



Islands Trust

DENMAN ISLAND
LOCAL TRUST COMMITTEE
AGENDA

AGENDA

Business Meeting
Tuesday, June 16, 2009 at 10:30 a.m.
Marcus Isbister Old School Centre
5901 Denman Road, Denman Island, BC

| | <i>Page No.</i> | <i>*Approx. Time*</i> |
|---|-----------------|-----------------------|
| 1. CALL TO ORDER | | 10:30 am |
| 2. APPROVAL OF AGENDA | | |
| 3. MINUTES | | |
| 3.1 Local Trust Committee Meeting Minutes of May 15, 2009 – <i>for adoption</i> | 1-7 | |
| 3.2 Section 26 Resolutions Without Meeting Log – <i>for information</i> | 8 | |
| 3.3 Denman Island Advisory Planning Commission Draft Minutes dated June 2, 2009 - <i>for receipt</i> | 9-10 | |
| 4. BUSINESS ARISING FROM MINUTES | | 10:45 am |
| 4.1 Follow-up Action List dated June 8, 2009 | 11-12 | |
| 5. DELEGATIONS – none declared | | |
| 6. TOWN HALL DISCUSSION | | 10:55 am |
| 7. CORRESPONDENCE <i>Correspondence specific to an active development application and/or project will be received by the Denman Island Local Trust Committee when that application and/or project is on the agenda for consideration.</i> | | |
| 8. APPLICATIONS AND PERMITS | | 11:05 am |
| 8.1 DE-ALR-2008.3 (Graham and Gamble) Staff Report dated May 25, 2009 - <i>attached</i> | 13-24 | |
| 8.2 DE-ALR-2009.3 (North Denman Lands) Staff Report – <i>to be distributed</i> | | |
| 8.3 DE-RZ-2009.1 (The Point) Staff Report – <i>to be distributed</i> | | |
| 9. REPORTS | | |
| 9.1 Strategic Plan for Local Trust Committees | 25-26 | 12:00 pm |
| 9.2 Work Program Reports Top Priorities Report and Projects Report dated June 8, 2009 | 27-29 | |
| 9.3 Applications Log Report dated June 8, 2009 | 30-34 | |
| 9.4 Trustee and Local Expenses | | |
| 9.5 Chair’s Report | | |
| 9.6 Trustees’ Report | | |

- | | | | |
|------------|---|-------|----------|
| 10. | LOCAL TRUST COMMITTEE PROJECTS | | |
| 10.1 | Local Trust Committee Sponsored Rezoning Applications from Historic Co-operatives Staff Report dated June 4, 2009 - <i>attached</i> | 35-41 | 12:10 pm |
| 10.2 | Denman Island Farm Plan Memorandum – <i>to be distributed</i> | | |
| 11. | NEW BUSINESS | | 1:00 pm |
| 11.1 | September Local Trust Committee Meeting Date Change | | |
| 12. | BYLAWS | | |
| 13. | ADVISORY PLANNING COMMISSION AND TRANSPORTATION ADVISORY PLANNING COMMISSION | | |
| 14. | ISLANDS TRUST WEBSITE | | 1:05 pm |
| 14.1 | Denman Page - <i>attached</i> | 42 | |
| 15. | NEXT MEETING DATE Tuesday, July 14, 2009 at 10:30 a.m. at Marcus Isbister Old School Centre, 5901 Denman Road, Denman Island, BC | | |
| 16. | TOWN HALL SESSION | | 1:10 pm |
| 17. | ADJOURNMENT | | 1:20 pm |

*Approximate time is provided for the convenience of the public only and is subject to change without notice.

DRAFT

**MINUTES OF THE DENMAN ISLAND LOCAL TRUST COMMITTEE
MEETING HELD AT 10:30 A.M. ON FRIDAY, MAY 15 2009
AT THE MARCUS ISBISTER OLD SCHOOL CENTRE,
5901 DENMAN ROAD, DENMAN ISLAND, BC**

| | | |
|-----------------------|-------------------|----------------------------------|
| <u>PRESENT</u> | Peter Luckham | Chair |
| | Louise Bell | Local Trustee |
| | David Graham | Local Trustee |
| | Courtney Campbell | Island Planner |
| | Chris Jackson | Acting Regional Planning Manager |
| | Carole Vosburgh | Recorder |

There were four (4) members of the public in attendance.

1 CALL TO ORDER

Chair Luckham called the meeting to order at 10:30 a.m.

2 APPROVAL OF AGENDA

The agenda, with the addition of 1 item, was approved by consensus, with the following amendment:

- Add item 12.3 “Triple Rock Bylaw 188”

3 MINUTES

3.1 Denman Island Local Trust Committee Meeting Minutes of April 14, 2009

DE-042-2009 It was **MOVED** and **SECONDED** that the Denman Island Local Trust Committee adopt the minutes of its regular business meeting held April 14, 2009, with the following amendments

- Page 3, Section 6: at the end of the sentence, add “when the application for the north end of the island was discussed later in the meeting. He also spoke about the need to rezone the Piercy Road property for the medical clinic as soon as possible.”
- Page 3, Section 7: replace existing text in italics with “There was no correspondence”.
- Page 3, Section 8.1, paragraph 1, line 1: remove the word “Northland”.
- Page 3, Section 8.1: replace “DE-RZ-2009.11” with “DE-RZ-2009.1”.

- Page 4, Section 9, DE-036-2009: add quotations around “Updated Community Profile with Build-out Data and Map” as well as quotations around “Soil Removal and Deposit Bylaw”.
- Page 4, Section 9.1, paragraph 1, line 1: change “requests” to “requested”.
- Page 4, Section 9.1, paragraph 2, line 1: delete “Reports”.
- Page 4, Section 9.2: After “Map”, delete the rest of this sentence and add a period. Add the following second sentence: “Suggestions were submitted from the local trustees.”
- Page 4, Section 10.3: i) Between “the potential” and “new bylaw” insert “of a”, and ii) At the end of this sentence, add the following second sentence: “It was determined that the delay in achieving the necessary zoning for the new location could not be remedied by a new bylaw amending the Land Use Bylaw, because a new land use designation was also required, which requires the adoption of the new OCP (Proposed Bylaw No. 185), which is currently awaiting ministerial approval”.
- Page 4, Section 9.2: replace “have been” with “were”.
- Page 6, Section 14, DE-039-2009, line 3: change “Rreport” to “Report”.

CARRIED

3.2 *Section 26 Resolutions Without Meeting*

None

3.3 *Denman Island Advisory Planning Committee Draft Minutes dated March 12, 2009*

The Local Trust Committee received the APC minutes. Committee members asked staff to bring these minutes back to the Committee if and when the proposed meeting on this subject was held with the Hornby Island Local Trust Committee.

4 BUSINESS ARISING FROM MINUTES

4.1 *Follow-Up Action List Dated May 5, 2009*

Island Planner Campbell provided an update on the Follow-Up Action List dated May 5, 2009.

5 DELEGATIONS

None declared.

6 TOWN HALL DISCUSSION

Henning Nielsen of The Point thanked the Committee for putting his rezoning application on the agenda and spoke about the timing of his application. He also spoke about the forthcoming application for the North Denman Lands. Various aspects both applications were discussed. Mr. Nielsen asked whether the NDLI application could be processed without signatures of the Ministers of Environment and of Lands and Agriculture, as the new ministers were yet to be appointed. Staff responded that he should submit the application without the signatures, so that preliminary office work could proceed, but that a report to the Committee would not happen until the application was complete.”

7 CORRESPONDENCE

7.1 Email dated April 30, 2009 from Edina Johnston regarding water use and water storage on Denman Island.

The Local Trust Committee decided to write a response to Edina Johnston.

8 APPLICATIONS AND PERMITS

8.1 DE-ALR-2009.1 (Henning Nielsen for SBJ Properties Inc.) - Staff Report Dated May 1, 2009.

Staff recommended that the Local Trust Committee forward this application to the Agricultural Land Commission.

DE-043-2009 It was **MOVED** and **SECONDED** that the Denman Island Local Trust Committee request staff to forward application DE-ALR-2009.1 to the Agricultural Land Commission.

CARRIED

8.2 DE RZ-2009.1 (Henning Nielsen for SBJ Properties Inc.) – Staff Report Dated May 1, 2009.

The Local Trust Committee decided that the requested restricted covenant information had arrived too late for perusal for this meeting. The Local Trust Committee decided not to take further steps processing this application until there was a decision from the Agricultural Land Commission, except that staff would provide the Local Trust Committee with a comparison of the relative advantages of the proposed restrictive covenant over land near the Komasa Bluff and the existing Komasa Bluff Development Permit Area.”

9. REPORTS

9.1 Strategic Plan for Local Trust Committees

The Plan was reviewed for information.

