on family size
- Canadian citizenship or landed immigrant status
- Minimum SSI residency requirements and/or SSI employment/livelihood
- Asset limits (including restrictions on ownership of other properties) and inclusion of a return on assets in income qualification calculations
- Ability to qualify for adequate mortgage (homeownership)
- Legal age

Information required from Applicants to apply the qualification criteria and establish priority should be obtained through the use of a waitlist.

RECOMMENDATIONS

7.0 Qualification Criteria for occupants

- 7.1 To be eligible for Salt Spring Community Housing, all applicants must be a Canadian citizen or landed immigrant and meet the household income criteria described in Table 1.
- 7.2 All applicants must meet net asset requirements. Preliminary recommendation as follows:
Net household assets of applicant not to exceed \$50,000, excluding RRSPs and tools of the trade.
- 7.3 Applicants must also meet one of the following three residency / employment categories:
- Salt Spring current resident for minimum two years;
 - Commuter to Salt Spring for three-quarter to full-time employment for minimum two years;
 - Salt Spring Essential Services worker (to be defined by the Housing Agency).

Exceptions to the above will be considered on a case-by-case basis by the Housing Agency. Such exceptions might include those with strong ties to Salt Spring and local family obligations (need to care for aging parents, etc.) or mental or physical disabilities.

Another exception where residency requirements may be relaxed would be where ongoing Community Housing vacancies exist with no appropriate qualified potential occupants.

Minority Opinion: Applicants must be a Salt Spring resident one year (not two) in cases where they are employed for a minimum of 20 hours a week.

Minority Opinion: Applicants who intend to rent a bed-unit in a dedicated shared rental house are not required to meet the residency requirements of 7.3 provided they have current employment on Salt Spring.

Minority Opinion: Applicants for homeownership should be on a First Come First Served basis, after an initial sorting, that could be a lottery or a one-time sorting by need, length of residency etc, for the purpose of creating a feeling of stability for the prospective owners.

Minority Opinion: Asset base cut-off recommendations should be studied in depth, for the purpose of restricting the ownership of other real estate.

III d) Waitlist

The CHTF thinks that a very effective way to track need and identify categories of need is to establish a Wait list. Consolidated data from this list (minus identification) would then be available to relevant bodies. The wait list will include ownership and rental options. It is assumed that the Salt Spring Community Housing Agency (or Capital Regional Housing Corporation on an interim basis) will administer the Waitlist and ensure that Applicants' personal information is kept confidential.

The waitlist is also a tool to screen applicants for eligibility, as well as to rank priority based on greatest need or other priorities established. Those applying for Community Housing (controlled by a housing agreement) must either be on the list or meet the qualifications (i.e. possess a certificate from the Community Housing Agency stating that they qualify). SSI Community Housing Agency projects would select applicants based on standing on the list and suitability of accommodation.

Other uses for the waitlist include the provision of housing needs data to local government and housing groups regarding need, provide those in need of housing with a mechanism to find suitable housing, and to provide housing suppliers with a list of qualified applicants.

Models of Waitlists

Various techniques for ranking specific Applicants on a waitlist are employed in different jurisdictions; one of the more common techniques employed (including BC Housing) is that of a weighted point system. In this model, each priority category and qualification criteria is assigned a weight, based on importance, urgency, and community need and values. Flexibility is built into the ranking system to allow special consideration for emergency situations and/or extended waiting periods by individual applicants.

III e) Qualification Certificates

The CHTF expects that much of the affordable housing on Salt Spring will be provided by individual homeowners renting suites and cottages. Homeowners need the ability to select their tenants carefully. Likewise renters need freedom to select appropriate living arrangements. Therefore the CHTF proposes that a Qualification Certificate be issued by the Housing Agency to anyone who qualifies for the Wait List. The Qualification Certificate is valid for a limited time period, probably one year. Anyone with a current Qualification Certificate is then eligible for any privately-owned registered rental accommodation, which can then be advertised in the normal way.

IV. Environmental, agricultural and sustainability issues

The OCP provides principles and guidelines regarding protection of ecological and agricultural land values and other sustainability issues; energy is not yet addressed. Given development pressures, greater clarity and new or clearer definitions would be helpful.

IV a) Location of community housing

The OCP, B.2.2.2.8 states:

Affordable housing projects for families and seniors could be allowed in or near island villages.

Villages have many environmental advantages, including reduced need for automobile transportation and potential for advanced water and waste treatment. But the OCP defines villages as Ganges, Fulford and Channel Ridge only.

Additional existing village areas such as Vesuvius, Maliview-Fernwood, and other developed areas could be officially designated in the OCP as villages suitable for community housing if services such as water and sewer are available or planned for, and if mixed-use zoning is provided so that residents have pedestrian access to a corner store.

The word “near” is problematic in that it invites sprawl and the consequent loss of agricultural and forested land. Infill developments within defined village boundaries are preferable for reasons of environmental sustainability, unless a project is linked to food production and ecological living.

The existing village containment boundaries are not easy to identify. Clearly marked boundaries for all villages are needed to ensure that community housing is located within the villages and not outside them. This is an important point because greenfield (undisturbed) sites are less expensive to develop than small infill sites and brownfield (previously developed) sites. Greenfield sites are therefore more attractive to developers—both for-profit and non-profit. Developments on relatively flat land inevitably remove agricultural potential, even if the land is not zoned as agricultural land. Maps and zoning designations should clearly identify areas within village containment boundaries.

Special case: Local organic food production is an important component of environmental sustainability; increased local food production is an objective of the Salt Spring Community Energy Strategy and the recently completed Island Natural Growers Produce Study. Community housing projects with an active food-growing component, e.g. housing for farm workers, may need to be located adjacent to agricultural land. Community housing projects with active food-growing components which can be maintained over time through covenant or similar mechanism may need to be located outside the village containment boundaries.

RECOMMENDATIONS

4.0 Environmental Considerations

- 4.1 The following locations are not suitable for community housing:
- land in a drinking watershed;
 - sites where sensitive ecosystems would be threatened by adjacent development;
 - sites where rare or endangered species would be disturbed by adjacent development;
 - land zoned for agriculture and / or in the ALR, except for community housing projects with an active agricultural component, and / or which employ other measures to ensure no net loss of agricultural potential;
 - sites adjacent to sources of pollution, including air and water borne chemical and biological contaminants and EMFs, which might pose elevated health risks to occupants, especially to young children.
- 4.2 Community Housing, especially larger projects, should preferably be located within clearly defined village containment boundaries.
- Existing village and hamlet areas such as Vesuvius, Maliview-Fernwood, and other developed areas should be officially designated in the OCP as villages or hamlets suitable for Community Housing if services such as water and sewer are available or planned for, and if mixed-use zoning is provided so that residents have pedestrian access to a corner store.
 - The Trust should review and clearly define the village containment boundaries;
 - New or existing hamlets, as defined in the OCP, are also suitable for Community Housing.
 - Planned trail networks from and within the villages should be completed and expanded to ensure pedestrian access to greenspace and services for community housing residents;
 - Community Housing projects with active food-growing components, which can be maintained over time through covenant or similar mechanism, may be located outside the village containment boundaries.

IV b) Densities

Environmentally sustainable housing is generally tightly clustered, with the balance of the site retained as greenspace. The LUB 355 Table 9.9.2 specifies a maximum density for R11 of 35 dwellings per ha (15 dwellings per acre), if on community sewage system, with a maximum lot coverage of 30%. This works out to be a footprint of about 85 square metres (915 square feet) per dwelling, i.e. 170 square metres (1830 square feet) for a two-storey dwelling. This does not facilitate small, tightly clustered dwellings with maximized greenspace. Other residential zones allow greater lot coverage (33%, except for R2 at 25%) and fewer densities per hectare (1 to 25, except for R1 at 37). A lower allowable lot coverage, at least for larger lots, combined with a higher number of dwellings per hectare, may be more appropriate to meet environmental objectives. In this regard, the areas where three storey buildings are permitted should be reviewed, since three storey residential buildings provide greenspace advantages as well as cost benefits.

RECOMMENDATION

4.0 Environmental Considerations

- 4.3 For Community Housing only, LUB 355 Table 9.9.2 should be reviewed with the intent to increase maximum densities and decrease maximum lot coverage for residential zones within the village containment boundaries. The village areas where three storey buildings are permitted should also be reviewed with the same intent.

IV c) Construction standards

In Canada, energy use is the critical determinant for sustainable housing, although related issues such as water use and waste treatment, indoor air quality, longevity, and use of non-toxic and recycled-content products are also part of the equation. The two recognized standards, R-2000 and EnerGuide for Houses, were both developed by Natural Resources Canada (NRCan)⁴. Both standards involve a computer thermal analysis of the house, a visual inspection and fan depressurization test. A Canadian Energy Star home rating system is being pilot tested in Ontario. It is largely based on the EnerGuide for Houses rating system, although there is also a prescriptive option.

The R-2000 standard includes minimum requirements for each aspect of the dwelling and includes water conservation and other environmental standards. Builders must be R-2000 certified. R-2000 houses achieve energy-efficiency of approximately 40 percent above building code requirements and use at least 30 percent less energy than conventional new houses. Building to the R-2000 Standard adds between four and seven percent to the cost of a new home. The average payback is seven years.

EnerGuide for Houses is applicable to new (EGNH) and existing (EGH) housing and provides a rating system; it does not at present include water conservation or materials issues, although indoor air quality is addressed. It is less rigorous than the R-2000 standard but also less expensive, both in terms of administration (it costs about \$350 to get an unsubsidized EGNH or EGH rating and any homeowner or builder can apply) and capital costs of measures. EGH ratings range from 0 to 100, with 100 requiring no purchased energy. New houses built to code generally rate in the 70's, depending on their design.

RECOMMENDATION

4.0 Environmental Considerations

- 4.4 A minimum energy performance standard, EnerGuide for New Houses (EGNH) rating of 78, with 80 or over preferred, is suggested for new Community Housing.

IV d) Infrastructure and site servicing options

Infrastructure and site servicing includes water supply, wastewater treatment, storm water handling, power supply, roads, bicycle paths and walkways, parking areas, and other shared services such as geothermal heating systems. The LEED green building rating system, although designed for non-residential projects, provides alternatives for all these areas. Costs can often be offset by savings in other areas, for example a geothermal heating loop would be offset by lower heating costs, the inclusion of covered, secure bicycle racks would be offset by a reduction in parking spaces. Specific measures to be considered include:

- Minimize building footprint and maximize native vegetation, or provide community gardens;
- Manage storm water runoff with permeable surfaces and collection and natural treatment systems;
- Zero increase in water demand through on-site and off-site conservation measures and rainwater collection; consider storm water and/or greywater use for non-potable purposes;
- Secure, covered bicycle storage and/or car-share co-op membership in lieu of some parking spaces;
- Passive solar design and natural day lighting;
- Optimize energy performance of project using computer analysis, e.g. EGNH rating of 80; consider shared ground source heat pump;
- High-efficiency LED outdoor safety lighting to minimize night sky pollution and off-site lighting;
- Locate electrical transformers away from residences;
- Recycle construction waste and provide recycling containers for occupants.

⁴ <http://oee.nrcan.gc.ca/r-2000/english/english.html>

RECOMMENDATION

4.0 Environmental Considerations

- 4.5 Community Housing projects should incorporate infrastructure and servicing measures to reduce impact of development on energy, water, and other resources.

IV e) Alternative housing options

Several SSI groups are discussing alternative housing or ‘ecovillage’ projects. There is a desire for low-cost, environmentally-sustainable, rural accommodation for organic farmers, wild crafters, and artisans. The ecovillages by definition would have low negative impact on the environment and would seek to improve resources such as water quality and forest through improved land stewardship. Construction methods, materials and infrastructure proposed for these projects generally do not conform to provincial standards, although they may be well-accepted in other parts of the world. Projects of this description could meet part of the demand for community housing and would fall within the goals of the OCP:

B.1.8.5 To ensure the continued development of land use opportunities for non-traditional residential settlement. Opportunities that are based on the communal stewardship of land, conservation of resources and alternative forms of infrastructure are of special importance.

The challenge is to find a mechanism to facilitate at least one demonstration project. One option might be to designate a lot as a permanent camp site with a community building providing cooking, bathing, sanitary and laundry facilities and built to code. Families could then provide ‘camping’ accommodation for themselves which would presumably not have to meet the BC Building Code Part 9 (residential). Alternatively, an exemption from Part 9 might be feasible under a “pilot project” designation.

RECOMMENDATION

4.0 Environmental Considerations

- 4.6 Alternative Community Housing projects demonstrating environmental sustainability, such as ecovillages, should be encouraged by planning staff and the Local Trust Committee.

