



# STAFF REPORT

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February 1, 2011

File No.: MA/

To: Mayne Island Local Trust Committee

From: Alison Fox  
Planner 2  
Local Planning Services

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Re: **Development Permit Process Briefing**

## **PURPOSE:**

At the November 1, 2010 Local Trust Committee (LTC) meeting, the Mayne Island LTC requested that staff bring a briefing on the development permit process to the next meeting. This was in response to an inquiry from a member of the public on the process and enforcement of development permit requirements. The purpose of this report is to outline the legislative purpose and authority of development permits and to clarify the process for implementing the requirements of development permits.

## **LEGISLATIVE BACKGROUND:**

Under s. 919.1 of the Local Government Act (LGA), a local government may designate development permit areas in an official community plan for the purposes of:

- a) protection of the natural environment, its ecosystems and biological diversity;
- b) protection of development from hazardous conditions;
- c) protection of farming;
- d) revitalization of an area in which a commercial use is permitted;
- e) establishment of objectives for the form and character of intensive residential development;
- f) establishment of objectives for the form and character of commercial, industrial or multi-family residential development;
- g) in relation to an area in a resort region, establishment of objectives for the form and character of development in the resort region;
- h) establishment of objectives to promote energy conservation;

- i) establishment of objectives to promote water conservation;
- j) establishment of objectives to promote the reduction of greenhouse gas emissions.

The Mayne Island OCP currently designates development permit areas for the purposes of the establishment of objectives for the form and character of commercial, industrial and intensive residential development.

Development permits cannot alter the use or density that is allowed by the zoning of the property. They may only be used to guide how the permitted level of development occurs.

### Guidelines

Section 9.19(2)(b) of the LGA requires local governments to provide guidelines for how the objectives of a development permit area should be met. These guidelines are crucial to the development permit process, as they form the basis for the requirements and conditions that are included in the permit. The scope of the guidelines determines the extent to which the local government can impose requirements and conditions on a developer. The guidelines should be clear and specific enough to provide certainty to an applicant of the criteria to be met in order to obtain a development permit.

Conditions in development permits must be related to guidelines of the development permit area. Permits which do not comply with the guidelines or which impose additional conditions beyond what the guidelines specify, must not be issued. Conversely, permit which meets the guidelines must be issued by the local government.

### Timing and Phasing

Conditions regarding the timing and phasing of development can be built into development permits, but only where guidelines exist specifying how permit conditions could be drafted to meet requirements of timing and/or phasing. This is a rarely used power under the authority to issue development permits, likely due to the difficulty of drafting general guidelines for something which tends to be very site specific<sup>1</sup>.

Permits lapse after a period of two years unless work is begun prior to the expiry date. Once work has begun, there is no requirement regarding the time to completion of the project, unless conditions have been included in the permit regarding timing and phasing of development.

### Requirement for Security

A local government may require that a permit applicant provide security in the form of a letter of credit or a deposit of securities in a form satisfactory to the local government. However, the circumstances for which a local government can require and apply the security are limited by subsection 925(2) of the Local Government Act. These circumstances are:

- (a) a condition in a permit respecting landscaping has not been satisfied,

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<sup>1</sup> Buholzer, W. British Columbia Planning Law and Practice

- (b) an unsafe condition has resulted as a consequence of contravention of a condition in a permit, or
- (c) damage to the natural environment has resulted as a consequence of a contravention of a condition in a permit.

Security cannot be required to simply ensure completion of a development. The requirement for security must be a condition of the development permit. The amount of the security may be contained within the development permit conditions, or may be included in the resolution which authorizes the issuance of the permit.

### Enforcement

Under s. 928(2), land must be developed strictly in accordance with the permit issued. If a developer wishes to deviate from the approved permit, then a permit amendment must be applied for. As plans may necessarily change slightly during the course of construction, in order to prevent a situation where a developer must return to the LTC for every minor adjustment, permits are often worded that development must be “substantially in accordance” with the permit or plans attached to and forming part of the permit.

Some permits previously issued by Islands Trust contain wording that certain conditions must be met prior to issuance of an occupancy permit by a building inspector. This was done in the past to ensure that Islands Trust development permit conditions are met prior to occupancy of buildings or units. However, experience has shown that the building inspector is unlikely to withhold an occupancy permit due to outstanding conditions that are not related to the Building Code.

Ultimately, the main tool for enforcing development permit conditions is bylaw enforcement. Bylaw enforcement may occur during development if construction is clearly proceeding in a manner contrary to the permit, but may also occur after the initial development if additions or changes are made that are contrary to the permit.

### **CONCLUSION:**

Development Permits are tools that can be used to guide how development occurs on a particular property. They cannot be used to alter the permitted use or density on a property. Conditions regarding timing and phasing of development may only be included in a permit if the Development Permit Area guidelines allow these requirements to be included. Security may be required in some specific instances to guarantee performance of the permit, but cannot be required in order to ensure completion of development within a specific time frame. The most appropriate mechanism for enforcing permit conditions is regular bylaw enforcement.

### **RECOMMENDATIONS:**

**THAT** the Mayne Island Local Trust Committee receive this report for information.

Prepared and Submitted by:

*Alison Fox*

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Alison Fox

February 1, 2011

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Date

Concurred in by:

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Date