9.2 Work Program Reports

The Local Trust Committee discussed how best to proceed with items on the Top Priorities list of the Local Trust Committee's work program. A key part of the discussion was about funding and suggestions that were provided by Henning Nielsen and Kathy Dunster, who were in the audience. The Local Trust Committee requested staff to contact Mr. Gary Rolston, a consultant with From the Ground Up, in Courtenay to discuss funding options for a Denman Island Farm Plan. The Local Trust Committee acknowledged that the Islands Trust Local Planning Committee planned to work on the issue of affordable housing this term and the Local Trust Committee decided to follow the results of that work.

DE-044-2009 It was **MOVED** and **SECONDED** that the Denman Island Local Trust Committee request staff to contact Mr. Gary Rolston in Courtenay to discuss funding options for a Denman Island Farm Plan.

CARRIED

9.3 Applications Log

The Applications Log was reviewed by Island Planner Campbell.

9.4 Trustee and Local Expenses

9.4.1 The expense reports were received as information.

9.4.2 The expense reports were received as information.

9.4.3 Budget 2009/10

The Committee discussed the need to have a budget for the 2009/10 fiscal year, but decided to wait until the year end and see how this year's expenses fall within the five general ledger codes established for all Local Trust Committees."

9.5 *Chair's Report*

Chair Luckham reported on the recent work of the Executive Committee on a strategic plan for the June meeting of the Islands Trust.

9.6 *Trustees' Report*

Trustee Graham reported on the recent meeting of the Local Planning Committee.

Trustee Bell reported on the upcoming meeting of a Cemetery Committee.

10 LOCAL TRUST COMMITTEE PROJECTS

There was no business relating to Local Trust Committee projects.

11 NEW BUSINESS

11.1 *Board of Variance appointments*

Acting Regional Planning Manager Jackson suggested that the Denman Island Local Trust Committee agree to the concept of appointing one Board of Variance to serve the entire Northern Region of the Islands Trust. Committee members endorsed this suggestion.

11.2 *Covenants against further subdivision*

Island Planner Campbell reviewed the history regarding the requirement for a restrictive covenant preventing future subdivision when land zoned R2 was subdivided using the averaging provision for lot size. “

12 BYLAWS

12.1 *Proposed Bylaw No.185 cited as the “Denman Island Official Community Plan, 2008”*

DE-045-2009 It was **MOVED** and **SECONDED** that the Denman Island Local Trust Committee adopt proposed Bylaw No.185 cited as the “Denman Island Official Community Plan, 2008”.

CARRIED

12.2 *Proposed Bylaw No. 186 cited as “Denman Island Land Use Bylaw, 2008”*

DE-046-2009 It was **MOVED** and **SECONDED** that the Denman Island Local Trust Committee adopt proposed Bylaw No.186 cited as “Denman Island Land Use Bylaw, 2008”

CARRIED

12.3 *Bylaw No. 188 Triple Rock*

Island Planner Campbell will report back to the Local Trust Committee on registration of the housing agreement for the co-housing project enabled by this bylaw.

**13 ADVISORY PLANNING COMMISSION AND TRANSPORTATION
ADVISORY PLANNING COMMISSION**

The Local Trust Committee did not have a referral for either of these commissions.

14 ISLANDS TRUST WEBSITE

14.1 *Denman Page*

The Local Trust Council and Island Planner Campbell discussed and agreed on future changes to the Denman page of the Islands Trust website.

15 NEXT MEETING DATE

The Local Trust Committee confirmed the date of June 16, 2009 for its next business meeting.

16 TOWN HALL SESSION

Henning Nielsen again spoke about the timing of DE-RZ-2009.1 (the Point) and of the expected application to rezone the North Denman Lands. It was confirmed that staff were willing to receive the North Denman Lands application without signatures from the Ministers of Environment and of Agriculture and Lands, but would not recommend to the Local Trust Committee that it be forwarded to the Agricultural Land Commission until it was complete. Staff would, however, as requested by the Local Trust Committee, prepare a comparison of the Komass

Bluff Development Permit Area designation and the proposed restrictive covenant as the means of protecting development from hazardous conditions associated with the unstable, sandy cliff.

As well, Committee members asked that the terms of agreement for the proposed restrictive covenant needed to be within the covenant itself rather than in an attachment.

17 ADJOURNMENT

DE-048-2009 It was **MOVED** and **SECONDED** that the Denman Island Local Trust Committee adjourn its regular business meeting at 1:50 p.m.

CARRIED

Recorder

Chair



Islands Trust

RWM From: May 15, 2009 To: June 08, 2009

Denman Island

| Resolution # | Action | Resolution Description | Resolution Date |
|--------------|-----------|--|-----------------|
| 2009-03 | In Favour | "That the Denman Island Local Trust Committee will forward application no. DE-ALR-2009.2 (Pedal Powered Investments) to the Agricultural Land Commission." | Jun 08, 2009 |

DRAFT

Minutes of the Denman Island Advisory Planning Commission

2 June 2009 at Marcus Isbister Old School

APC Members:

Tachi Barker, Jenny Balke, Anne de Cosson, Ralph Walton, Derek Hood.

Regrets:

John Johnston

There were no guests or members of the public in attendance.

Agenda:

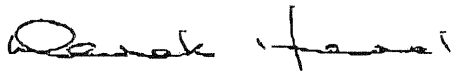
The minutes from the APC meeting of 12 March were adopted.

The members discussed the Memorandum from the Trustees re the Potential Sub Division map and reviewed the map. Following is a summary of the comments, questions and suggestions:

- The first bullet point in the Memorandum indicates “....background for Policies 8 and 20.....” It is our understanding that Policy 20 refers to residents being encouraged to maintain low level lighting etc and we do not think it is relevant in this context. Advise if it was intended that some other aspect of this policy should be considered.
- Visually, the map is good and the possible changes can be readily identified.
- The group suggest the following to improve the comprehension for a resident who may not be well versed in reading a map:
 - (i) the chart and legend should have a title.
 - (ii) the Subdivision potential might read “Additional Subdivision Potential”.
- The group had significant concern about the accuracy of the map as presented. If a visual presentation of this information is to be offered the group urges that a major effort be undertaken to ensure it is much more accurate. For example concern was expressed that Lot 6 *PLAN* 43740 is the remainder of a subdivision and that further subdivision is not permitted under an agreement that places a covenant on this lot in exchange for greater subdivision on an adjacent parcel.

- The group were concerned that they did not have sufficient time to review all possible errors on the map.
- The group recommends that the wording in the "Note" should be much more prominent and indicate that factors such as road dedication, steep slope etc are "likely" to be factors affecting accuracy rather than "possible" factors.
- The group recommends that existing covenants be taken into consideration when determining if parcels may be further subdivided.

Next meeting TBA



Derek Hood
Chair
5 June 2009.



Follow Up Action Report w/ Target Date

Denman Island Jan-20-2009

| No. | Activity | Responsibility | Target Date | Status |
|-----|--|-----------------------------------|-------------|----------|
| 1 | Community Profile: staff requested to complete the profile, update build out analysis information and add to profile | Courtney Campbell Jacquie Hill | Mar-02-2009 | On Going |

Feb-17-2009

| No. | Activity | Responsibility | Target Date | Status |
|-----|---|-------------------|-------------|----------|
| 1 | Staff to forward ALC information regarding additional houses. | Courtney Campbell | Mar-17-2009 | On Going |

Mar-17-2009

| No. | Activity | Responsibility | Target Date | Status |
|-----|---|----------------|-------------|----------|
| 1 | Draft minutes from February 17, 2009 in camera meeting. | Chris Jackson | Mar-31-2009 | On Going |

Apr-14-2009

| No. | Activity | Responsibility | Target Date | Status |
|-----|--|----------------|-------------|----------|
| 1 | Provide explanation of policy and/or procedure for applications for second dwellings on ALR land. Specifically, when would this come before the LTC, and when would it remain solely with staff? | Chris Jackson | Jun-16-2009 | On Going |

May-15-2009

| No. | Activity | Responsibility | Target Date | Status |
|-----|--|-------------------|-------------|----------|
| 1 | Report back to LTC on registration of housing agreement for Triple Rock. | Courtney Campbell | Jun-16-2009 | On Going |

| | | | | |
|---|--|-------------------|-------------|----------|
| 1 | Notify LTC when ALR inclusion/exclusion application is received for NDLI and arrange RWM to decide on forwarding application the ALC. Also determine if the ALC is contemplating a special site visit for this application in advance of their scheduled visit to Denman in August. | Courtney Campbell | Jun-16-2009 | Done |
| 1 | Respond to email received from E. Johnston regarding groundwater. Trustee Bell to draft, Becky McErlan to print on letterhead and arrange for Chair Luckham to sign before mailing. | Becky McErlan | Jun-16-2009 | Done |
| 1 | Forward DE-ALR-2009.1 (The Point) to the ALC. | Courtney Campbell | Jun-16-2009 | Done |
| 1 | For DE-RZ-2009.1(The Point) provide comparison of current DPA for Komas Bluff and proposed restrictive covenant in terms of level of protection, enforceability, ability to monitor, potential conflict with existing conservation covenant, etc. Also provide comment on ability of one covenant to reference another, or establish that one takes precedence over another. | Courtney Campbell | Jun-16-2009 | On Going |
| 1 | Contact Gary Rolston to discuss funding options for a Denman Island farm plan. | Courtney Campbell | Jun-16-2009 | On Going |
| 1 | Provide memo to LTC on procedures for covenant registration and confirmation from Land Titles Office that they are registered. | Courtney Campbell | Jun-16-2009 | On Going |
| 1 | Make following updates on Denman webpage:Remove everything to do with bylaw 185 and 186 once they are up under planning bylaws; remove Triple Rock files; remove NDLI files; remove BC Ferries rezoning files; order applications most recent first. Add The Point staff reports and add Dharma Fellowship staff report for ALR from last year. | Courtney Campbell | Jun-16-2009 | Done |
| 1 | Provide policy/procedure on requiring LTC direction for changes to LTC webpage. | Courtney Campbell | Jun-16-2009 | On Going |
| 1 | Post adopted bylaws 185 and 186 on website under "planning bylaws" and remove bylaws 60 and 148. | Jacque Hill | Jun-16-2009 | Done |