V. Quantifying community benefit and developer benefit

The ability to clearly define and quantify community and developer benefit is a critical part of the assessment of applications and the subsequent development of projects. Other communities work closely with, and require full transparency from, developers providing low-income and community housing.

There are several possible development scenarios for affordable housing projects, involving various combinations of for-profit or non-profit developers, who may act simply as project managers, or who also may own the land on which the housing is to be built. When project management and housing construction services are being provided on a stand-alone contractual basis (e.g., to a housing agency or local government entity), they should be provided on a cost basis, and costs can be quantified with reasonable accuracy.

In situations where a for-profit developer is also the owner of land, local government should establish clear guidelines addressing the issue of developer return or profit versus community benefit. These guidelines will assist the Local Trust Committee in making decisions, but should also help developers by clarifying the ground rules for affordable housing proposals. Policies and guidelines should be established that clearly define and quantify the extent to which the community can benefit and developer can profit from affordable housing projects, particularly in situations where for-profit developers are also landowners. For example, a developer should not profit from the increase in land value associated with upzoning for affordable housing.

The current OCP provides some direction on the issue of community versus developer benefit with respect to amenities such as park land or recreation facilities, but there are no such guidelines for affordable housing. One approach to defining community versus developer benefit would be to establish a formula that is analogous to the amenity zoning policy outlined in the OCP (H.3.3.1).

Table: Impact of density and sale price on net profit

Cost	Market			Affordable	
	A- Market	B- Market	C- Market	D- Affordable	E- Affordable
Units	1	3	10	10	20
Square feet	1,000	3,000	10,000	10,000	20,000
Land (value, pre-rezoning)	150,000	150,000	150,000	150,000	150,000
Hard costs (\$100/sq.ft.)	100,000	300,000	1,000,000	1,000,000	2,000,000
Soft costs (\$25/sq.ft.)	<u>25,000</u>	<u>75,000</u>	<u>250,000</u>	<u>250,000</u>	<u>500,000</u>
Total construction cost	125,000	375,000	1,250,000	1,250,000	2,500,000
Total cost	275,000	525,000	1,400,000	1,400,000	2,650,000
Developer profit (20% cost)	<u>55,000</u>	<u>105,000</u>	<u>280,000</u>	<u>280,000</u>	<u>530,000</u>
Total cost	330,000	630,000	1,680,000	1,680,000	3,180,000
Average cost/unit	330,000	210,000	168,000	168,000	159,000
Average sales price	230,000	230,000	230,000	175,000	175,000
Total sales	230,000	690,000	2,300,000	1,750,000	3,500,000
Total cost	<u>-330,000</u>	<u>-630,000</u>	<u>-1,680,000</u>	<u>-1,680,000</u>	<u>-3,180,000</u>
Net profit = land value increase	-100,000	60,000	620,000	70,000	320,000

Market

- A- Building only 1 modest home (\$230,000) is not feasible (\$100,000 loss) if the land cost is \$150,000. The \$100,000 reflects the amount the land is over-priced for the development of a single unit for \$230,000.
- B- Building 3 modest homes (\$230,000) provides the developer a 20% return on cost (total cost, including land) plus a \$60,000 surplus. This surplus reflects the amount of benefit the owner obtains from increased density. In other words, the developer could afford to pay \$60,000 more for the land and still make the return of 20%. As such, the land value is deemed to have increased to \$210,000 by re-zoning (\$150,000 cost + \$60,000). This assumes no sales price caps, i.e. selling at \$230,000.
- C- Building 10 modest homes (\$230,000) provides the developer a 20% return on cost, plus a \$620,000 surplus. Land value is therefore increased to \$770,000 by re-zoning (\$150,000+620,000). This demonstrates the dramatic increase in land value as densities are increased (no sales price caps).

Affordable

- D- Building 10 affordable homes (price cap \$175,000), profitability is reduced, and a developer can not afford to pay as much for the land (compared to a market development). As such, the increase in land value is more modest (\$70,000). However, the developer is still able to earn the same profit of 20% (\$280,000). If the "affordable" units are built to the same quality, the purchaser receives most of the benefit by purchasing a home for \$175,000 that would normally cost upwards of \$230,000.
- E- Building 20 affordable homes (price cap \$175,000) provides the developer a 20% return on cost, plus a \$320,000 surplus. Land value is therefore increased to \$470,000 by rezoning (\$150,000+320,000). This demonstrates the increase in land value with greater densities, even with sales price caps.

Developer vs. Community benefit

The benefit of the increased density can be quantified by calculating the increase in profit potential of a development. This profit increase can be attributed to a decrease in per unit land costs, and/or an increased developer margin, and is considered to be an increase in the land value (all else being equal). Some additional costs savings can be achieved as fixed costs are spread among more units; this is not considered in this illustration.

This also assumes that the developer profit of 20% is attributed only to the developer (i.e. not considered as part of the benefit to be split with the community).

Using the examples above, the following **increases in land value** can be achieved by rezoning:

	<i>Sale price</i>	<i>total increase in land value</i>	<i>per unit increase in land value</i>
B- 3 modest homes	\$230,000	60,000	20,000
C- 10 modest homes	\$230,000	620,000	62,000
D- 10 affordable homes	\$175,000	70,000	7,000
E- 20 affordable homes	\$175,000	320,000	16,000

RECOMMENDATIONS

3.0 Larger-scale (four units or more) Community Housing projects

- 3.1 The proposed unit mix (size, type, ownership/rental, and sale prices / rental rates) should be recommended to the Trust by the Housing Agency based on demonstrated need, in consultation with the housing provider.
- 3.2.a) Upzoning is to be contingent upon a Developer’s Housing Agreement⁷ which specifies the developer’s commitments to the community, including but not limited to unit mix, selling prices, allowable profit, completion dates, default provisions, and which requires the placement of individual Unit Housing Agreements with covenant on each Community Housing unit at completion.
- 3.2.b) Selection of projects by the Housing Agency to be based on a process using a template per Appendix B.
- 3.3 Each unit to be registered with the Salt Spring Housing Agency.
- 3.4 Housing applicants to be selected from wait list and/or hold current Qualification Certificate.
- 3.5 The calculation of return on investment should be clearly defined. All costs should be transparent and readily substantiated. To ensure transparency, the housing provider should pay for all appraisals and quantity surveys (these costs should be included in the “cost base”), but the client should be the Housing Agency or the Islands Trust. The intent is to quantify developer and community benefit in order to ensure maximum community benefit.
- 3.6 Larger-scale Community Housing projects should be located within the village containment boundaries, or within new or existing hamlets to avoid sprawl (see 4.2).

Minority Opinion: Location of new subdivisions for Community housing should be permitted within easy walking distance of the main roads.

- 3.7 Larger-scale Community Housing projects may include a variety of tenure types and housing forms including: Rental; free-hold ownership; strata; co-op; co-housing; serviced housing such as the Meadowbrook and Abbeyfield models; rental units on rental lots or pads; and ownership units on rental lots or pads such as the Brinkworthy and proposed ecovillage models. Innovative tenures that support community housing should be encouraged.

The calculation of developer return should be clearly defined, and all costs should be transparent and readily substantiated. To ensure transparency, the developer should pay for all appraisals and quantity surveys (these costs should be included in the “cost base”), but the client should be the Islands Trust.

Housing construction, particularly during a period of high building activity and escalating costs, is not a risk-free enterprise, and commonly includes a “profit margin” to the contractor / builder. A profit / risk factor of about 20% may be appropriate for “normal” market conditions.⁵ The inclusion of a contingency or risk factor means that the developer / builder should bear total responsibility for cost overruns.

The calculation of community and developer benefit should also include consideration of park land and trails dedication, provision of sidewalks, water, sewer; storm water, building services such as energy and water conservation measures above code requirements, property tax exemptions; and income tax benefits.

VI. Housing Agreements

In general, all Community Housing will be subject to a (tri-partite?) Housing Agreement between the property owner and the planning authority (or Community Housing Agency) (and the Capital Region Housing Corporation or other body committed to long-term sustainable, affordable housing?). The Housing Agreement is permanently registered on title. There should be a Housing Agreement for any situation in which the Trust has “up zoned” the property (i.e., conferred a benefit on the property owner). These situations include:

- Provision of additional densities;
- Conversion of seasonal cottages to year-round status;
- Creation of rental suite(s) within an existing dwelling or outbuilding.

RECOMMENDATION

1.0 General

- 1.2 All Community Housing — ownership and rental — is to be protected by means of a Housing Agreement and / or a covenant registered on title.

Sale price and resale price of ownership units

The initial sale price and subsequent resale price formula must be specified in the Housing Agreement to ensure affordability.

For multiple unit projects (including multiple detached dwellings) the formula should ensure that a range of prices are available. For example, if the maximum allowable price is \$220,000 (3 bedroom Community Housing Three, from Table 1.), then the average unit price for the development might be set at \$175,000 and the number of units in various size and price categories would be stipulated in the agreement, per Table 1.

Resale price formula for determining price escalation should be simple (e.g., based on CPI index, or the rate of increase of wages in the community).

In this report we make a distinction between the General Instrument or Developer Agreement, and the Housing Agreement for each dwelling unit, and released one the project is complete and the Housing Agreements are all registered (?). The General Instrument must be registered on the title of the land as a condition for development approvals. The Housing Agreement must be registered on title for the unit to which it relates before conveyance.

⁵ The expected rate of return will be higher in active building periods and lower during slow times, which suggests that private sector involvement in affordable housing projects may vary with market conditions. This does not necessarily mean that the rate of return to the private sector should be recalculated, but that greater non-profit involvement should be encouraged.

VI a) General Instrument / Developer Agreement

Implementation of an approved General Instrument is a condition of any rezoning application approval or building permit approval for any Community Housing Project. The form of the General Instrument will vary, depending on the size and type of the project, but must include, at minimum, the following:

1. Description of the development, including whether the Units will be rented or owner-occupied, or a combination thereof;
2. The number, size and location, and price range of the Units, to include a table listing each unit by address, size, number of bedrooms, initial price / rental rate, and anticipated date of completion;
3. Provisions / documents for the Housing Agreement to be placed on title for each unit, to include:
 - title restrictions,
 - initial price or rent,
 - resale restrictions,
 - rental restrictions,
 - occupant qualification criteria,
 - monitoring provisions,
 - rights of first refusal,
 - provisions for waiving,
 - penalty clauses.
4. The qualification criteria for potential occupants (see CHTF Recommendation 7.0);
5. A marketing plan;
6. Provisions for monitoring the ongoing affordability of the units, and the process for qualifying prospective resident households for income eligibility; and means for reviewing eligibility on an ongoing basis;
7. Incentives by the Islands Trust, the Community Housing Agency, and other agencies (if any);
8. Provisions for First Right of Refusal to a public agency;
9. Penalties for non-compliance or non-completion;
10. Any additional obligations;
11. Assignment / discharge / termination clauses;
12. The requirement for provision of project cost information, sufficient to quantify and verify the developer vs. community benefit, to the satisfaction of the Housing Agency.

VI b) Housing Agreement

Each Community Housing dwelling unit shall be protected with a Housing Agreement registered on title. This applies to all units, including secondary rental suites in owner-occupied dwellings and other cases not subject to a General Instrument. The terms and conditions of the Housing Agreement will vary, but should include the following:

1. Title– the Housing Agreement shall be registered against the title to the property to which it relates;
2. Term– the Housing Agreement shall be in perpetuity, subject to provisions;
3. Initial purchase price or rental price of unit. (see CHTF Recommendations, Table 1);
4. Resale restrictions (see CHTF Recommendation 6.5);
5. Rental restrictions (see CHTF Recommendation 6.4);
6. Occupant qualification criteria– occupants shall hold valid Qualification Certificates (see CHTF Recommendation 7.0);
7. Monitoring– the owner shall submit an annual statement confirming the occupancy of the unit;

8. First Right of Refusal shall be given to a public agency or non-profit entity willing and able to meet the conditions (not applicable to secondary suites and cottages). In the event of the sale of a unit, if the seller is unable to find an eligible and qualified purchaser, the named entity shall have the right to purchase said unit at the price that could be charged to an income-eligible purchaser.
9. Provisions for temporary waiver under the following circumstances:
 - destruction of unit through fire, flood, or other act of nature;
 - demolition of unit is required (by public agency or by structural engineer's report);
 - long-term lack of qualified occupants (subject to confirmation by Housing Agency);
 - special need of owner (secondary rental suites and cottages only, and subject to approval by Housing Agency).
10. Penalty clauses– the penalty for non-compliance in principle should be at least two times the value of the benefit of non-compliance, plus enforcement costs;
11. Approval and enforcement– the Housing Agreement and its rights and obligations shall be approved and enforced by the Islands Trust and / or the Housing Agency or other designated authority.

VII. Community Housing Agency

The CHTF believes that an overseeing body, a Community Housing Agency or Housing Authority, is needed to manage Community Housing on Salt Spring. It is appropriate for small communities with extraordinary housing pressures to seek to manage their housing. For example, Tofino is in the process of establishing a Housing Authority.

RECOMMENDATION	
1.0 General	
1.12	Priority be given to the establishment of a local, independent non-profit Housing Agency, with ongoing tax support provided by Islands Trust and CRD, plus funding from other sources, to administer the recommendations provided in this document, supplemented by research from Islands Trust, CRD and other agencies.
1.13	The Board of the Housing Agency should be comprised of volunteers, at least one of whom should be a Community Housing resident, appointed by CRD and Islands Trust local elected officials. Board terms should be staggered and limited.

VII a) Functions

In the short term, a Community Housing Agency would administer housing policies and would:

- Manage wait lists and qualification certificates;
- Hold, monitor and enforce housing agreements;
- Hold first right of refusal on affordable housing;
- Undertake Needs Assessments and set priorities based on need;
- Work with housing providers to establish suitable mix of units and prices.

In the longer term, a Community Housing Agency would also:

- Act as affordable housing developer / project manager / contractor;
- Own and / or manage affordable housing.

VII b) Organization

In the short term, an existing entity such as Capital Region Housing Corporation or the Community Services Society could perform some of the functions of a Community Housing Agency. In the longer term, a Community Housing Agency could take the form of a CRD Commission (e.g., like the Parks and Recreation Commission), an Islands Trust entity or a non-profit entity.

Any public funding would also require public accountability, for example by electing Community Housing Agency Board members and / or by having elected officials sit on the Board. Note that Trustees might be in a conflict of interest position regarding any projects which required land use decisions by the Local Trust Committee.

VII c) Funding and Staffing

In the short term, the Agency could be managed and operated by a volunteer Board, without staff. Funding sources could include grants from (e.g., CRD, Islands Trust, and housing agencies such as CMHC) or donations.

In the longer term, a Community Housing Agency could receive tax support (e.g., through the recently established CRD Housing Trust Fund or a local tax levy) and fees for rental / owned housing. Once sustainable funding is secured, part time staff for the Agency could be considered.

The CRD can provide an annual tax contribution to a non-profit entity (e.g., like the SSI Library Society or Artspring), but it cannot provide direct tax funding or grants-in-aid to an Islands Trust entity. Also, access to financing through the Municipal Financing Authority (including the possibility of RRSP-eligible “community bonds”) would only be available through the CRD. The CRD, Islands Trust and non-profit organizations can provide charitable tax receipts for donations.

VII d) Enforcement

Mechanisms for cost-effective enforcement of housing agreements would have to be developed.

VIII. Disposition of community / public lands / assets

All residents have an interest in public assets, including community/publicly held or controlled land. Public land is a valuable asset, which can be used to help meet community goals and objectives. The public generally view these assets held or controlled (by Trust Council or other body) to be held in trust for all residents.

Their disposal or transfer (including long-term lease) should therefore be based on strong evidence that it is done in the best interest of the community, and in a manner that ensures fairness to all potential recipients. It should be a requirement that recipients of community land for housing be non-profit providers whenever possible. Only in cases when a non-profit sponsor is not available or lacks the development capacity, should private sector involvement in the development be considered.

Building local capacity in all aspects of housing development and operation is highly desirable, and strong preference should be given to those proponents that specifically include this as a feasible objective in their project plan.

The intent of the policy should consider both governance/accountability issues, as well as the best interest of the community.

The policy should be designed to ensure that:

- the prime benefit from any disposal of public land accrues to the public
- there is an open and transparent public process
- there is fair and equal opportunity for all members of the public to participate
- the decision should be based on an objective evaluation of options available

- the selection process should be based on evaluation criteria designed to achieve the greatest adherence to community priorities and goals.

For public land identified for housing, the key areas of community housing policy should be considered in any disposition decision made. Consideration of the following Community Housing policy areas are critical to ensure that the decisions address the community's greatest housing needs, as well as reflect community values:

- Land must be protected by a Housing Agreement that ensures affordability in perpetuity
- Land use should be directed towards projects meeting a demonstrated need
- Priority should be given to non-profit housing providers and those meeting the needs of lower income residents
- Environmentally sensitive areas should not be developed
- Efforts should be made to concentrate higher density housing within village boundaries
- Housing should be constructed to meet high energy standards
- Projects should be targeted to residents meeting defined Community Housing qualification criteria
- Consideration should be given to the long-term lease of land as an alternative to sale or transfer.

VIII a) Proposal selection process

For housing developments involving community (public) land or public funds (grants, subsidy), most jurisdictions use a Request for Proposal (RFP) process to solicit and evaluate proposals. This process generally begins with a Request for Expressions of Interest (REOI), which is designed to capture general interest from proponents and develop a "short list" of potential proposals.

The process is designed to be open and transparent, and widely advertised to ensure as much public participation as possible. In order to encourage the practice of forming partnerships and collaborations between interested parties, the list of participants should be made available to the public.

This process should begin after the priorities and goals for the community have been articulated in an adopted Community Housing policy.

VIII b) Request for Expressions of Interest (REOI)

A REOI is an opportunity primarily for housing providers – societies, developers, institutions, program delivery agents – to present their general concept for consideration. It may also be used as an opportunity for members of the community to present their ideas on the best use of the property, or to express their housing needs and/or preferences. There should be a stated deadline for submissions.

The results can also provide Trust Staff/Trustees (or Housing Agency, steering committee, etc.) to consider combinations of uses and/or the potential for partnerships between complementary proposals.

REOI packages provided to interested participants include:

Specific guidelines/governing principles to encourage proposals to address certain site specific and basic requirements, public or social policies, etc. Some examples:

- environmental sustainability
- timely development
- employment for local residents
- mixed income housing
- rental or ownership tenure (or both)
- community or resident collaboration

Information requested from REOI participants:

Developers (private or non-profit) are to provide the same basic information, generally consisting of such things as:

- general and basic description of housing proposal
- target market
- description of how proposal will meet community need and priorities
- firm/society background
- housing development experience and examples of other developments successfully undertaken

- Financial and technical capacity of proponent to complete proposed project
- development philosophy (tied to established governing principles)
- proposed partnerships with other entities (including government)
- utilization or development of local development/management capacity

The REOI process can involve participation in either a voluntary or mandatory information session that can help proponents understand the process, make their submissions more focused, and help streamline evaluation.

Evaluation criteria for the EOIs may include meeting with proponents and/or requesting additional information, and should not be as rigorous as criteria for the RFP. The EOI is a preliminary step to develop a short-list of parties invited to participate in the RFP, and often acts as a self-selecting mechanism for parties to help them decide if the RFP is suitable for their organization (the RFP process can involve significant effort, and parties completely unsuited for the development should not be encouraged to expend resources).

VIII c) Request for Proposals (RFP)

The RFP process is open to those who participated or were short-listed from the REOI process. More detailed information than required in the EOI is obtained. There should be a stated deadline for submissions.

The development of the RFP requirements can include participation of parties not directly involved in the process, such as the CHTF, the Community Centre, or the Capital Region Housing Corporation. The public is often offered the opportunity to review and comment on proposals received, allowing public input to be considered in the selection process.

Most housing development RFPs include the following information and requirements:

RFP packages provided to interested participants include:

- Project introduction and statement of purpose
- Target market (income, tenure)
- Property description – site, location, size, zoning, constraints, etc.
- Project intent/goals (public/community housing policy, target prices)

Submissions from RFP participants include the following information:

Proponent and development team

- Proponent – name(s), contact information, resumes of key personnel, development team members
- Proponent experience – housing development and management, scope and success of other projects
- Proponent capacity – financial capacity to finance and complete the project

Proposed development

- Narrative description
- Conceptual site plan and design theme
- Adherence to guiding principles (see description REOI above)
- Environmental and energy efficiency features
- Infrastructure and site servicing plans
- Construction budget (templates sometimes provided)
- Construction schedule
- Sales or rental feasibility
- Affordability to target market
- Involvement of public or private partners (government, service groups, etc.)
- Partnerships and in-kind participation of other parties

Evaluation and selection criteria are quantitative and weighted, and would typically include such things as:

- Experience of proponent (the primary indicator of likelihood of success)

Salt Spring Community Housing Task Force
PART 3 Background Report

December 7, 2005

- Financial capacity of proponent
- Features that build local capacity
- Degree to which proposal meets affordability policy goals
- Degree to which proposal meets guiding principles
- Feasibility (financial viability, market analysis)
- Completeness of proposal
- Public acceptance

APPENDIX A

Housing Needs Assessment Recommended Outline

1. Analysis of Demographics

Demographic profile - housing demand is largely driven by changes in the number and composition of households. The analysis should consider the current situation as well as a forecast for a period of (say) 5 years, and includes such things as:

- Current and past census data to identify population growth rates
- Comparison to CRD and provincial averages
- Include such things as age distribution, individual and household incomes, number and size of households, special needs populations (elderly, disabled, homeless), single parents, poverty population, etc.
- Analysis of survey data and/or waitlist data, with rationalization/reconciliation of any significant differences
- Inclusion of anecdotal evidence and other local knowledge
- Population forecast data to identify future expected populations (include features identified above, and compare to CRD and provincial average.
- Others?

Economic profile - economic opportunity can be compared to population growth and provide some context for existing and forecasted housing conditions.

- Sources of income – employment, retirement, income supports, self-employment
- Employment – sources/sectors, trends, forecasts, wages, seasonal fluctuations, employer and employee concerns and perceptions (impacts of housing related issues), commuting patterns
- Others?

Affordability - estimate the housing costs that would be affordable, given population and incomes

- Price ranges (homeowner) and rents deemed affordable, based on population income and household size.
- Application of CHTF definition of “acceptable” housing, including affordability, suitability, and adequacy.
- Other?

2. Analysis of Housing Stock

Housing inventory – census data, property tax records, building department records, as well as local knowledge can be used to develop an estimate of the existing housing supply. This can include such information as:

- Number of units, type, size, age, condition, vacancy rates – Rental and Homeowner
- Supported, assisted, special needs, subsidized, and institutional housing
- Seasonal residences
- Housing under construction and planned (development and building permits)
- Homeowner and rental housing costs
- Anecdotal evidence and other local knowledge
- Other?

APPENDIX A

3. Identification of Gaps in Supply of Affordable Housing

Gaps in supply – Compare the current supply (inventory) of housing to the amount estimated to be required (based on demographic profile) for both the current situation and the forecasted period

- Inventory– number of units, types, tenures, price ranges
- Current and forecasted shortfall (gaps) and/or excesses in various categories

Affordability - include a comparison of the cost of the existing (and planned) housing inventory to the costs deemed affordable to the current population

4. Prioritise Population Groups in “Core Housing Need”

Priority categories - quantify housing needs for those identified as in core need, categorized as follows:

- Low-income families and individuals
- Moderate income families and individuals
- Essential service workers
- Employees forced to leave the community
- Single parents
- Elderly
- Youth
- Homeless and at-risk of homelessness
- Special needs and transition housing
- Urgent housing need
- Length of time on housing waitlist

Appropriate housing - estimate the amounts of appropriate housing type for the priority groups, including such features as:

- Type, tenure, size and price ranges
- Locations?
- Others?

Qualification Criteria – given the limited and finite supply of land available for Community Housing, the requirements to qualify for this housing should first and foremost reflect the priorities established. In addition to the priority “Core Need” categories established above, some minimum qualifying criteria should be put in place, such as:

- Income limits based on family size
- Canadian citizenship or landed immigrant status
- Minimum SSI residency requirements and/or SSI employment/livelihood
- Asset limits (including restrictions on ownership of other properties) and inclusion of a return on assets in income qualification calculations
- Ability to qualify for adequate mortgage (homeownership)
- Legal age

Information required from Applicants to apply the qualification criteria and establish priority should be obtained through the use of a waitlist.

Waitlists -The CHTF believes that a very effective way to track need and identify categories of need is to establish a Wait list. Consolidated data from this list (minus identification) would then be available to relevant bodies. The wait list will include ownership and rental options. It is assumed that the Salt Spring Community Housing Agency (or

APPENDIX A

Capital Regional Housing Corporation on an interim basis) will administer the Waitlist and ensure that Applicants' personal information is kept confidential.