STAFF REPORT

Date: May 25, 2009

File No.: DE-ALR-2008.3
(Graham & Gamble)

To: Denman Island Local Trust Committee

From: Courtney Campbell, Island Planner

cc: Chris Jackson, Acting Regional Planning Manager

Re: **APPLICATION FOR SUBDIVISION IN THE AGRICULTURAL LAND RESERVE**

Owner: Michaele Graham & Robert Gamble

Applicant: Same

Location: 1416 Lacon Road
Lot B, Section 18, Denman Island, Nanaimo District, Plan VIP65443

1. THE PROPOSAL

This application is for subdivision of the above noted parcel under Section 946 of the *Local Government Act* (subdivision to provide residence for a relative). The property is in the Agricultural Land Reserve (ALR) and requires Agricultural Land Commission (ALC) approval. The Denman Island Local Trust Committee (LTC) has the discretion to decide whether or not to forward this application to the ALC. The LTC must pass a resolution to forward this application to the ALC for it to proceed, and can forward the application with or without additional comments.

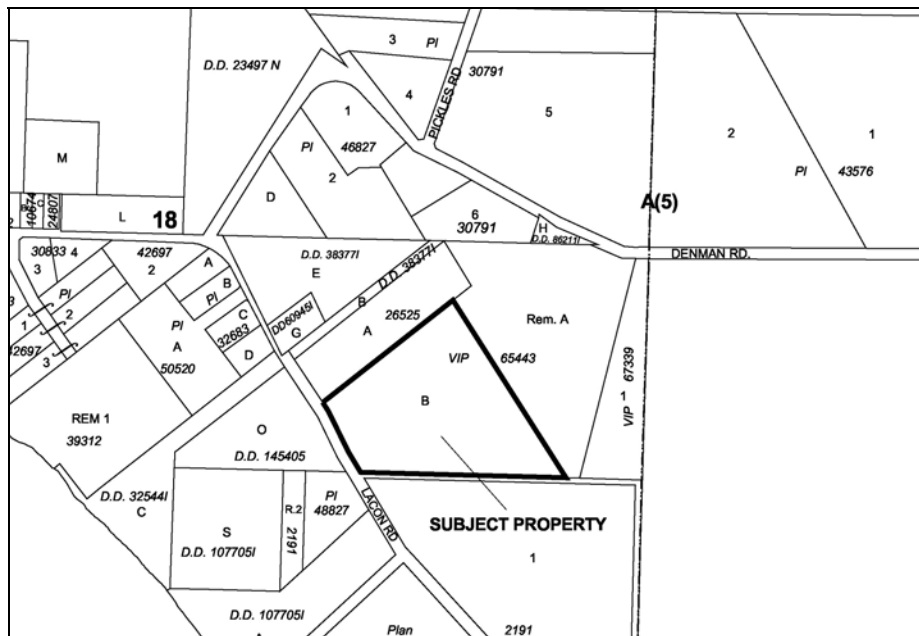


Figure 1 Subject Property

The property is 7.34 hectares (18.9 acres) in the Agriculture Land Reserve and the proposed subdivision would divide the property into two lots of 3.8 hectares (9.45 acres) each. The subject property is shown in Figure 1.

If this ALR application is successful, the applicants are then required to apply to the Ministry of Transportation and Infrastructure for subdivision. The Islands Trust would receive a referral, and at that stage a more detailed, technical analysis of the specific lot configuration of the subdivision would be done by staff. For this ALR application, the subdivision proposal should be considered on a conceptual level.

2. CURRENT PLANNING STATUS OF SUBJECT LANDS:

2.1 Trust Policy Statement:

The Islands Trust Policy Statement should be read in its entirety for a complete understanding. Trust policies related to this application touch upon Agricultural Land (4.1), Forests (4.2) and Growth and Development (5.2). The proposal is not contrary to or at variance with the Trust Policy Statement.

2.2 Denman Island Trust Committee Official Community Plan Bylaw No. 185: Sustainable Resources (SR)

The following policies are relevant to this application:

Part E.1 – Housing

Objective 3: To set the maximum for the overall density of the Island as the residential density possible with the zoning regulations in place at the time of adoption of this Plan while providing flexibility for a range of dwelling types.

Policy 3: In the Sustainable Resource designation, the size of new lots for forestry uses that are created by subdivision may not be less than 64 hectares, and the size of new lots for agricultural and other uses that are created by subdivision may not be less than 15 hectares.

Policy 4: In the Sustainable Resource designation, the lot size averaging provision should not be used.

Policy 5: In the Sustainable Resource designation, parcel sizes should be regulated in such a way as to encourage and enhance the sustainable resource capability of the land.

Policy 11: The overall residential density on Denman Island should generally not increase beyond that permitted by existing zoning on the date this Plan was adopted except that an increase of approximately 5 percent may be permitted to accommodate zoning amendments for special needs and affordable housing, including secondary dwellings pursuant to Policy 16 or site-specific zoning amendment applications under Policy 29 of this Section.

Policy 14: In the Sustainable Resource designation, unless otherwise permitted by Policy 29, on land in the Agricultural Land Reserve:

- *one dwelling could be permitted per the minimum lot area permitted by subdivision; and*
- *additional dwellings could be permitted if they are required for full-time farm help.*

Part E.4 – Resources

Policy 1: *In the Sustainable Resources designation:*

- *The principal uses should be agriculture and silviculture....*

Policy 7: *The Local Trust Committee should only support an application for non-farm use or subdivision on land in the Agricultural Land Reserve if the proposed non-farm use or subdivision is consistent with zoning regulations and either;*

- *Allows an activity that supplements the farm income and does not decrease the farming capability of the property; or*
- *Protects the land for conservation purposes.*

2.3 Denman Island Local Trust Committee Land Use Bylaw No. 186: Agriculture (A) zone

Section 3.4 *Resources Zoning Tables* contains the regulations for the Agriculture zone. Below are the regulations relevant to this application:

Table 2 (7) – Dwelling units for full-time farm workers employed on the lot are permitted.

Table 3 (1) – Maximum number of single family dwelling units per lot is 1 (one).

Table 7 (1) – Minimum lot area permitted by subdivision, subject to regulations in Section 2.8 is 15.0 ha.

A lot created for the purpose of providing residence for a relative under section 946 of the *Local Government Act* is exempt from the minimum lot areas in the LUB.

2.4 Local Government Act, Section 946

Section 946 of the *Local Government Act* enables an approving officer to approve a subdivision that would otherwise be prevented by a bylaw provision for minimum parcel size if:

- (a) *the person making the application has owned the parcel for at least 5 years before making the application;*
- (b) *the application is made for the purpose of providing a separate residence for the owner or for the owner's mother, father, mother-in-law, father-in-law, daughter, son, daughter-in-law, son-in-law or grandchild;*
- (c) *the subdivision would not be a subdivision that an approving officer is prevented from approving by subsection(3).*

From subsection 3, parts (a) and (b) are relevant to this proposal:

(3) *Despite subsection (1), an approving officer must not approve a subdivision under this section in any of the following circumstances:*

- (a) *if*
 - (i) *the parcel proposed to be subdivided is classified as farm land for assessment and taxation purposes, and*
 - (ii) *after creation of the parcel subdivided for the purpose of providing a residence as stated in subsection (2)(b), the remainder of the parcel proposed to be subdivided would be less than 2 hectares;*

- (c) if the parcel proposed to be subdivided
 - (i) is within an agricultural land reserve established under the Agricultural Land Commission Act, and
 - (ii) was within the previous 5 years created by subdivision under this section, including subdivision under section 996 of the Municipal Act, R.S.B.C. 1979, c.290, as it read before it was repealed and replaced by section 13 of the Municipal Amendment Act (No. 2), 1989.