The waitlist is also a tool to screen applicants for eligibility, as well as to rank priority based on greatest need or other priorities established. Those applying for Community Housing (controlled by a housing agreement) must either be on the list or meet the qualifications (i.e. possess a certificate from the Community Housing Agency stating that they qualify). SSI Community Housing Agency projects would select applicants based on standing on the list and suitability of accommodation.

Other uses for the waitlist include the provision of housing needs data to local government and housing groups regarding, provide those in need of housing with a mechanism to find suitable housing, and to provide housing suppliers with a list of qualified applicants.

Models of Waitlists

Various techniques for ranking specific Applicants on a waitlist are employed in different jurisdictions; one of the more common techniques employed (including BC Housing) is that of a weighted point system. In this model, each priority category and qualification criteria (see page 4.) is assigned a weight, based on importance, urgency, and community need and values. Flexibility is built into the ranking system to allow special consideration for emergency situations and/or extended wait periods by individual applicants.

5. Policies that give Priority to those in “Core Housing Need”

Policies areas to consider that give priority and encourage the development of housing targeted to those in most need:

- Fast-track approvals
- Higher densities
- Reduction and/or waiver of fees, taxes, etc.
- Support in access to government funding
- Others?

STANDARD CHARGE TERMS

FILED BY: RESORT MUNICIPALITY OF WHISTLER

STANDARD HOUSING AGREEMENT, 219 COVENANT AND RENT CHARGE AND INDEMNITY

The following standard charge terms will be incorporated by reference in every Section 219 covenant and housing agreement in which the set is referred to by its filing number as provided by Section 235 of the *Land Title Act*.

WHEREAS:

- A. Section 219 of the Land Title Act permits the registration of a covenant of a negative or positive nature in favour of the Resort Municipality of Whistler (the "Municipality") in respect of the use of land or construction on land;
- B. The Owner (hereinafter defined) is the registered owner of the Land (hereinafter defined);
- C. The Owner and the Municipality wish to enter into this Agreement to provide for affordable employee housing on the terms and conditions set out in this Agreement, and this Agreement is both a covenant under section 219 of the *Land Title Act* and a housing agreement under s.905 of the *Local Government Act*.

THIS AGREEMENT is evidence that in consideration of the mutual promises contained in it and in consideration of the payment of \$2.00 by the Municipality to the Owner, the receipt and sufficiency of which is hereby acknowledged by the Owner, the parties agree as follows:

PART I – DEFINITIONS

- 1. In this Agreement the following words have the following meanings:
 - a. "Agreement" means these standard charge terms together with the General Instrument (hereinafter defined);
 - b. "Assessed Value" means the most recent assessed value of the real property as determined by the assessment authority in which the real property is situated. If such value is not available, then the Assessed Value means the highest price in terms of money that the real property will fetch under all conditions requisite to a fair sale with the buyer and seller each acting prudently, knowledgeably and assuming the price is not effected by undue stimulus as estimated by a real estate appraiser accredited in the jurisdiction in which the real property is located;
 - c. "CPI" means the All-Items Consumer Price Index for Vancouver, B.C. published from time to time by Statistics Canada, or its successor in function, where Occupancy Permit Year (hereinafter defined) = 100;

- d. "Daily Amount" means \$100.00 per day as of December 31, 2000 adjusted thereafter by an amount determined by multiplying \$100.00 by the percentage change in the CPI since December 31, 2000 to January 1 of the year that a written notice is delivered to the owner by the Municipality pursuant to section 24 herein;
- e. "Dispose" means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, rent or sublet, divest, release, and agree to do any of those things;
- f. "Dwelling Units" means all residential dwelling units located or to be located on the Land whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, into which ownership or right of possession or occupation of the Land may be Subdivided (hereinafter defined);
- g. "Employee" means a Qualified Person (hereinafter defined) who is either employed or self-employed for an average of not less than 20 hours per week over the most recent twelve months and whose principal place of employment or business during that time is located within the boundaries of the Resort Municipality of Whistler;
- h. "Employee Unit" means a Dwelling Unit designated as an employee unit in accordance with Part II herein to be used, occupied and Disposed of in accordance with this Agreement;
- i. "General Instrument" means the Form C under the Land Title (Transfer Forms) Regulations, as amended, and all schedules and addenda to the Form C charging the Land and citing these Standard Charge Terms;
- j. "Gross Floor Area" means the habitable gross floor area of each Employee Unit and includes enclosed sunrooms but does not include crawl spaces, open patios, open balconies or parking spaces. If the Employee Unit is a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be based on the gross floor area shown corresponding to the Employee Unit on the Strata Plan filed in the LTO (hereinafter defined) in respect of the Land. If the Employee Unit is not a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be made in accordance with the procedure for determining gross floor area set out in the *Strata Property Act* as if the Employee Unit were a strata lot;
- k. "Interest" means the property interest of the Owner in an Employee Unit;
- l. "Land" means the land described in Item 2 of the General Instrument and any part into which said land is Subdivided;
- m. "LTO" means the New Westminster/Vancouver Land Title Office or its successor;
- n. "Occupancy Permit Year" means the calendar year in which the Municipality issues an occupancy permit for an Employee Unit;
- o. "Original Rent" means \$1.25 per square foot per month;
- p. "Owner" means the Transferor described in the General Instrument and any subsequent owner of the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of an Employee Unit from time to time;

- q. "Prime Rate" means the annual rate of interest, expressed as a percentage, used as a reference rate by the Royal Bank of Canada at its main branch in Vancouver, British Columbia for Canadian dollar loans and designated by the Royal Bank of Canada from time to time as its prime rate;
- r. "Qualified Person" means a person who does not own, either directly or indirectly through a trust, business asset, or otherwise, any interest in real property anywhere in the world unless, at the time that such person applies for an Employee Unit:
 - i. the Assessed Value of all the real property he or she owns does not exceed 60% of the Assessed Value of the Employee Unit; or
 - ii. the real property he or she owns is:
 - (1) less than 400 square feet in area,
 - (2) less than 650 square feet in area and it is the principal residence of two individuals,
 - (3) less than 850 square feet in area and it is the principal residence of that person and at least one child, or
 - (4) less than 1200 square feet in area and it is the principal residence of that person and at least two children; and
 that person enters into an agreement with the Municipality to sell his or her interest in the real property within the time period specified by the Municipality, acting reasonably, or that person enters into an agreement with the Municipality with respect to the real property and the Employee Unit on terms acceptable to the Municipality in its sole discretion;
- s. "Retiree" means a Qualified Person who has ceased employment and who was an Employee for 5 of the 6 years immediately preceding the date on which the individual ceased employment;
- t. "RFR" means a right of first refusal and option to purchase the Land granted or to be granted by the Owner to the Municipality;
- u. "Subdivide" means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative units" or "shared interests in land" as defined in the *Real Estate Act*;
- v. "Tenancy Agreement" means a tenancy agreement, lease, license or other agreement granting rights to occupy an Employee Unit;
- w. "Tenant" means an occupant of an Employee Unit by way of a Tenancy Agreement.

PART II - USE OF LAND AND CONSTRUCTION OF EMPLOYEE UNITS

- 2. The Owner covenants and agrees with the Municipality that:
 - a. the Land will not be developed and no building or structure will be constructed on the Land unless:
 - i. as part of the construction and development of any such building or structure, the Owner also designs and constructs to completion, in accordance with a building permit issued by the Municipality and in accordance with any development permit issued by the

- Municipality, at least the number of Employee Units on the Land specified in the General Instrument; and
- ii. if required by the Municipality in its sole discretion, an RFR is fully registered against title to the Land in the LTO, with priority as set out in section 2(e) herein;
- b. the number of Dwelling Units on the Land will not exceed the number of Dwelling Units specified in the General Instrument;
 - c. the Owner will meet or exceed the construction standards for Employee Units as specified by the Municipality in a development permit issued by the Municipality in respect of development on the Land;
 - d. the Owner will at all times ensure that the Land is used and occupied in compliance with all statutes, laws, regulations, and orders of any authority having jurisdiction and without limiting the generality of the foregoing all bylaws of the Municipality and all federal, provincial, municipal or local laws, statutes or ordinances relating to environmental matters, including all rules, regulations, policies, guidelines, criteria or the like promulgated under or pursuant to any such laws; and
 - e. the Owner will do everything necessary, at the Owner's expense, to ensure that this Agreement and an RFR, if required, will be registered against title to the Land in priority to all charges and encumbrances which may have been registered or are pending registration against title to the Land save and except those specifically approved in writing by the Municipality or in favour of the Municipality.
3. If not all the Dwelling Units on the Land are to be used as Employee Units the owner will not apply for a discharge of this Agreement pursuant to section 6 in respect of any Dwelling Unit, and the Municipality will be under no obligation to provide such discharge, unless at the time that the Owner applies for the discharge the Owner is not in breach of any of its obligations under this Agreement and there are [insert the number of Employee Units stipulated in the General Instrument] other Dwelling Units on the Land which:
- a. are designated as Employee Units pursuant to section 4 and for which occupancy permits have been issued by the Municipality and which are and always have been used, occupied and Disposed of in compliance with this Agreement;
 - b. are not designated as Employee Units but the location of which has been approved in writing by the Municipality for use as Employee Units and for which occupancy permits have been issued by the Municipality and which are not and have never been Disposed of, used or occupied; or
 - c. are otherwise acceptable to the Municipality in its sole discretion upon conditions the Municipality considers necessary in its sole discretion, to ensure that the Owner fully complies with its obligations under this Agreement.

For greater certainty, any combination of Dwelling Units referred to in a, b and c will suffice to meet the requirements of this section 3, provided that the total of the combination of Dwelling Units referred to in a, b and c is equal to or greater than the number of Employee Units specified in the General Instrument;

4. All applications for Employee Unit designations must be made by the Owner by written notice delivered to the Municipality and are irrevocable by the Owner upon receipt by the Municipality of the written notice, but no designation is effective unless and until the Municipality confirms in writing that the location and

the size of the Dwelling Unit is approved by the Municipality for an Employee Unit, acting reasonably as a local government. If in the sole discretion of the Municipality the Owner has failed within a reasonable time to make application for Employee Unit designations as required by this Agreement, the Municipality may in its sole discretion make such designations.

5. Notwithstanding the definition of "Land" in section 1 herein, for the purpose of stipulating the maximum allowable number of Dwelling Units on the Land and for the purpose of stipulating the number of required Employee Units to be constructed on the Land by the Owner pursuant to this Part II and for the purpose of sections 3, 4 and 6 herein, and for the purpose of the definition of Dwelling Unit in section 1, but for no other purposes, "Land" means the entire area of the legal parcel described in Item 2 of the General Instrument as at the date of registration of the General Instrument at the LTO.
6. Subject to section 3, at the request of the Owner and at the Owner's sole expense, the Municipality will deliver to the Owner discharges of this Agreement in registrable form for each Dwelling Unit that:
 - a. is a separate legal parcel; and
 - b. is not an Employee Unit,

provided that, where the Land is subdivided under the *Strata Property Act*, the Municipality may withhold delivery of any discharges required to be delivered pursuant to this section until after the Municipality has received from the strata corporation its duly authorized agreement that it will not take any action that would result in an inability to rent the Employee Units in accordance with this Agreement or would render such rental a breach of the strata corporation bylaws.

PART III - USE AND OCCUPANCY OF EMPLOYEE UNITS

7. The Owner agrees that each Employee Unit may only be used as a permanent residence occupied by Employees or Retirees, and the Owner further agrees that the number of Employees or Retirees who permanently reside in the Employee Unit must be equal to or less than the number of Employees or Retirees that the Municipality's building inspector determines can reside in the Employee Unit given the number and size of bedrooms in the Employee Unit and in light of any relevant standards set by the Municipality in any bylaws of the Municipality.
8. The Owner will ensure that each Employee Unit is continuously used and occupied as set out in section 7.
9. Notwithstanding anything to the contrary contained in this Agreement, if a potential tenant would be an Employee except for the fact that such potential tenant has not resided in the Municipality over the most recent twelve months, then the Owner may rent the Employee Unit to such potential tenant provided that the Employee Unit is rented or leased in accordance with all other requirements of this Agreement.
10. Within three days after receiving notice from the Municipality, the Owner will in respect of each Employee Unit, deliver, or cause to be delivered, to the Municipality a statutory declaration, substantially in the form attached as Schedule "A", sworn by the Owner, containing all of the information required to complete the statutory declaration. The Municipality may request such a statutory declaration in respect of the Employee Unit no more than four times in any calendar year. The Owner hereby irrevocably authorizes the Municipality to make such inquiries as it considers necessary and reasonable in order to confirm that the Owner is complying with this Agreement, and irrevocably authorizes and directs the recipient of the request for information from the Municipality to provide such information to the Municipality.

11. If the Owner cannot comply with the occupancy requirements for any Employee Unit for reasons of hardship, the Owner may request that the Municipality alter the Owner's obligations with respect to that Employee Unit on terms acceptable to the Municipality, but no such request may be made later than 30 days after the Municipality has delivered to the owner a notice of breach of this Agreement under Part VII herein. The Owner must deliver the request in writing in accordance with section 37 of this Agreement. The request must set out the circumstances of the hardship involved. The request must set out the reasons why the Owner cannot comply with the occupancy requirements, and must describe the hardship to the Owner that compliance would cause. The Owner agrees that the Municipality is under no obligation to grant any relief, and may proceed with its remedies under this Agreement, and at law and in equity, despite the Owner's request or the hardship involved, and the Owner agrees that the relief, if any, is to be determined by the Municipality in its sole discretion.

PART IV - DISPOSITION AND ACQUISITION OF EMPLOYEE UNITS

12. In this Part, the following words have the following meanings:
- a. "Average Purchaser Index" means the average monthly Housing Price Index (hereinafter defined) for the 12 months immediately preceding the month of any offer to purchase the Interest of the Owner in the Employee Unit.. For example, if the offer to purchase the Employee Unit is dated January 15, 2001, the *Average Purchaser Index* means the average of the monthly Housing Price Indices for the months from and including January, 2000 to and including December, 2000;
 - b. "Average Vendor Index" means the average monthly Housing Price Index for the 12 months immediately preceding the month in which the Interest of the current Owner of the Employee Unit was submitted for registration in the LTO (the "Old Completion Date"). For example, if the Old Completion Date was January 15, 2000, the *Average Vendor Index* means the average of the monthly Housing Price Indices for the months from and including January, 1999 to and including December, 1999;
 - c. "First Purchaser" means the person to whom the Interest in an Employee Unit is first transferred after issuance of the occupancy permit for the Employee Unit by the Municipality;
 - d. "Housing Price Index" means the appropriate (Detached, Attached, or Apartment) Multiple Listing Service housing price index for Greater Vancouver, B.C., as published by the Real Estate Board of Vancouver in collaboration with Canada Mortgage and Housing Corporation, the Real Estate Foundation of British Columbia, the University of British Columbia, and their respective successors in function;
 - e. "Housing Price Multiplier" means the Average Purchaser Index divided by the Average Vendor Index;
 - f. "Maximum Price" for the sale of the Employee Unit to the First Purchaser means the amount determined by multiplying the Gross Floor Area of the Employee Unit by \$155. In addition to the Maximum Price payable by the First Purchaser, the Owner that sells the Employee Unit to the First Purchaser will be entitled to charge the First Purchaser the net GST payable by the First Purchaser and the fee paid by the Owner to obtain the home warranty insurance required by the *Home Protection Act*.
- "Maximum Price" for the sale of the Employee Unit by the First Purchaser or a Subsequent

Purchaser (hereinafter defined) means the greater of:

- i. the value for the Employee Unit set out in Item 2(b) of the Form A - Freehold Transfer registered in the LTO transferring the Interest in the Employee Unit to the First Purchaser or a Subsequent Purchaser, as the case may be (the "Previous Sale Price"); and
- ii. the Previous Sale Price multiplied by the Housing Price Multiplier.

Notwithstanding anything to the contrary contained in this Agreement, if for any reason whatsoever the Housing Price Multiplier cannot be determined, the Maximum Price means the Previous Sale Price;

Examples of how to calculate the Maximum Price for the sale of an Employee Unit by the First Purchaser or a Subsequent Purchaser are attached to this Agreement as Schedule "B", which forms part of this Agreement; and

- g. "Subsequent Purchaser" means a person who purchases the Employee Unit from the First Purchaser or from someone who owned the Employee Unit after the First Purchaser.
13. The Owner will not Dispose of the Interest in an Employee Unit except in accordance with the terms and conditions set out in this Agreement and the RFR.
 14. The Owner will not accept any offer to purchase the Interest in an Employee Unit for a purchase price exceeding the Maximum Price.
 15. The Owner will not permit the Interest in an Employee Unit to be disposed of by sublease or assignment of a Tenancy Agreement unless such subletting or assignment is done in compliance with this Agreement.
 16. The Owner will give prior written notice of this Agreement to any person to whom it proposes to Dispose of the Interest in an Employee Unit.
 17. The Owner must not rent or lease any Employee Unit except to an Employee or Retiree in accordance with section 7 and except in accordance with the following additional conditions:
 - a. the Employee Unit will be used or occupied only pursuant to a Tenancy Agreement;
 - b. the monthly rent payable for the Employee Unit will not exceed the rent, rounded to the nearest dollar, determined by multiplying the Gross Floor Area by the Original Rent. Subject always to the provisions of the *Residential Tenancy Act* (British Columbia), the Owner may increase the rent payable for the Employee Unit annually, beginning with the first anniversary of the day on which the occupancy permit was issued by the Municipality for the Employee Unit, and thereafter on each successive anniversary date, by an amount determined by multiplying the rent payable for the Employee Unit at the time of the proposed rent increase by the percentage change in the CPI since the last anniversary date;
 - c. the Owner will not require the Tenant to pay any extra charges or fees for use of any common property, limited common property, or other common area, or for sanitary sewer, storm sewer, water utilities, property taxes. For clarity, this section does not apply to cablevision, telephone, other telecommunications, gas utility or electricity utility fees or charges;
 - d. the Owner will attach a copy of this Agreement to the Tenancy Agreement;

- e. the Owner will include in the Tenancy Agreement a clause requiring the Tenant to comply with the use and occupancy restrictions contained in Part III of this Agreement;
 - f. the Owner will include in the Tenancy Agreement a clause entitling the Owner to terminate the Tenancy Agreement in accordance with the *Residential Tenancy Act* if the Tenant uses or occupies, or allows use or occupation of, the Employee Unit in breach of the use or occupancy restrictions contained in this Agreement;
 - g. the Tenancy Agreement will identify all occupants of the Employee Unit, and will stipulate that anyone not identified in the Tenancy Agreement will be prohibited from residing at the Employee Unit for more than 30 consecutive days in any calendar year;
 - h. the Tenancy Agreement will provide for termination of the Tenancy Agreement by the Owner in situations where the Employee Unit is occupied by more than the number of people the Municipality's building inspector determines can reside in the Employee Unit given the number and size of bedrooms in the Employee Unit and in light of any relevant standards set by the Municipality in any bylaws of the Municipality;
 - i. the Tenancy Agreement will provide that the Owner will have the right, at the Owner's option, to terminate the Tenancy Agreement should the Tenant remain absent from the Employee Unit for three consecutive months or longer, notwithstanding the timely payment of rent;
 - j. the Tenancy Agreement will provide that the Tenant will not sublease the Employee Unit or assign the Tenancy Agreement; and
 - k. the Owner will deliver a copy of the Tenancy Agreement to the Municipality upon demand.
18. The Owner will terminate any Tenancy Agreement where the Tenant uses or occupies, or allows use or occupation of an Employee Unit in breach of this Agreement, such termination to be in accordance with the terms of the Tenancy Agreement and the *Residential Tenancy Act* (British Columbia).
19. The Municipality may, in its sole discretion, provide written consent to the Owner from time to time to do something that is otherwise not permitted under this Agreement, on such terms and conditions as the Municipality considers desirable.
20. If the Owner is leasing or renting one or more Employee Units, the Owner will, forthwith upon request by the Municipality, and from time to time as the Employee Units become vacant, identify to the Municipality which Employee Units are vacant and available for occupancy and the Owner will make best efforts to lease or rent the vacant Employee Units to qualified applicants on the Municipality's applicant list.
21. The Owner will be solely responsible for screening Tenants to determine whether or not they qualify to occupy the Employee Unit in accordance with this Agreement notwithstanding that the Employee Unit may be leased or rented to someone from the Municipality's applicant list. For greater certainty, the Owner agrees that the Municipality is not responsible for, and makes no representation to the Owner regarding, the suitability of any prospective tenant on the Municipality's applicant list.

PART V - CAPITAL IMPROVEMENTS

22. If the Owner has made capital improvements to the Employee Unit that required the issuance of a building

permit by the Municipality, then the Municipality may, in its sole discretion, permit the Owner to increase the sale price for the Employee Unit up to an amount commensurate with the value of the capital improvements. If the Owner is dissatisfied with the value of the improvements as determined by the Municipality, the Owner may, at its expense, engage a Quantity Surveyor to establish the value of such improvements, but the Municipality will in no way be bound by the value established by the Quantity Surveyor, and the Municipality will, in its sole discretion, determine the permitted increase, if any, in the sale price. For greater certainty, the Municipality will not permit any increase in the sale price for improvements that have been made without a building permit.

PART VI - DEMOLITION OF EMPLOYEE UNIT

23. The Owner will not demolish an Employee Units unless:
- a. the Owner has obtained the written opinion of a professional engineer or architect who is at arm's length to the Owner that it is no longer reasonable or practical to repair or replace any structural component of the Employee Unit, and the Owner has delivered to the Municipality a copy of the engineer's or architect's report; or
 - b. the Employee Unit is damaged or destroyed, to the extent of 40% or more of their value above their foundations, as determined by the Municipality in its sole discretion, acting reasonably, and
 - c. a demolition permit for the Employee Unit has been issued by the Municipality (unless the Building has, or the Dwelling Units have been destroyed by an accident, act of God, or sudden and unanticipated force) and the Employee Unit has been demolished under that permit.

Following demolition, the Owner will use and occupy the replacement Dwelling Unit in compliance with this Housing Agreement, and sections 2.c., 2.d. and 2.e. herein will apply to the construction of the replacement Dwelling Unit to the same extent and in the same manner as those sections apply to the construction of the original Dwelling Unit, and the Dwelling Unit must be approved by the Municipality as a Employee Unit in accordance with section 4.

PART VII - DEFAULT AND REMEDIES

24. The Owner acknowledges that the Municipality requires employee housing to attract employees to work for local businesses and that these businesses generate tax and other revenue for the Municipality and economic growth for the community. The Owner therefore agrees that, in addition to any other remedies available to the Municipality under this Agreement or at law or equity, if an Employee Unit is used or occupied in breach of this Agreement or rented at a rate in excess of that permitted under this Agreement, the Owner will pay, as a rent charge under section 25, the Daily Amount to the Municipality for every day that the breach continues after 30 days written notice from the Municipality to the Owner stating the particulars of the breach. The Daily Amount is increased on January 1 of each year by an amount calculated by multiplying the Daily Amount as of the previous January 1 by the percentage increase in the CPI between that previous January 1 and the immediately preceding December 31. The Daily Amount is due and payable immediately upon receipt by the Owner of an invoice from the Municipality for the same.
25. The Owner hereby grants to the Municipality a rent charge under s. 219 of the *Land Title Act* (British Columbia), and at common law, securing payment by the Owner to the Municipality of any amount payable by the Owner pursuant to this Agreement. The Owner agrees that the Municipality, at its option,

may enforce payment of such outstanding amount in a court of competent jurisdiction as a contract debt, by an action for and order for sale, by proceedings for the appointment of a receiver, or in any other method available to the Municipality in law or in equity.

26. If the Employee Unit is sold for a purchase price exceeding the Maximum Price in contravention of this Agreement, the Owner will pay the excess (the "Excess Amount") to the Municipality within 30 days after written demand is made by the Municipality. The amount remaining unpaid after the 30 days will bear interest at the Prime Rate calculated from the due date until the date paid, compounded annually not in advance. The Owner further acknowledges and agrees that the Municipality's Excess Amount is fair and reasonable and is not to be construed as a penalty or forfeiture but as liquidated damages.