2.5 Agricultural Land Commission Act, section 25

- (1) On an application for permission for non-farm use under section 20 (3) or for subdivision under section 21 (2), the commission may do one of the following:
 - (a) refuse permission;
 - (b) grant permission;
 - (c) grant permission for an alternative non-farm use or subdivision.
- (2) If the commission makes a decision under subsection (1) (b) or (c), it may impose terms it considers advisable.
- (3) An application referred to in subsection (1), except such an application from a first nation government, may not proceed unless authorized by a resolution of the local government if, on the date the application is made, the application
 - (a) applies to land that is zoned by bylaw to permit agricultural or farm use, or
 - (b) requires, in order to proceed, an amendment to an official settlement plan, an official community plan, an official development plan or a zoning bylaw.

2.6 Development Permit Area (DPA) No. 2

The rear of the subject property is within DPA No. 2, "Steep Slopes". A development permit is not required, as the ALR application does not propose the removal of trees the placement of any impervious surfaces, or the construction of any buildings or structures on a slope of 60 degrees or greater. The OCP states that all other land alteration or development is exempt from the requirements of this development permit area. Future construction of buildings or structures or implementation of farming activities (i.e. tree cutting) may require a development permit, should any of these activities be proposed within the development permit area.

2.7 Archaeological Sites

According to the provincial Remote Access to Archaeology Data (RAAD), there are no archeological sites on or within 50 meters of this property¹.

2.8 Sensitive Ecosystems

A portion of the property on the eastern property line is classed as the sensitive ecosystem "older forest" as shown in figure 2 below:

¹ Fifty metres is the recommended buffer from the BC Archaeology Branch to determine if there is a conflict with an identified archaeological site.



Figure 2 Sensitive Ecosystem on Subject Property

2.9 Covenants / Easements / Rights-of-Way

Pursuant to section 946(8) of the *Local Government Act*, because the land is in the Agricultural Land Reserve, the owners are NOT required to enter into a covenant with the local government restricting future use and subdivision under this section of the Act.

3. SITE CONTEXT:

The subject property is bordered to the north and south by other properties in Agriculture zone, and also in the ALR that are 7.1 acres and 32.3 acres in size respectively. To the west and across Lacon Road are smaller properties zoned R1, and to the east are R2 zoned properties.

A site visit has not been conducted, but from air photo imagery, it appears that the property to the south is farmed and the other adjacent properties are mostly forested. The subject property is also forested aside from a site cleared for the current residence.

4. COMMUNITY INFORMATION MEETING(S):

A community information meeting is not a requirement for an application to subdivide in the ALR.

5. RESULTS OF CIRCULATION:

Circulation is not a requirement for an application to subdivide in the ALR.

6. ISSUES SUMMARY:

- a. Requirements of Section 946 of the *Local Government Act*
- b. Increase in residential density and future subdivision potential
- c. Farm use and long-term viability of farming
- d. Access, septic and water

7. STAFF COMMENTS:

a. Requirements of Section 946 of the *Local Government Act*

The proposal fulfills the requirements of Section 946 of the *Local Government Act*:

- The property has not been subdivided under section 946 of the *Local Government Act* in the past 5 years; the subject property was created by subdivision in 1997.
- The applicants have stated that the purpose of subdivision is to provide residence for a son.
- The property does not have farm status for taxation purposes.
- The applicants have owned the property for more than 5 years as per the Certificate of Title (not attached but available upon request).
- The proposed remainder lot is not less than 2 hectares.

b. Increase in residential density and future subdivision potential

Objective 3 of the Housing section (E.1) in the OCP expresses the aim of maintaining the overall residential density. This proposal would result in an increase of one additional density. However, the intent of section 946 of the *Local Government Act* is to allow subdivision to provide residence for a relative when subdivision would not otherwise comply with a local government's minimum lot size regulations.

The proposed subdivision would result in two lots of 3.83 hectares (9.45 acres) each. If this subdivision was approved, after a period of 5 years the owners of these new parcels could apply for subdivision under section 946 of the *Local Government Act* again. This section of the Act states that the new parcel created by subdivision must be at least 1 hectare, and the remainder parcel must be at least 2 hectares. The 3.83 hectare size of the proposed new lots is large enough to allow subdivision in the future, subject to necessary approvals by the LTC, ALC, and provincial approving officer, among others.

c. Farm use and long-term viability of farming

The property is not currently farmed. The original application stated the applicants' son intends to establish an organic farm on the new lot, should the subdivision be successful. In their May 6, 2009 letter (attached), the applicants stated that the intention is no longer to establish a farm. In conversation with Ms. Graham, staff understands that her son does have a long-term plan of establishing a farm, but the task of preparing a farm plan for consideration with this application was too onerous, and the applicants decided to request that the application be considered simply on its merits as a Section 946 subdivision, without taking into account future plans for a farm. It appears that the immediate goal of the subdivision is to provide housing for the applicants' son, while establishing a farm remains a long-term goal.

Policy 7 of Part E-4 (Resources) in the OCP states that subdivision in the ALR should not be supported unless it:

- *Allows an activity that supplements the farm income and does not decrease the farming capability of the property; or*
- *Protects the land for conservation purposes.*

In the case of this application, no conservation is proposed, and there are no immediate plans for it to supplement farm income, although the creation of farm income may be a long-term result. The question of this proposed subdivision's ability to increase or maintain the viability of farming the property in the future is outside of the area of expertise of Islands Trust staff. Staff recommends relying on the review by Agricultural

Land Commission and its staff to determine the impact the proposed subdivision would have on the long-term viability of farming.

Because the applicants have not demonstrated that the subdivision would supplement (or in this case create) farm income, this policy could be seen as supportive of an LTC decision to not forward the application to the ALC. However, there is some indication by the applicants that in the long-term, their son plans to establish an organic farm should the subdivision be successful.

d. Access, septic and water

This proposed subdivision will require establishing road access to the new lot, as well as septic and water. At this stage in the application these issues are considered at a conceptual level. Access, water and septic issues will be considered in more detail at the subdivision referral review stage.

8. SUMMARY OF OPTIONS:

The LTC has several options:

- Defer consideration of this application;
- Refer this application to the Advisory Planning Commission;
- Pass a resolution to not forward this application to the ALC;
- Pass a resolution to forward this application to the ALC; or
- Pass a resolution to forward this application to the ALC with comment.

RECOMMENDATIONS:

Based on the above considerations, Staff recommends that the Denman Island Local Trust Committee:

1. instruct staff to forward this application to the Agricultural Land Commission; and
 2. consider developing a policy or policies regarding s. 946 subdivisions in the Agricultural Land Reserve.
-

Respectfully submitted by:



Courtney Campbell, Island Planner

June 2, 2009

Date of signature

Concurred in by:

Chris Jackson

June 1, 2009

Chris Jackson, Acting Regional Planning
Manager

Date of signature

Attachments:

1. ALC Application by Landowner
2. Proposed Subdivision Plan
3. Letter from applicant received May 6, 2009

Appendix 1:



APPLICATION BY LAND OWNER

NOTE: The information required by this form and the documents you provide with it are collected to process your application under the Agricultural Land Commission Act and regulation. This information will be available for review by any member of the public. If you have any questions about the collection or use of this information, contact the Agricultural Land Commission and ask for the staff member who will be handling your application.

TYPE OF APPLICATION (Check appropriate box)

- EXCLUSION under Sec. 30(1) of the Agricultural Land Commission Act
 SUBDIVISION in the ALR under Sec. 21(2) of the Agricultural Land Commission Act
 INCLUSION under Sec. 17(3) of the Agricultural Land Commission Act
 Non-farm USE in the ALR under Sec. 20(3) of the Agricultural Land Commission Act

APPLICANT

| | | | |
|--|------------------------|---|------------------------|
| Registered Owner: MICHAELE MARINA GRAHAM. | | Registered Owner. Agent: ROBERT JOHN GAMBLE | |
| Address: 1620 BAIKIE RD. | | Address: 1416 LACON RD. | |
| DENMAN ISLAND | | DENMAN ISLAND | |
| B.C. | Postal Code V0R1T0. | B.C. | Postal Code V0R1T0. |
| Tel. (home) 250.335.3007 (work) | | Tel. 250.335.1356. | |
| Fax | | Fax | |
| E-mail | | E-mail | |

LOCAL GOVERNMENT JURISDICTION (Indicate name of Regional District or Municipality)

Islands Trust - Denman Island local trust committee.

LAND UNDER APPLICATION (Show land on plan or sketch)

| Title Number | Size of Each Parcel (Ha.) | Date of Purchase | |
|-----------------------|---------------------------|------------------|------|
| | | Month | Year |
| 1416 LACON RD. LOT b. | | | |
| VIP 65443 SECTION 18 | | | |
| PID: 023.791.462 | 7.34 | | |
| | | | |
| | | | |

OWNERSHIP OR INTERESTS IN OTHER LANDS WITHIN THIS COMMUNITY

(Show information on plan or sketch)

If you have interests in other lands within this community complete the following:

Title Number(s): 1620 BAIKIE RD., LOT A PLAN 25570 SECTION 16
 NLD D.I. P.I.D. # - 002.921.481.

PROPOSAL (Please describe and show on plan or sketch)

- To subdivide for the purpose of providing residence to a family member.
- The property ~~is~~ is 18.9 acres (7.34 ha) and currently is not in use for farming.
- The proposed subdivision will divide the property into two 9.45 acre parcels (see attached sketch).
- The family member is planning on utilizing the property for an organic farm, if the subdivision is approved, as well as a residential area to build a home.

CURRENT USE OF LAND (Show information on plan or sketch)

List all existing uses on the parcel(s) and describe all buildings

- Residential
- one house - one garage - one woodshed - one chicken coop.

USES ON ADJACENT LOTS (Show information on plan or sketch)

North - Residential
 East - Residential
 South - Residential
 West - Residential

DECLARATION

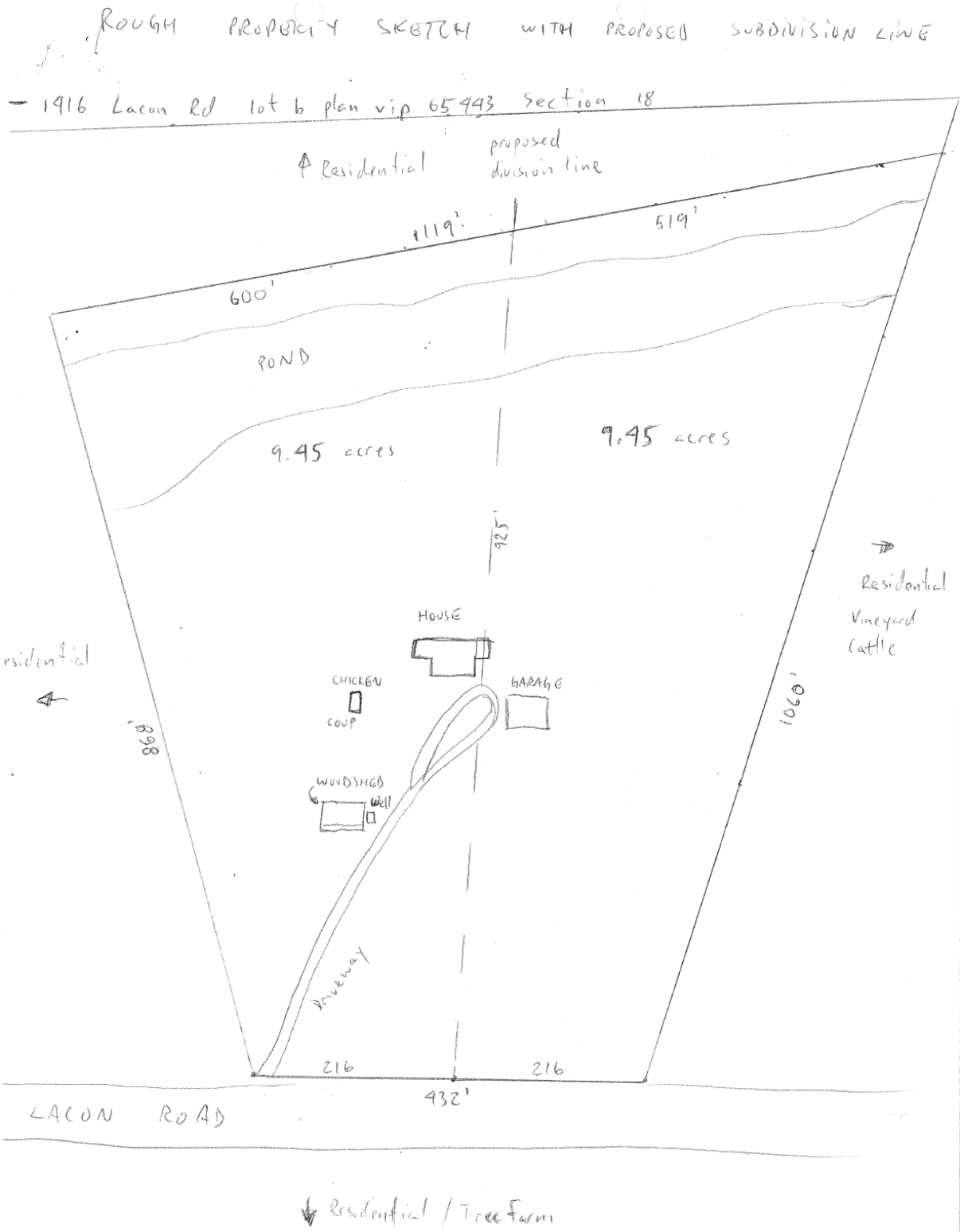
I/we consent to the use of the information provided in the application and all supporting documents to process the application in accordance with the *Agricultural Land Commission Act* and regulation. Furthermore, I/we declare that the information provided in the application and all the supporting documents are, to the best of my/our knowledge, true and correct. I/we understand that the Agricultural Land Commission will take the steps necessary to confirm the accuracy of the information and documents provided.

| | | |
|------------------------------|---|--|
| <u>July 15/08</u> Date | <u>[Signature]</u> Signature of Owner or Agent | <u>Robert Gamble</u> Print Name |
| <u>July 15, 2008</u> Date | <u>[Signature]</u> Signature of Owner or Agent | <u>Michaela Heinz Graham</u> Print Name |
| _____ | _____ | _____ |
| Date | Signature of Owner or Agent | Print Name |

Please ensure the following documents are enclosed with your application:

- Application fee payable to the Local Government
- Certificate of Title or Title Search Print
- Agent authorization (if using agent)
- Map or sketch showing proposal & adjacent uses
- Proof of Notice of Application *(See instructions)
- Photographs (optional)

Appendix 2: Proposed subdivision plan



Appendix 3: Letter from applicant received May 5, 2009

From
Michael H. Graham
1620 Baikie Rd.
Denman Isle, B.C.
VDE, LTD.

To Courtney Campbell, ph. # 250-335-3007
Islands Trust
Gabriola North Office,
700 North Rd.,
Gabriola Isle B.C. V8R1X3.

Dear Ms Courtney Campbell,

This letter concerns a 'change of plan' re: the application for subdivision at 1416 Lecon Rd., Denman Isle B.C. It is no longer the intent to start a farm there, we just want the 946-A clause, to "provide a residence for a relative" (ie, my son + his family).

I will answer the questions asked by Lisa Berg (the 'land planner') in simple 'point' form, as follows:
(1) Bob Gamble and I have owned the property since Sept. 2002.
(2) We have been registered as 'Joint Owners' since December 2002.

- (3) the property is NOT assessed as having farm status.
- (4) the current use of the property is residential.
- (5) the planned use after subdivision is residential.
- (6) 'subdivision' will generate a need for a septic field, a well and a driveway.
- (7) the proposal can be modified to reduce potential negative impact.

...and last and most important, is the fact that both Bob Gamble and I, and our families are very long term residents of Denman Island, and wish to remain so, hence the application for subdivision.

With thanks,

Yours sincerely,
Michael H. Graham
and
Bob Gamble

Sustainable Environment

| *indicates change from last quarter | FOCUS AREA | WHO | HOW WILL WE MEASURE SUCCESS? | TARGET(s) | CURRENT STATUS |
|--|---|-------------|--|----------------------------------|--|
| Protect and enhance the natural environment | | | | | |
| | Adopt soil removal and deposit bylaw | LTCs/IMs | By the number of LTAs/IMs with adopted bylaws | 2008-9 - (1 - SSI) | 1 st reading given SSI community consultation on-going |
| * | Adopt bylaws to manage tree removal | LTCs/IM | By whether a model bylaw has been developed By the number of LTAs/IMs with new bylaws for tree protection | 2007-8 2007-8(1) NP | Incorporated into model bylaw for sensitive ecosystem protection Completed (NP OCP <i>adopted</i>) |
| | Integrate new precautionary principles into local planning procedures | LPC/LTCs/IM | By whether a model DAI bylaw is complete By the number of LTAs/IMs with new precautionary principles integrated into bylaws | 2006 2008-9 - (1) (NP) | Completed Subject to LTC initiative and LPS budget proposals for 08-09 |
| * | Monitor and enforce LTC conservation covenants | LTC | By whether a process has been designed to identify, monitor and enforce LTC covenants | 2008-9 | \$10,000 in 08-09 budget to hire a co-op student |
| | | LTC | By whether resources are in place for monitoring and enforcement | 2009-10 | Subject to budget in 09-10 |