PART VIII - INTERPRETATION

27. In this Agreement:
- a. reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;
 - b. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - c. if a word or expression is defined in this Agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
 - d. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - e. reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
 - f. the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
 - g. time is of the essence;
 - h. all provisions are to be interpreted as always speaking;
 - i. reference to a "party" is a reference to a party to this Agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes employees, agents, officers and invitees of the party;
 - j. reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
 - k. where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

PART IX - MISCELLANEOUS

28. **Housing Agreement.** The Owner acknowledges and agrees that this:

- a. Agreement constitutes a covenant under s.219 of the *Land Title Act* and a housing agreement entered into under s.905 of the *Local Government Act* (British Columbia);
 - b. where an Employee Unit is a separate legal parcel the Municipality may file a notice of housing agreement under s.905 of the *Local Government Act* in the LTO against title to the Employee Unit; and
 - c. where Employee Units are not separate legal parcels, or have not yet been constructed, or where the land has not yet been Subdivided to create the Employee Units, the Municipality may file a notice of housing agreement under s. 905 of the *Local Government Act* in the LTO against title to the Land.
29. **Modification.** This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the Municipality, if it is signed by the Municipality and a person who is the current registered owner of the Land.
30. **Management.** The Owner covenants and agrees that it will furnish good and efficient management of the Employee Units and will permit representatives of the Municipality to inspect the Employee Units at any reasonable time, subject to the notice provisions in the *Residential Tenancy Act*. The Owner further covenants and agrees that it will maintain the Employee Units in a satisfactory state of repair and fit for habitation and will comply with all laws, including health and safety standards applicable to the Land. Notwithstanding the forgoing, the Owner acknowledges and agrees that the Municipality, in its absolute discretion, may require the Owner, at the Owner's expense, to hire a person or company with the skill and expertise to manage the Employee Units.
31. **Indemnity.** The Owner will indemnify and save harmless the Municipality and each of its elected officials, officers, directors, employees and agents, and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, actions, loss, damage, costs and liabilities, which all or any of them will or may be liable for or suffer or incur or be put to by reason of or arising out of:
- a. any act or omission of the Owner, or its officers, directors, employees, agents, contractors or other persons for whom at law the Owner is responsible;
 - b. the Owner's ownership, lease, operation, management or financing of the Land or any Employee Unit; or
 - c. any act or omission of the Municipality or any of its elected officials, board members, officers, directors, employees, agents or contractors in carrying out or enforcing this Agreement, except where such act or omission constitutes a breach of this Agreement by the Municipality or by any other person for whom at law the Municipality is responsible.
32. **Release.** The Owner by this Agreement releases and forever discharges the Municipality and each of its elected officials, officers, directors, employees and agents, and its and their heirs, executors, administrators, personal representatives, successors and assigns, from and against all claims, demands, damages, actions, or causes of action by reason of or arising out of advice or direction respecting the ownership, lease, operation or management of the Land or any Employee Unit 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.

33. **Survival.** The obligations of the Owner set out in sections 24, 25, 26, 31 and 32 will survive termination of this Agreement.
34. **Municipalities Powers Unaffected.** This Agreement does not:
- a. affect or limit the discretion, rights, duties or powers of the Municipality under any enactment or at common law, including in relation to the use or subdivision of the Land;
 - b. impose on the Municipality any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - c. affect or limit any enactment relating to the use or subdivision of the Land; or
 - d. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
35. **Agreement for Benefit of Municipality only.** The Owner and the Municipality agree that:
- a. this Agreement is entered into only for the benefit of the Municipality;
 - b. this Agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Property, the Land or the building or any portion thereof, including any employee unit;
 - c. the Municipality may at any time execute a release and discharge of this Agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.
36. **No Public Law Duty.** Where the Municipality is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the Municipality is under no public law duty of fairness or natural justice in that regard and agrees that the Municipality may do any of those things in the same manner as if it were a private party and not a public body.
37. **Notice.** Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of Owner set out in the records at the LTO, and in the case of the Municipality addressed:
- To: Clerk, Resort Municipality of Whistler,
4325 Blackcomb Way, Whistler, BC V0N 1B4
- And to: Whistler Housing Authority,
4335 Main Street, Whistler, BC V0N 1B4
- or to the most recent postal address provided in a written notice given each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.
38. **Enuring Effect.** This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.

39. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.
40. **Waiver.** All remedies of the Municipality will be cumulative and may be exercised by the Municipality in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the Municipality exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.
41. **Sole Agreement.** This Agreement, and any documents signed by the Owners contemplated by this Agreement, represent the whole agreement between the Municipality and the Owner respecting the use and occupation of the Employee Units, and there are no warranties, representations, conditions or collateral agreements made by the Municipality except as set forth in this Agreement.
42. **Further Assurance.** Upon request by the Municipality the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the Municipality to give effect to this Agreement.
43. **Covenant Runs with the Land.** This Agreement burdens and runs with the Land and every parcel into which it is Subdivided. All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Land.
44. **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 Land.
45. **Equitable Remedies.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the Municipality for breach of this Agreement or the RFR and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement or the RFR.
46. **No Joint Venture.** Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the Municipality or give the Owner any authority to bind the Municipality in any way.
47. **Applicable Law.** Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia. Without limiting the above, in the event of any conflict between any provision of this Agreement and the Residential Tenancy Act, this Agreement is without effect to the extent of the conflict.
48. **Deed and Contract.** By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

SCHEDULE "A"
STATUTORY DECLARATION
CANADA
PROVINCE OF BRITISH COLUMBIA
IN THE MATTER OF A HOUSING
AGREEMENT WITH THE RESORT
MUNICIPALITY OF WHISTLER ("Housing
Agreement")

TO WIT:

I, _____ of _____, British Columbia, do solemnly declare that:

1. I am the owner of _____ (the "Employee Unit"), and make this declaration to the best of my personal knowledge.
2. This declaration is made pursuant to the Housing Agreement in respect of the Employee Unit.
3. For the period from _____ to _____ the Employee Unit was occupied only by the Employees and Retirees (as defined in the Housing Agreement) whose names and current addresses and whose employer's names and current addresses appear below:

Names, addresses and phone numbers of Employees and Retirees:

Names, addresses and phone numbers of Employers:

4. The rent charged each month for the Employee Unit is as follows:
 - (a) the monthly rent on the date 365 days before this date of this statutory declaration: \$ _____ per month;
 - (b) the rent on the date of this statutory declaration: \$ _____; and
 - (c) the proposed or actual rent that will be payable on the date that is 90 days after the date of this statutory declaration: \$ _____.
5. I acknowledge and agree to comply with the Owner's obligations under this Agreement, and other charges in favour of the Municipality registered in the land title office against the land on which the Employee Unit is situated and confirm that the Owner has complied with the Owner's obligations under these Agreements.
6. 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 the _____)
 _____, British Columbia,)
 this ____ day of _____)
)
)
)
)
)
 _____)
 A for taking Affidavits for)
 British Columbia)

Schedule “B”

Insert 2 page Excel sheets for examples of calculations



Building Our Resort Community
4335 Main Street, Whistler BC, V0N1B4
phone: (604) 905-4688 fax: (604)932-4461
email: mail@whistlerhousing.ca
website: www.whistlerhousing.ca

STANDARD CHARGE TERMS

FILED BY: RESORT MUNICIPALITY OF WHISTLER

STANDARD RIGHT OF FIRST REFUSAL AND OPTION TO PURCHASE

The following standard charge terms are deemed to be included in every right of first refusal and option to purchase in which the set is referred to by its filing number as provided by Section 235 of the *Land Title Act*.

WHEREAS:

- A. The Owner is the registered owner of the Land (hereinafter defined);
- B. The Owner has entered into a Housing Agreement with the Resort Municipality of Whistler (the "Municipality") under section 905 of the *Local Government Act* and has granted to the Municipality a Covenant under section 219 of the *Land Title Act* relating to certain restrictions on the use of the Land (collectively, the "Housing Agreement");
- C. The purpose of the Housing Agreement and this Agreement is to ensure that the Land is used solely for the provision of affordable housing for Employees or Retirees (hereinafter defined);
- D. Pursuant to the terms of the Housing Agreement the Owner has or will agree to build or maintain Employee Units (hereinafter defined) on the Land; and
- E. In order to ensure that the Employee Units are occupied and disposed of in accordance with the Housing Agreement the Owner agrees to grant to the Municipality a right of first refusal to purchase and an option to purchase the Employee Units on the terms and conditions set out in this Agreement,

THIS AGREEMENT is evidence that in consideration of the mutual promises contained in it and in consideration of the payment of \$2.00 by the Municipality to the Owner, the receipt and sufficiency of which is hereby acknowledged by the Owner, the parties agree as follows:

PART I – DEFINITIONS

- 1. In this Agreement the following words have the following meanings:
 - a. "Agreement" means these standard charge terms together with the General Instrument (hereinafter defined);
 - b. "Assessed Value" means the most recent assessed value of the real property as determined by the assessment authority in which the real property is situated. If such value is not available, then the Assessed Value means the highest price in terms of money that the real property will fetch under all conditions requisite to a fair sale with the buyer and seller each acting prudently, knowledgeably

and assuming the price is not effected by undue stimulus as estimated by a real estate appraiser accredited in the jurisdiction in which the real property is located;

- c. "Average Purchaser Index" means the average monthly Housing Price Index (hereinafter defined) for the 12 months immediately preceding the month of the Bona Fide Offer to purchase the Employee Unit. For example, if the offer to purchase the Employee Unit is dated January 15, 2001, the *Average Purchaser Index* means the average of the monthly Housing Price Indices for the months from and including January, 2000 to and including December, 2000;
- d. "Average Vendor Index" means the average monthly Housing Price Index for the 12 months immediately preceding the month in which the Interest of the current Owner of the Employee Unit was submitted for registration in the LTO (the "Old Completion Date"). For example, if the Old Completion Date was January 15, 2000, the *Average Vendor Index* means the average of the monthly Housing Price Indices for the months from and including January, 1999 to and including December, 1999;
- e. "Bona Fide Offer" means an offer to purchase the Owner's Interest in the Employee Unit:
 - i. in writing;
 - ii. signed by an Outside Offeror (hereinafter defined);
 - iii. in a form legally enforceable against the Outside Offeror and subject to no conditions except for the Municipality's Subject (as hereinafter defined);
 - iv. providing for a deposit of not less than 10% of the proposed purchase price within 72 hours of the removal or waiver of the Municipality's Subject;
 - v. providing that if the Municipality does not exercise its right of first refusal as set forth in this Agreement, the Outside Offeror will grant to the Municipality a right of first refusal and option to purchase the Lands upon the same terms and conditions as are set forth in this Agreement;
 - vi. providing that the Outside Offeror will not assign or transfer the contract for the purchase the Employee Unit; and
 - vii. confirming that the Outside Offeror has read and understood the terms of this Agreement, the Housing Agreement and all other charges in favour of the Municipality that are registered in the LTO against the Land and that the Outside Offeror agrees to be bound by the owner's obligations pursuant to such charges;
- f. "Business Day" means Monday to Friday inclusive except for those excluded days declared by lawful authority as holidays, excluding any day that the LTO is not open for business;
- g. "Dispose" means to transfer by any method, and includes assign, give, sell, grant, charge, convey, bequeath, devise, lease, rent or sublet, divest, release, and agree to do any of those things;
- h. "Dwelling Units" means all residential dwelling units located or to be located on the Land whether those dwelling units are lots, strata lots or parcels, or parts or portions thereof, into which ownership or right of possession or occupation of the Land may be Subdivided;
- i. "Efforts to Sell" means the best efforts of the Owner to sell the Employee Unit using all reasonable means including, listing the Employee Unit for sale with a licensed real estate agent, advertising the Employee Unit for sale in the local newspapers, posting "for sale" signs on any bulletin boards maintained by the Municipality for sale of such units, and offering to sell the Employee Unit to the Municipality on the following terms:

- i. specifying in a written notice that it is offering to sell the Employee Unit to the Municipality in accordance with section 6, 7 or 8 of this Agreement;
 - ii. giving the Municipality the exclusive right for 15 Business Days from the date on which the Municipality receives the notice from the Owner pursuant to section 6, 7, or 8 of this Agreement, to give a written notice to the Owner agreeing to purchase the Employee Unit for the purchase price which is the lesser of the Fair Market Value of the Employee Unit and the Maximum Price, and on the terms that are set out in section 5.b. to 5.g. of this Agreement.
- j. "Employee" means a Qualified Person (hereinafter defined) who is either employed or self-employed for an average of not less than 20 hours per week over the most recent twelve months and whose principal place of employment or business during that time is located within the boundaries of the Resort Municipality of Whistler;
 - k. "Employee Unit" means a Dwelling Unit designated as an employee unit in accordance with the Housing Agreement to be used, occupied and Disposed of in accordance with the Housing Agreement;
 - l. "First Purchaser" means the person to whom the Interest in an Employee Unit is first transferred after issuance of the occupancy permit for the Employee Unit by the Municipality;
 - m. "General Instrument" means the Form C under the Land Title (Transfer Forms) Regulations, as amended, and all schedules and addenda to the Form C charging the Land and citing these Standard Charge Terms;
 - n. "Gross Floor Area" means the habitable gross floor area of each Employee Unit and includes enclosed sunrooms but does not include crawl spaces, open patios, open balconies or parking spaces. If the Employee Unit is a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be based on the gross floor area shown corresponding to the Employee Unit on the Strata Plan filed in the LTO (hereinafter defined) in respect of the Land. If the Employee Unit is not a strata lot as defined by the *Strata Property Act*, the gross floor area measurements will be made in accordance with the procedure for determining gross floor area set out in the *Strata Property Act* as if the Employee Unit were a strata lot;
 - o. "Housing Price Index" means the appropriate (Detached, Attached, or Apartment) Multiple Listing Service housing price index for Greater Vancouver, B.C., as published by the Real Estate Board of Vancouver in collaboration with Canada Mortgage and Housing Corporation, the Real Estate Foundation of British Columbia, the University of British Columbia, and their respective successors in function;
 - p. "Housing Price Multiplier" means the Average Purchaser Index divided by the Average Vendor Index;
 - q. "Interest" means the property interest of the Owner in the Employee Unit.
 - r. "Land" means the land described in Item 2 of the General Instrument and any part into which said Land is Subdivided (hereinafter defined);
 - s. "Lender" means a mortgagee that is a bank or other financial institution established or regulated under any enactment of British Columbia or Canada, or a receiver or receiver-manager acting on

behalf of such mortgagee.