Healthy Communities

| OBJECTIVE | FOCUS AREA | WHO | HOW WILL WE MEASURE IT? | TARGET | CURRENT STATUS |
|---|---|-------------|---|---|---|
| Foster healthy and livable communities | | | | | |
| | Local strategies for affordable housing | LTCs/IMs | By whether a model housing agreement has been completed By the number of new covenants or housing agreements in place to guide housing affordability By the number of new OCPs that have an updated strategy for affordable housing | 2006-7 -1(SS1) 2007-8 - 2 (SSI) 2008-9 - 1(SS1) | Completed One complete One in final development In development through SSI OCP |
| | Local strategies to manage tourism | LPC/LTCs/IM | By the number of new OCPs with strategies to manage tourism | 2008-9 - (1 - SSI) | Tourism policies in SSI OCP to be reviewed |
| | Coordinate planning efforts with Gulf Islands National Park Reserve | LPC/LTC | By whether staff attended meetings with GINPR By the number of bylaws amended to reflect Parks Canada holdings | 2006-7 (1) 2006-7(1) 2008-9 (5) | Completed NP (assoc) completed Planned |

| OBJECTIVE | FOCUS AREA | WHO | HOW WILL WE MEASURE IT? | TARGET | CURRENT STATUS |
|---|--|-------------|--|--|--|
| Manage growth | | | | | |
| * | Review and update OCPs | LPC/LTCs/IM | By the number of OCP reviews completed | 2007-8 - (4 - MA, NP, GM, GB (Mudge), 2008-9 -(3 - SSI, DE, TH) | MA adopted. NP <i>adopted</i> GB (Mudge) and GM (assoc) in process SSI underway. Completion subject to 08-09 budget |
| | Identify build-out potential as a basis for further planning and communication | LPC/LTCs/IM | By the number of build-out calculations and maps completed | 2006-7 -(4)- GB, NP, SS, LA,) 2007-8 (2) DE, GM (assoc) | 5 completed or in final edits (GB, NP, SS LA & MA) DE and GM (assoc) on target for completion |
| Strengthen citizen participation in local government | | | | | |

Excellence in Governance

| OBJECTIVE | FOCUS AREA | WHO | HOW WILL WE MEASURE IT? | TARGET(S) | CURRENT STATUS |
|--|------------|-----|-------------------------|-----------|----------------|
| Sustainable and fair local representation | | | | | |

For more information, contact

Kim Benson, Chair,
Islands Trust Council
email kbenson@islandstrust.bc.ca
telephone 604.619-2933

Linda Adams, Chief Administrative Officer,
Islands Trust
email ladams@islandstrust.bc.ca
telephone 250.405.5151

Visit our website at
www.islandstrust.bc.ca



Top Priorities

Denman Island

| No. | Description | Activity | Received/Initiated | Responsibility | Target Date | Status |
|-----|-------------------------|---|--------------------|-------------------|-------------|----------|
| 1 | OCP/LUB Targeted Review | <ol style="list-style-type: none"> 1. Add extinguished conservation densities to bank 2. Encourage rezoning applications for historic co-ops 3. Development permit area mapping 4. Protected area network (PAN) mapping 5. Conservation / Recreation policies section review 6. Watershed mapping and implementing RAR 7. Targets for climate change 8. Groundwater extraction and sale 9. Policies for beach access to waterfront subdivisions 10. Raising minimum lot size for Section 946 subdivision on non-ALR lands 11. Agriculture zone setbacks 12. Lot coverage on small lots 13 Raptor nest protection | Mar-17-2009 | Courtney Campbell | Feb-17-2011 | On Going |

| | | | | | | |
|---|---|--|-------------|-------------------|-------------|----------|
| 2 | Farm Plan | Further discussion by LTC to determine next steps. | Apr-15-2008 | Courtney Campbell | Feb-17-2010 | On Going |
| 3 | Local strategies for affordable housing | Pending further LTC consideration for direction | Apr-15-2008 | Courtney Campbell | | On Going |



Projects

Denman Island

| No. | Description | Activity | Received/Initiated | Status |
|-----|--|---|--------------------|----------|
| 1 | Promoting the use of Neighbourhood Zero Emissions Vehicles | | | On Going |
| 1 | Community Profile and Build-out Map | Update community profile with current data and prepare build-out / subdivision potential map. | | On Going |
| 1 | Soil removal and deposit bylaw | Establish need for bylaw on Denman Island and develop bylaw if necessary. | | On Going |



Applications w/ Status - Denman Island Status: Open

Applications

Agricultural Land Reserve

| File Number | Applicant Name | Date Received | Purpose |
|---------------|---------------------------------------|---------------|--|
| DE-ALR-2008.3 | Michaele and Robert Graham and Gamble | Jul-17-2008 | To subdivide for the purpose of providing residence to two family members. The property is 18.9 acres (7.34 hectares) and currently is not in use for farming. The proposed subdivision will divide the property into two 9.45 acre parcels. The family member is planning on utilising the property for an organic farm, if the subdivision is approved, as well as a residential area to build a home. |

Planner: Courtney Campbell

Planning Status

Status Date: Jun-05-2009

Staff report on agenda for June 16th LTC meeting

Status Date: May-25-2009

Staff report revised after adoption of OCP and LUB bylaws no. 185 and 186

Status Date: May-06-2009

Draft staff report sent to RPM for review

| File Number | Applicant Name | Date Received | Purpose |
|---------------|---------------------|---------------|---|
| DE-ALR-2009.1 | SBJ Properties Inc. | Apr-08-2009 | The proposal aims to exclude a portion of the parcel closest to and including the steep slope of Komas Bluffs. This part is not farmable for reasons of steep slope and potentially unstable terrain. A portion currently not in the Agricultural Land Reserve is proposed for inclusion, resulting in a net increase in useable farmland of 2.7 hectares. The exclusion/inclusion forms part of a rezoning application currently before the Islands Trust. |

Planner: Courtney Campbell

Planning Status

Status Date: May-27-2009

Application forwarded to the Agricultural Land Commission

Status Date: May-01-2009

Planner drafting staff report

| File Number | Applicant Name | Date Received | Purpose |
|---------------|--------------------------------|---------------|--|
| DE-ALR-2009.2 | Pedal Powered Investments Ltd. | May-27-2009 | To subdivide to 2 properties. 35.5 hectares to become co-housing for 15 families - that will farm the ALR portion Lot A. The other 27.5 hectares to be single family residential and will include portion of ALR |

Planner: Courtney Campbell

Planning Status

Status Date: Jun-05-2009

Staff to facilitate Resolution Without Meeting to forward application to Agricultural Land Commission

| File Number | Applicant Name | Date Received | Purpose |
|---------------|--------------------|---------------|--|
| DE-ALR-2009.3 | 736800 BC Ltd. c/o | Jun-01-2009 | Inclusion of 88.7 ha into and exclusions of 88.7 ha of land from the ALR. Part of larger rezoning proposal that would create residential lots, agricultural lots, and a provincial park. |

Planner: Courtney Campbell

Planning Status

Status Date: Jun-05-2009

Staff preparing report for June 16th LTC meeting

Development Permit

| File Number | Applicant Name | Date Received | Purpose |
|--------------|-----------------------|---------------|--|
| DE-DP-2006.2 | Daniel/Debra Stoneman | Aug-31-2006 | The use of presently cleared areas within the Komass Bluff permit area for agricultural use. |

Planner: Courtney Campbell

Planning Status

Status Date: May-01-2009

No change

Status Date: Feb-09-2009

no change; waiting for information from applicant

Status Date: Nov-14-2007

Still have not received plans

Rezoning

| File Number | Applicant Name | Date Received | Purpose |
|---|---|---------------|--|
| DE-RZ-2007.2 | Dharma Fellowship of His Holiness the Gyalwa Karmapa Planner: Courtney Campbell | Apr-19-2007 | Meditation retreat centre for short and long-term meditation and teaching retreats |
| Planning Status | | | |
| Status Date: Jun-05-2009 | | | |
| Waiting for information from ALC regarding compliance with their conditional approval of non-farm use | | | |
| Status Date: Apr-30-2009 | | | |
| Lou Varela's contact finished on April 30. File being sent back to office. | | | |
| Status Date: Mar-03-2009 | | | |
| File being reviewed by consultant, site visit to be scheduled. | | | |

| File Number | Applicant Name | Date Received | Purpose |
|---|--|---------------|--|
| DE-RZ-2009.1 | Henning Nielsen Planner: Courtney Campbell | Feb-11-2009 | Restrictive covenant, agriculture, residential, conservation (see file). |
| Planning Status | | | |
| Status Date: Jun-05-2009 | | | |
| Staff working on report to compare current DP area with proposed restrictive covenant on Komasa Bluff | | | |
| Status Date: May-01-2009 | | | |
| Applicant requests that this RZ application and the ALR (incl/exclusion) application are processed concurrently rather than putting the RZ on hold while waiting for the ALC response on the ALR application. | | | |
| Status Date: Mar-02-2009 | | | |
| Staff reviewing file and preparing staff report for April LTC meeting. | | | |

| File Number | Applicant Name | Date Received | Purpose |
|---------------------------------|--|---------------|---|
| DE-RZ-2009.2 | Henning Nielsen Planner: Courtney Campbell | Jun-01-2009 | Transfer of 31 densities from seven Crown parcels slated for inclusion in a new provincial park |
| Planning Status | | | |
| Status Date: Jun-05-2009 | | | |
| Staff reviewing file. | | | |

| File Number | Applicant Name | Date Received | Purpose |
|--------------------|----------------|---------------|---------|
| Subdivision | | | |

DE-SUB-2008.3

Henning Nielsen Apr-24-2008
Planner: Courtney Campbell

To create four parcels.

Planning Status

Status Date: May-01-2009

Application on hold until further notice.

Status Date: Jan-14-2009

No new information. Waiting for proof of potable water and final survey

Status Date: Jun-05-2008

PLA received from Ministry of Transportation

| File Number | Applicant Name | Date Received | Purpose |
|---------------|----------------|---------------|---|
| DE-SUB-2009.1 | Harry Olesen | Apr-23-2009 | to create 2 parcels for residential use |

Planner:

Planning Status

| File Number | Applicant Name | Date Received | Purpose |
|---------------|-----------------|---------------|--|
| DE-SUB-2009.2 | Henning Nielsen | Jun-01-2009 | Subdivide one parcel to create 2 parcels |

Planner:

Planning Status

Siting and use Permit

| File Number | Applicant Name | Date Received | Purpose |
|---------------|-----------------------|---------------|--|
| DE-SUP-2006.7 | Daniel/Debra Stoneman | Aug-31-2006 | Agricultural (including buildings consistent with ALR legislation) |

Planner: Courtney Campbell

Planning Status

Status Date: Jan-08-2009

On hold pending outcome of court case

| File Number | Applicant Name | Date Received | Purpose |
|----------------|---------------------|---------------|--|
| DE-SUP-2008.11 | Patricia McLaughlin | Jun-12-2008 | Work shed - to store equipment (tools, etc.) and outdoor furniture when not in use. 3.1 metres x 3.7 metres (10' x 12'); ceiling height - 8', peak of gable - 12'. |

Planner: Courtney Campbell

Planning Status

Status Date: May-01-2009

Legal council preparing indemnification agreement

Status Date: Jan-15-2009

Require signatures of all property owners in Komas development. Signatures not being provided. Seeking legal options on this matter.

| File Number | Applicant Name | Date Received | Purpose |
|---------------|----------------------------|---------------|---|
| DE-SUP-2009.3 | Wendy Phillips (Wright) | Apr-22-2009 | Build an addition to cottage that will include a bathroom with indoor composting toilet, bedroom and storage. Height of ridge will be about 16' or 4.9 m above grade. |

Planner: Marnie Eggen

Planning Status

| File Number | Applicant Name | Date Received | Purpose |
|---------------|-----------------|---------------|--|
| DE-SUP-2009.4 | Peter Backhouse | May-27-2009 | one residence, one workshop and one shed |

Planner:

Planning Status



STAFF REPORT

Date: June 2, 2009

File No.: DE/04-1-I

To: Denman Island Local Trust Committee

From: Courtney Campbell, Island Planner

CC: Chris Jackson, Acting Regional Planning Manager

Re: Local Trust Committee Sponsored Rezoning Applications of Historic Co-operatives

1. BACKGROUND:

The Denman Island Local Trust Committee (LTC) has identified the sponsorship of rezoning applications for historic co-operatives as part of the Official Community Plan and Land Use Bylaw Targeted Review project. There are several properties on Denman Island with co-operative land ownership that have existed for many years, and that have a legally non-conforming number of dwellings. Multiple dwellings may have been permitted on their property at the time of construction, but subsequent bylaws have limited the number of dwellings so that they no longer conform to the current bylaw.

Section 4.1(xiii) of the Islands Trust Policy Manual permits a local trust committee to initiate and sponsor a development application "Where a local trust committee has made an error (e.g. as part of a bylaw consolidation) in assigning an appropriate designation or land use regulation to a specific property and moves to correct the error." In this case the changing of the number of dwellings permitted on a lot without recognizing the historic densities of existing dwellings in the bylaw is considered an error of the local trust committee and should owners of these co-operatives wish to apply for rezoning, the application can be sponsored by the LTC and the fee waived.

Although the LTC wishes to sponsor the application for rezoning of these historic co-operatives, the owners of the co-operatives themselves must make application to the LTC. The purpose of this staff report is to present the background, process and timeline for the project so that it can be advertised to the community. Once applications are received, subsequent staff reports will provide a detailed planning analysis for each property.

2. CURRENT PLANNING STATUS OF SUBJECT LANDS:

Four properties have been identified as legally non-conforming co-operatives that may qualify for this LTC sponsored rezoning. There could be others that we are not aware of and they are encouraged to contact Islands Trust staff to determine if they would also qualify.

Table 1: Properties that may be eligible for rezoning

| Location | Legal Description | Lot size | Current Zoning |
|--------------|---|-------------------------------|----------------|
| 2550 Lake Rd | The west ½ of the SE ¼ of section 27, except parcels A and B and except part in plan VIP68873 | 41.6 acres (16.8 hectares) | A |
| 3640 Lake Rd | The SE ¼ of Section 26 | 160 acres (64.8 hectares) | R2 and A |
| 3843 Wren Rd | Parcel A (DD84520I) of the SE ¼ of Section 27 | 19.5 acres (7.9 hectares) | R2 and A |
| 1795 Swan Rd | Lot A, Section 16 and 23, Plan 23870 | 50.7 acres (20.5 hectares) | A |

2.1 Islands Trust Policy Statement:

The Islands Trust Policy Statement does not specifically address a rezoning to bring legally non-conforming properties into conformity. Each individual application will be considered with respect to the Islands Trust Policy Statement in a subsequent staff report or reports.

2.2 Denman Island Official Community Plan Bylaw No. 185, 2009

The Official Community Plan (OCP) may require amendment to bring these historic co-operatives into conformity. Further analysis will be given when individual applications are received.

Section E.1, Policy 29 states that:

The Local Trust Committee should consider zoning amendment applications to bring into conformity legal non-conforming dwelling units that were in existence and were deemed to be legal non-conforming on the date of adoption of this Plan provided that the applicant provides written proof, to the satisfaction of the Denman Island Local Trust Committee, that the dwelling units were constructed prior to the date of adoption of this Plan in accordance with the land use bylaw in effect at the time of construction.

2.3 Land Use / Zoning Bylaw

As a starting point to assist property owners in preparing their application and staff who will have to assess each application, below is a summary of bylaw changes regarding permitted density of dwellings, followed by a more detailed listing of each bylaw.

Table 2: Summary of bylaw changes regarding permitted density of dwellings

| | |
|----------|--|
| Pre-1972 | No regulation existed for the number of dwellings per lot. |
| 1972 | One dwelling per 5 acres (2 hectares) was permitted with no maximum number of dwellings per lot. |
| 1976 | The minimum area per dwelling was raised to 10 acres (4 hectares) with a maximum of 5 dwellings per lot. In addition, one guest dwelling of up to 400 square feet was permitted on lots of 2 acres (0.8 hectares) or larger. |

| | |
|------|---|
| 1984 | The maximum number of dwellings per parcel was removed. |
| 1990 | Additional zones were created: the Residential zone allowed only one dwelling per lot, the minimum lot area per dwelling in the Rural Residential zone remained at 10 acres (4 hectares) and the minimum lot area per dwelling in the Rural Resource zone was raised to 37 acres (15 hectares). There was still no maximum number of dwellings per lot. Guest dwellings were no longer permitted. |
| 1992 | Multiple dwellings were permitted in the Residential zone at one dwelling per hectare (2.47 acres) to a maximum of 5 dwellings per lot. |
| 2002 | The Resource Residential zone was removed and Agriculture (A), Forestry (F) and Resource (RE) zones were created. The maximum number of single family dwelling units per lot in all of these zones was set at 1 (one). |
| 2009 | Number of dwellings permitted in the Agriculture (A) zone changed from 1 per lot to 1 per 15 hectares. |

1972: Regional District of Comox-Strathcona Bylaw No. 89 “Denman Island Zoning By-law, 1972”

Most of Denman Island was zoned Rural with the exception of small areas zoned Commercial and Industrial.

Part 601 – Permitted in the Rural zone are:

- (2) One or two family residential buildings where no more than one (1) or two family residential building is provided for each five (5) acres of lot area.*

1976: Amendment By-law No. 193 (Comox-Strathcona Regional District):

Part 6, section 601(2) is repealed and replaced with:

- (2) One only guest dwelling up to 400 square feet of floor area, where the lot area is two (2) acres or more.*

Part 6, section 601 is amended by adding the following clause (3):

- (3) where a lot exceeds 10 acres in area, one additional single family dwelling shall be permitted for each 10 acres of lot area thereafter, up to a maximum of 5 single family dwelling units per lot and provided that such dwellings shall not be sited so as to prohibit future subdivision.*

1979: Amendment By-law No. 8 (Denman Island Trust Committee):

Part 6, section 601 is amended by adding a subsection (4) as follows:

- (4) Where a lot is within Subdivision District ‘A’ under “Denman Island Subdivision Control By-law, 1972” as amended and such lot exceeds 10 ha in area, one additional single family dwelling shall be permitted for each 10 ha of lot area thereafter, up to a maximum of five (5) single family dwelling units per lot and provided that such dwellings shall not be sited so as to prohibit future subdivision.*

Part 6, Section 601(3) is amended by adding after the last word in the sub-section the words "subject to Section 601(4)".

Note: All four of the properties identified as historic co-operatives that may be eligible for this rezoning were within Subdivision District 'A' under Denman Island Subdivision Control By-law, 1972.