- t. "LTO" means the New Westminster/Vancouver Land Title Office or its successor.
- u. "Maximum Price" for the sale of the Employee Unit to the First Purchaser means the amount determined by multiplying the Gross Floor Area of the Employee Unit by \$155. In addition to the Maximum Price payable by the First Purchaser, the Owner that sells the Employee Unit to the First Purchaser will be entitled to charge the First Purchaser the net GST payable by the First Purchaser and the fee paid by the Owner to obtain the home warranty insurance required by the *Home Protection Act*.

"Maximum Price" for the sale of the Employee Unit by the First Purchaser or a Subsequent Purchaser (hereinafter defined) means the greater of:

- i. the value for the Employee Unit set out in Item 2(b) of the Form A - Freehold Transfer registered in the LTO transferring the Interest in the Employee Unit to the First Purchaser or a Subsequent Purchaser, as the case may be (the "Previous Sale Price"); and
- ii. the Previous Sale Price multiplied by the Housing Price Multiplier.

Notwithstanding anything to the contrary contained in this Agreement, if for any reason whatsoever the Housing Price Multiplier cannot be determined, the Maximum Price means the Previous Sale Price;

Examples of how to calculate the Maximum Price for the sale of an Employee Unit by the First Purchaser or a Subsequent Purchaser are attached to this Agreement as Schedule "A", which forms part of this Agreement;

- v. "Municipality's Subject" mean the following clauses:

The obligation of the seller to complete the transaction contemplated herein is subject to the following (the "Seller's Conditions"):

- i. the seller notifying the buyer in writing not later than _____ that the Resort Municipality of Whistler (the "Municipality") has approved the terms of the sale of the Land to the buyer and that the Municipality has decided not to exercise its option to purchase the Land with respect to this transaction only; and
- ii. the seller notifying the buyer in writing not later than _____ that the Municipality has confirmed the buyer's eligibility to own the Land.

The Seller's Conditions are for the sole benefit of the seller and may be satisfied by the seller by notice in writing to the buyer. If the Seller's Conditions are not satisfied on or before the date specified for their removal, this agreement will be automatically terminated, the deposit will be returned to the buyer, and neither party will have any further obligation to the other under this agreement;

- w. "Outside Offeror" means a purchaser or prospective purchaser of the Employee Unit who deals at arm's-length with the vendor of the Employee Unit;
- x. "Owner" means the Transferor described in the General Instrument and any subsequent owner of

the Land or of any part into which the Land is Subdivided, and includes any person who is a registered owner in fee simple of an Employee Unit from time to time;

- y. "Prime Rate" means the annual rate of interest, expressed as a percentage, used as a reference rate by the Royal Bank of Canada at its main branch in Vancouver, British Columbia for Canadian dollar loans and designated by the Royal Bank of Canada from time to time as its prime rate;
- z. "Qualified Person" means a person who does not own, either directly or indirectly through a trust, business asset, or otherwise, any interest in real property anywhere in the world unless, at the time that such person applies for an Employee Unit:
 - i. the Assessed Value of all the real property he or she owns does not exceed 60% of the Assessed Value of the Employee Unit; or
 - ii. the real property he or she owns is:
 - (1) less than 400 square feet in area,
 - (2) less than 650 square feet in area and it is the principal residence of two individuals,
 - (3) less than 850 square feet in area and it is the principal residence of that person and at least one child, or
 - (4) less than 1200 square feet in area and it is the principal residence of that person and at least two children; andthat person enters into an agreement with the Municipality to sell his or her interest in the real property within the time period specified by the Municipality, acting reasonably, or that person enters into an agreement with the Municipality with respect to the real property and the Employee Unit on terms acceptable to the Municipality in its sole discretion;
- aa. "Retiree" means a Qualified Person who has ceased employment and who was an Employee for 5 of the 6 years immediately preceding the date on which the individual ceased employment;
- ab. "Subdivide" means to divide, apportion, consolidate or subdivide the Land, or the ownership or right to possession or occupation of the Land into two or more lots, strata lots, parcels, parts, portions or shares, whether by plan, descriptive words or otherwise, under the *Land Title Act*, the *Strata Property Act*, or otherwise, and includes the creation, conversion, organization or development of "cooperative units" or "shared interests in land" as defined in the *Real Estate Act*;
- ac. "Subsequent Purchaser" means a person who purchases the Employee Unit from the First Purchaser or from someone who owned the Employee Unit after the First Purchaser.

PART II - GENERAL

- 2. The Owner covenants and agrees that the Owner will not Dispose of its Interest in any Employee Unit unless such Interest is Disposed of in accordance with this Agreement. The Owner will not Dispose of its Interest in any Employee Unit other than to the Municipality or to an Outside Offeror pursuant to a Bona Fide Offer.
- 3. Provided that the Owner is not in breach of any of its obligations under this Agreement or under the Housing Agreement, at the request of the Owner and at the Owner's sole expense, the Municipality will deliver to the Owner discharges of this Agreement in registrable form for each Dwelling Unit that:
 - a. is a separate legal parcel; and is not an Employee Unit; and

- b. Is not an Employee Unit.

PART III - RIGHT OF FIRST REFUSAL

- 4. The Owner covenants and agrees as follows:
 - a. The Owner will not sell or offer to sell any Employee Unit for any consideration not consisting entirely of lawful money of Canada;
 - b. If the Owner receives a Bona Fide Offer to purchase any Employee Unit which the Owner is willing to accept, then the Owner will offer to sell the Employee Unit to the Municipality on the terms that are set out in section 5 of this Agreement, by giving to the Municipality a notice in writing (the "Notice") attached to a copy of the Bona Fide Offer. The Municipality will have the exclusive right for 15 Business Days (the "Election Period") from the date on which the Municipality receives from the Owner the Notice and a copy of the Bona Fide Offer within which to purchase the Employee Unit on the terms set out in section 5 of this Agreement. The Owner agrees that the Municipality's Election Period to purchase the Employee Unit will not start to run until the Owner gives to the Municipality notice of the Bona Fide Offer with the only condition precedent or subject in the Bona Fide Offer being the Municipality's Subject;
 - c. If the Municipality wishes to exercise this right of first refusal, the Municipality will give the Owner written notice of such exercise on or before the end of the Election Period;
 - d. If the Municipality does not exercise this right of first refusal with respect to a specific Bona Fide Offer, the Municipality's rights under this right of first refusal with respect to the particular Bona Fide Offer will be waived, but only if the terms of sale between the Outside Offeror and the Owner are in strict compliance with the terms stated in the Bona Fide Offer, and if the Owner complies with the following requirements:
 - i. the Owner delivers to the Municipality, within 5 business days after the expiry of the Election Period written proof, satisfactory to the Municipality, in its sole discretion, that the purchaser is an Outside Offeror, and that the Outside Offeror agrees to be bound by all the agreements in favour of the Municipality which affect the Employee Unit;
 - ii. the Owner does not remove the second part of the Municipality's Subject until such time as the Municipality informs the Owner that it is satisfied with the information provided pursuant to sub-section i herein;
 - iii. at least 5 Business Days before completion of the sale pursuant to the Bona Fide Offer the Owner delivers to the Municipality the following:
 - (1) written proof, satisfactory to the Municipality, in its sole discretion, that the purchase price payable under the Bona Fide Offer does not exceed the Maximum Price;
 - (2) signed Form C granting to the Municipality an option to purchase and a right of first refusal to purchase the Employee Unit (the "New Form C") on substantially

the same terms as set out in this Agreement, with such amendments as the Municipality may reasonably require;

- (3) a discharge of this Agreement (the "Discharge") for execution by the Municipality;
 - (4) undertakings from the solicitor or notary for the Outside Offeror (the "Legal Representative") on terms satisfactory to the Municipality, including that:
 - (a) the Legal Representative will only register the Discharge if it is done concurrently with the registration of the New Form C;
 - (b) the Legal Representative will ensure that the New Form C is registered against the Employee Unit in priority to all mortgages and other financial liens, charges and encumbrances, except for any charges in favour of the Municipality;
 - (c) forthwith after registration of the New Form C, provide to the Municipality copies of the Discharge and the New Form C with registration particulars endorsed thereon, and a copy of the State of Title Certificate for the Land confirming registration of the New Form C; and
 - (5) a copy of the vendor's statement of adjustments for the Employee Unit certified to be true by the Legal Representative; and
- iv. upon request by the Municipality, the Owner delivers to the Municipality such further evidence as the Municipality may reasonably require to confirm the purchase price of the Employee Unit, and to confirm that the Outside Offeror has granted to the Municipality an option to purchase and a right of first refusal to purchase the Employee Unit.

PART IV - GRANT OF OPTION

5. The Owner hereby grants to the Municipality the sole and exclusive irrevocable option to purchase the Employee Units (the "Option") effective immediately upon breach of any of the Owner's obligations contained in the Housing Agreement, or this Agreement, or upon the Owner advising the Municipality in writing of its intention to transfer or sell the Employee Unit. The Option will be exercised by or on behalf of the Municipality by a written notice delivered to the Owner in accordance with the following terms:
- a. Subject to adjustments as provided in this Agreement and subject to sections 6 to 8 of this Agreement, for the purchase price (the "Purchase Price") that is the lesser of:
 - i. the purchase price set out in the Bona Fide Offer (if any); and
 - ii. the Maximum Price.
 - b. The purchase of the Employee Unit by the Municipality will be completed on the date ("Completion Date") to be chosen by the Municipality, acting reasonably, such date not to be later than thirty Business Days after the Municipality gives to the Owner its notice of intention to exercise the Option.

- c. On the Completion Date, the Owner will convey the Employee Unit to the Municipality free and clear of all mortgages and other financial liens, charges and encumbrances, provided that the Owner is entitled to use the Purchase Price to discharge any mortgage registered against title to the Employee Unit, in accordance with section 5.g.vii.
- d. The Owner will give vacant possession of the Employee Unit to the Municipality, subject only to existing tenancies in favour of Employees or Retirees, following payment of the adjusted Purchase Price to the Owner on the Completion Date.
- e. All adjustments, both incoming and outgoing, in connection with the purchase and sale of the Employee Unit, including adjustments of taxes, rates, rents and other matters usually the subject of adjustment between vendor and purchaser, as well as adjustments for any amounts payable by the Owner to the Municipality pursuant to the terms of this Agreement or the Housing Agreement, will be made as at the Completion Date.
- f. The Owner covenants and agrees that it will, from and after the date of the application to register this Agreement in the LTO, take or cause to be taken all proper steps and actions and corporate proceedings to enable the Owner to vest a good and marketable title to the Employee Unit in the Municipality at the Completion Date, free and clear of all liens, encumbrances, defects in title, equities or claims of every nature and kind except for Permitted Encumbrances (if any, as described in the General Instrument) and to enable the Owner to carry out the sale of the Employee Unit and to execute and deliver this Agreement as valid and binding obligations of the Owner.
- g. The Owner hereby represents and warrants to, and covenants and agrees with the Municipality as at the Completion Date that:
 - i. the Owner has no indebtedness or obligation to any person which might now or in future constitute a lien, charge or encumbrance on the Employee Unit;
 - ii. the Owner has not used the Employee Unit or permitted any use of the Employee Unit, to store, manufacture, dispose of, emit, spill, leak, generate, transport, produce, process, release, discharge, landfill, treat or remediate any explosive, radioactive material, asbestos, urea formaldehyde, chlorobiphenyl, hydrocarbon, underground tank, pollution, contamination, hazardous substance, corrosive substance, toxic substance, special waste, waste, or matter of any kind which is or may be harmful to human safety or health or to the environment, including anything the storage, manufacture, disposal, emission, discharge, treatment, generation, use, transport, remediation or release into the environment of which is now or at any time after the execution of this Agreement is prohibited, controlled, regulated or licensed under any laws applicable to the Employee Unit ("Contaminant");
 - iii. the Owner has not caused or permitted, the storage, manufacture, disposal, emission, spilling, leakage, treatment, generation, transportation, production, processing, release, discharge, landfilling, treatment or remediation of any Contaminant in, on, under or from the Employee Unit;
 - iv. the Owner has at all times used the Employee Unit in compliance with all laws relating to Contaminants and to the environment;

- v. the Owner will indemnify and save harmless the Municipality, and its elected and appointed officials, officers, employees and agents, from and against any and all actions, causes of action, liabilities, demands, losses, damages, costs (including remediation costs and costs of compliance with any law, and legal fees and disbursements), expenses, fines and penalties, suffered or incurred by the Municipality by reason of a breach of any representation or warranty, covenant or agreement of the Owner set forth in this Agreement. This obligation will survive the termination of this Agreement;
- vi. not less than 5 days before the Completion Date, the Municipality will deliver to the Owner's solicitors:
 - (1) two copies of a Form A Transfer transferring the fee simple title to the Employee Unit to the Municipality ("Transfer") subject only to Permitted Encumbrances,
 - (2) two copies of the Owner's Statement of Adjustments to be approved and executed by the Owner, and
 - (3) a statutory declaration of the Owner that the Owner is a resident of Canada within the meaning of the *Income Tax Act* (Canada);
- vii. on or before the Completion Date, the Owner will deliver to the Municipality's solicitors or notaries, in trust, the Transfer executed on behalf of the Owner, in registrable form, on the undertakings that:
 - (1) on the Completion Date, the Municipality will apply to register the Transfer in the LTO only if the adjusted Purchase Price (less any proceeds of a new mortgage to be granted by the Municipality) has first been deposited in the trust account of the Municipality's solicitors; and
 - (2) after application has been made to register the Transfer in the LTO, and upon receipt of a satisfactory post-index search of the title to the Employee Unit indicating that in the normal course of LTO procedure the Municipality will become the registered owner of the Employee Unit free and clear of all mortgages and other financial liens, charges and encumbrances, other than any mortgage to be discharged as provided herein, the Municipality will at once pay the Owner's solicitor or notary public the adjusted Purchase Price by solicitor's trust cheque made available for pick up by the Owner's solicitor or notary public, on the undertaking of the Owner's solicitor or notary public to discharge any mortgage or other financial charge from title to the Employee Unit forthwith following completion;
- viii. the Employee Unit will be at the Owner's risk until the Completion Date and will thereafter be at the risk of the Municipality. In the event of loss or damage to the Employee Unit occurring before the completion of the closing on the Completion Date by reason of fire, tempest, lightning, earthquake, flood or other acts of God, explosion, riot, civil commotion, insurrection or war, the Municipality, at the Municipality's option, may cancel this Agreement;
- ix. the Municipality, its agents and employees, have the licence, conditional on providing 48 hours prior written notice to the Owner, to enter upon the Employee Unit from time to

time prior to the Completion Date, at the Municipality's sole risk and expense, for the purpose of making reasonable inspections, surveys, tests and studies of the Employee Unit; and

- x. the Municipality will pay:
 - (1) any property transfer tax payable by it under the *Property Transfer Tax Act* (British Columbia),
 - (2) LTO registration fees in connection with the transfer of the Employee Unit to the Municipality,
 - (3) the Municipality's legal fees and disbursements but not the Owner's, and
 - (4) all goods and services tax, if any, payable in respect of transfer of the Employee Unit to the Municipality under the *Excise Tax Act* (Canada).

PART V - EXCEPTIONS TO RIGHT OF FIRST REFUSAL AND OPTION

- 6. Notwithstanding any other provision in this Agreement, if the Owner is a Lender and the Lender has for between 90 days and 119 days made Efforts to Sell, and if the Lender has been unable to enter into a Bona Fide Offer or to sell the Employee Unit to the Municipality, the Lender may after that time sell the Interest to a purchaser who is not an Employee or Retiree, but the purchase price for the Interest must not exceed the Maximum Price and the Employee Unit may only be used, occupied, re-sold or leased by that new owner in accordance with the Housing Agreement and this Agreement.
- 7. Notwithstanding any other provision in this Agreement, if the Owner is a Lender and the Lender has for at least 120 days made Efforts to Sell, and if the Lender has been unable to enter into a Bona Fide Offer or sell the Employee Unit to the Municipality, the Lender may after that time sell the Interest to a purchaser who is not an Employee or Retiree for any price, and the Employee Unit may be used and occupied subject only to all enactments applicable to the use of the Employee Unit but the Housing Agreement and this Agreement will not apply.
- 8. Notwithstanding any other provision in this Agreement, if the Owner is not a Lender and the Owner has for at least 120 days made Efforts to Sell, and if the Owner has been unable to enter into a Bona Fide Offer or sell the Employee Unit to the Municipality, the Owner may after that time sell the Interest to a purchaser who is not an Employee or Retiree, but the purchase price for the Interest must not exceed the Maximum Price and the Employee Unit may be used and occupied subject only to all Municipal zoning enactments applicable to the use of the Employee Unit but the Housing Agreement and this Agreement will not apply.

PART VI - INTERPRETATION

- 9. In this Agreement:
 - a. reference to the singular includes a reference to the plural, and vice versa, unless the context requires otherwise;

- b. article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
- c. if a word or expression is defined in this agreement, other parts of speech and grammatical forms of the same word or expression have corresponding meanings;
- d. reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
- e. reference to any enactment is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced, unless otherwise expressly provided;
- f. the provisions of s. 25 of the *Interpretation Act* with respect to the calculation of time apply;
- g. time is of the essence;
- h. all provisions are to be interpreted as always speaking;
- i. reference to a "party" is a reference to a party to this agreement and to that party's respective successors, assigns, trustees, administrators and receivers. Wherever the context so requires, reference to a "party" also includes employees, agents, officers and invitees of the party;
- j. reference to a "day", "month", "quarter" or "year" is a reference to a calendar day, calendar month, calendar quarter or calendar year, as the case may be, unless otherwise expressly provided; and
- k. where the word "including" is followed by a list, the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including".

PART 1X - MISCELLANEOUS

- 10. **Municipality not Obligated to Exercise Right of First Refusal or Option.** The Owner acknowledges and agrees that the Municipality is under no obligation to exercise its Option or the RFR.
- 11. **Duration of Option and Right Of First Refusal .** The option to purchase hereby granted and the right of first right of refusal granted by this Agreement are effective until the date that is 80 years less a day after the date on which Form C referring to this Agreement is deposited for registration in the LTO.
- 12. **Modification.** This Agreement may be modified or amended from time to time, by bylaw duly passed by the Council of the Municipality, if it is signed by the Municipality and the person who is the current registered owner of the Land. The Municipality may, in its absolute and unfettered discretion provide written consent to the Owner from time to time to do something that is otherwise not permitted under this Agreement, on such terms and conditions as the Municipality considers desirable.
- 13. **Assignability.** The Owner will not assign its interest under this Agreement without the prior written consent of the Municipality, which consent the Municipality may arbitrarily withhold. The Municipality may assign any of its rights or interests under this Agreement to a company owned by it or to an Employee or Retiree, and upon such assignment the Municipality will have no further obligations under this

Agreement with respect to the rights or interests assigned by the Municipality

14. **Municipalities Powers Unaffected.** This Agreement does not:
- a. affect or limit the discretion, rights, duties or powers of the Municipality under any enactment or at common law, including in relation to the use or subdivision of the Land;
 - b. impose on the Municipality any legal duty or obligation, including any duty of care or contractual or other legal duty or obligation, to enforce this Agreement;
 - c. affect or limit any enactment relating to the use or subdivision of the Land; or
 - d. relieve the Owner from complying with any enactment, including in relation to the use or subdivision of the Land.
15. **Agreement for Benefit of Municipality only.** The Owner and the Municipality agree that:
- a. this agreement is entered into only for the benefit of the Municipality;
 - b. this agreement is not intended to protect the interests of the Owner, any tenant, or any future owner, lessee, occupier or user of the Property, the Land or the building or any portion thereof, including any employee unit;
 - c. the Municipality may at any time execute a release and discharge of this agreement, without liability to anyone for doing so, and without obtaining the consent of the Owner.
16. **No Public Law Duty.** Where the Municipality is required or permitted by this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Owner agrees that the Municipality is under no public law duty of fairness or natural justice in that regard and agrees that the Municipality may do any of those things in the same manner as if it were a private party and not a public body.
17. **Liability.** Except to the extent caused by the negligence of the Municipality or any other person for whose negligence the Municipality is responsible in law, the Owner agrees to and does hereby indemnify and save harmless the Municipality, its officers, servants, agents and their heirs, personal representatives, successors and assigns against all loss, damage, costs and liabilities which they will or may be liable for or suffer in connection with the Land. The obligations of the Owner as set out in this section survive termination of this Agreement.
18. **Costs.** Unless otherwise specified in this Agreement, the Owner will comply with all the requirements of this Agreement at its own cost and expense and will pay to the Municipality, on request, all reasonable costs or expenses it incurs in connection with this Agreement.
19. **Notice.** Any notice required to be served or given to a party herein pursuant to this Agreement will be sufficiently served or given if delivered, to the postal address of Owner set out in the records of the LTO, and in the case of the Municipality addressed:

To: Clerk, Resort Municipality of Whistler,
4325 Blackcomb Way, Whistler, BC VON 1B4

And to: Whistler Housing Authority,
4335 Main Street, Whistler, BC V0N 1B4

or to the most recent postal address provided in a written notice given each of the parties to the other. Any notice which is delivered is to be considered to have been given on the first day after it is dispatched for delivery.

20. **Enuring Effect.** This Agreement will extend to and be binding upon and enure to the benefit of the parties hereto and their respective successors and permitted assigns.
21. **Severability.** If any provision of this Agreement is found to be invalid or unenforceable such provision or any part thereof will be severed from this Agreement and the resultant remainder of this Agreement will remain in full force and effect.
22. **Waiver.** All remedies of the Municipality will be cumulative and may be exercised by the Municipality in any order or concurrently in case of any breach and each remedy may be exercised any number of times with respect to each breach. Waiver of or delay in the Municipality exercising any or all remedies will not prevent the later exercise of any remedy for the same breach or any similar or different breach.
23. **Sole Agreement.** This Agreement, and any documents signed by the Owners contemplated by this Agreement, represent the whole agreement between the Municipality and the Owner respecting the use and occupation of the Employee Units, and there are no warranties, representations, conditions or collateral agreements made by the Municipality except as set forth in this Agreement.
24. **Further Assurance.** Upon request by the Municipality the Owner will forthwith do such acts and execute such documents as may be reasonably necessary in the opinion of the Municipality to give effect to this Agreement.
25. **Covenant Runs with the Land.** This Agreement burdens and runs with the Land and every parcel into which it is consolidated or Subdivided by any means, including by subdivision under the *Land Title Act* (British Columbia) or by strata plan under the *Strata Property Act* (British Columbia). All of the covenants and agreements contained in this Agreement are made by the Owner for itself, its personal administrators, successors and assigns, and all persons who after the date of this Agreement, acquire an interest in the Land.
26. **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 Land.
27. **Equitable Remedies.** The Owner acknowledges and agrees that damages would be an inadequate remedy for the Municipality for breach of this Agreement or the RFR and that the public interest strongly favours specific performance, injunctive relief (mandatory or otherwise), or other equitable relief, as the only adequate remedy for a default under this Agreement or the RFR.
28. **No Joint Venture.** Nothing in this Agreement will constitute the Owner as the agent, joint venturer, or partner of the Municipality or give the Owner any authority to bind the Municipality in any way.
29. **Applicable Law.** Unless the context otherwise requires, the laws of British Columbia will apply to this Agreement and all statutes referred to herein are enactments of the Province of British Columbia.

Without limiting the above, in the event of any conflict between any provision of this Agreement and the Residential Tenancy Act, this Agreement is without effect to the extent of the conflict.

30. **Deed and Contract.** By executing and delivering this Agreement the Owner intends to create both a contract and a deed executed and delivered under seal.

Schedule "A"

Note: Attach 2 page excel sheets with examples of calculations