1984: Denman Island Trust Committee Zoning By-law No. 24, 1984:

In the R zone (Rural):

Section 30(a) The following uses and no others are permitted in an R Zone:

- ii) one guest dwelling auxiliary to a principal dwelling where the parcel area exceeds 0.8 hectares (2 acres);*
- iii) on a parcel having an area exceeding 1 hectare (2.47 acres) and located within Subdivision District "C" defined under Denman Island Subdivision Control Bylaw, 1972, one additional single family dwelling for each additional 1 hectares (2.47 acres) of parcel area.*
- iv) on a parcel having an area exceeding 4 hectares (9.88 acres) and located within Subdivision District "B" defined under Denman Island Subdivision Control By-law, 1972, one additional single family dwelling for each additional 4 hectares (9.88 acres) of parcel area.*
- v) on a parcel having an area exceeding 10 hectares (24.7 acres) and located within Subdivision District "A" defined under Denman Island Subdivision Control By-law, 1972, one additional single family dwelling for each 10 hectares (24.7 acres) of parcel area*

1990: Denman Island Land Use Bylaw No. 40, 1989

Repealed the "Denman Island Zoning Bylaw No. 24, 1984" and the Denman Island Subdivision Control Bylaw, 1972".

Accessory cottages were no longer allowed.

Created new zones with the following permitted densities:

Residential: one dwelling unit per lot

Rural Residential: one dwelling unit per lot plus one dwelling unit for each additional 4 hectares of lot area

Rural Resource: one dwelling unit per lot plus one dwelling unit for each additional 15 hectares of lot area

1992: Denman Island Land Use Bylaw No. 65, 1992

Repealed the "Denman Island Land Use Bylaw No. 40, 1989.

Contained the following zoning regulations pertaining to density:

Residential: one dwelling unit per parcel of one hectare or less in area plus one dwelling unit for each additional one hectare of parcel area up to a total of 5 dwelling units per parcel

Rural Residential: unchanged from Bylaw no. 40 but clarified that one dwelling unit is permitted on lots of 4 hectares or less.

Rural Resource: unchanged from Bylaw no. 40 but clarified that one dwelling unit is permitted on lots of 15 hectares or less.

2002: Denman Island Land Use Bylaw No. 148, 2002

Repealed the “Denman Island Land Use Bylaw No. 65, 1992

Contained the following zoning regulations pertaining to density:

Residential: unchanged from Bylaw No. 65

Rural Residential: unchanged from Bylaw No. 65

The Resource Residential zone was removed, and Agriculture (A), Forestry (F) and Resource (RE) zones were created. The maximum number of single family dwelling units per lot was set at 1 (one).

2009: Denman Island Land Use Bylaw No. 186

Repealed the “Denman Island Land Use Bylaw No. 148, 2002”

Changed the number of dwellings permitted in the Agriculture (A) zone from 1 per lot to 1 per 15 hectares

2.4 Legally Non-Conforming Status – Section 911 of the *Local Government Act*

Section 911 of the *Local Government Act* should be read in its entirety, but copied below are excerpts thought to be particularly relevant to the application of historic co-operatives. In summary, the following points are made:

- In order to have legally non-conforming status, the use cannot be discontinued for a period of 6 months in a row. However, normal seasonal practices that would cause the use to be discontinued for more than 6 months are acceptable.
- A structural alteration or addition is not permitted except as allowed by a board of variance.
- A change of owners or tenants does not affect the legally non-conforming status.

Excerpts from section 911 of the Local Government Act:

- (1) *If, at the time a bylaw under this Division is adopted,*
(a) *land, or a building or other structure, is lawfully used, and*
(b) *the use does not conform to the bylaw,*

the use may be continued as a non-conforming use, but if the non-conforming use is discontinued for a continuous period of 6 months, any subsequent use of the land, building or other structure becomes subject to the bylaw.

- (2) *The use of land, a building or other structure, for seasonal uses or for agricultural purposes is not discontinued as a result of normal seasonal or agricultural practices, including*

- (a) *seasonal, market or production cycles,*
(b) *the control of disease or pests, or*

(c) the repair, replacement or installation of equipment to meet standards for the health or safety of people or animals.

(5) A structural alteration or addition, except one that is required by an enactment or permitted by a board of variance under section 901(2), must not be made in or to a building or other structure while the non-conforming use is continued in all or any part of it.

(7) For the purposes of this section, a change of owners, tenants or occupants of any land, or of a building or other structure, does not, by reason only of the change, affect the use of the land or building or other structure.

3. TIMELINE AND PROCESS:

This project is part of a larger “Official Community Plan / Land Use Bylaw Targeted Review” that is planned for completion by adoption of bylaw amendments by the fall of 2011. In order to allow time for property owners to prepare their applications, and time for staff analysis and the rest of the bylaw amendment process, advertisement to the community should begin as soon as possible. Below is a suggested timeline for the project that correlates with the draft timeline in the staff report dated April 1, 2009 for the OCP/LUB targeted review:

| | |
|----------------|--|
| July, 2009 | Advertisement to community |
| November, 2009 | Deadline for receipt of applications |
| March, 2010 | First staff report or reports to LTC |
| Summer 2010 | Prepare draft bylaws |
| Winter 2010/11 | First reading and agency referrals |
| Spring 2011 | Second reading, public hearing, third reading, forward to EC |
| Fall 2011 | Final adoption |

4. ISSUES SUMMARY

- a) Onus of proof
- b) Qualifying properties
- c) Method of advertising

6. STAFF COMMENTS:

- a) **Onus of Proof:** The applicants will be required to prove that the dwelling or dwellings they believe to be legally non-conforming existed at the relevant date when they were permitted, and that their use has not been discontinued for a continuous period of more than 6 months or was used seasonally. The evidence of previous and current owners of the property can normally be relied on, as can the evidence of neighbours.
- b) **Qualifying properties:** Staff is unclear whether the four properties identified as historic co-operatives with legally non-conforming dwellings are the only ones that should be considered, or if there may be others we are not aware of. This will have an impact on the method of advertising.

- c) **Method of advertising:** In order to make owners of relevant properties aware of this opportunity, advertisement should go to the community. This could be a targeted mail-out to the owners of the four properties believed to qualify for this LTC sponsored rezoning, and/or could include advertisement in the newspaper, or other methods as the LTC wishes. Advertisement will include a staff contact, and staff will be available to assist applicants to ensure their application is complete.

7. SUMMARY OF OPTIONS:

At this point the LTC is asked to determine the desired method of advertising, and direct staff to prepare and post / mail advertisements.

RECOMMENDATIONS:

Based on the above considerations, Staff recommends that the Denman Island Local Trust Committee:

1. Instruct staff to advertise in the local newspaper the opportunity for historic co-operatives with legally non-conforming dwellings to apply for Local Trust Committee sponsored rezoning; and,
2. Instruct staff to conduct a mail-out to the property owners of the four historic co-operatives identified as having legally non-conforming dwellings.

Respectfully submitted by:



Courtney Campbell, Island Planner

June 5, 2009

Date of signature

Concurred in by:

Chris Jackson

Acting Regional Planning Manager

June 4, 2009

Date of signature



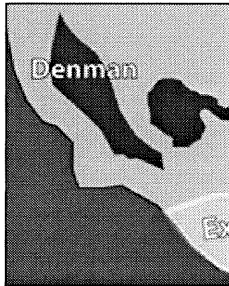
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Population:
Approximately 1,095

Size:
5,108 hectares (12,622 acres)

Location:
22 kilometres south-east of Courtenay on Vancouver Island.

Denman Island Local Trust Committee

Latest News

In this section you will find current news items that are relevant to your Local Trust Area and your community. [Subscribe](#) to the Denman Island Latest News updates and receive the latest information on official community plan reviews, staff reports, notifications and other documents published in the latest news section.

May 2009

- [New Land Use Bylaw and Official Community Plan Adopted May 15, 2009](#)

February 2009

- [Housing Needs Assessment on Hornby and Denman Island - Final Report](#)

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Projects, Bylaw Reviews and Reports

In this section you will find current Local Trust Committee projects specifically related to the island area.

Land Use and Development Information

- [Denman Island Development Permit Brochure](#)
- [Regulation of Land Use on Denman Island](#)
- [Denman Island Siting and Use Permit Brochure](#)

Agricultural Land Commission Application for (The Point) DE-ALR-2009.1

- [DE-ALR-2009.1 \(The Point\) Staff Report dated May 1, 2009](#)

Rezoning Application for (The Point) DE-RZ-2009.1

- [Geotechnical Report 44211-N on the Komas Bluffs \[PDF 6 MB\]](#)
- [DE-RZ-2009.1 \(The Point\) Preliminary staff Report dated April 1, 2009](#)
- [DE-RZ-2009.1 \(The Point\) Second Staff Report dated May 1, 2009](#)
- [Rezoning Application Form Submitted by Applicant](#)

Rezoning Application for Dharma Fellowship Society DE-RZ-2007.2

- [Staff Report dated June 25, 2007](#)

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