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**To:** Executive Committee                      **For the Meeting of:** November 18, 2020  
**From:** CAO                                      **Date Prepared:** November 12, 2020  
**SUBJECT:** Potential legislative and procedure change by the Islands Trust in relation to forest protection

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**PURPOSE:** For Executive Committee to receive an initial report reviewing the recommendations of the Raincoast Conservation Foundation received at the September 2020 Trust Council meeting and to consider any recommendations to further any potential policy reform.

**BACKGROUND:**

Following the presentation at Trust Council in September by Raincoast Conservation Foundation, Trust Council made the following motion(s).

*THAT Executive Committee reviews the recommendations of Raincoat Conservation Foundation regarding the policy reform to protect endangered forests and habitats within the Islands Trust Area and provide recommendations to Trust Council.*

*THAT the Islands Trust Council request the Province enhance the Trust's jurisdiction over tree cutting bylaws to make its jurisdiction equal to that of municipalities under Section 8 of the Community Charter.*

Those recommendations were included in the package provided by RainCoast to the meeting in September, and generally consist of the following:

1. Establish Development Permit Areas to protect forest ecosystems and regulate forest practices on private lands
2. Seek enforceability of Development Permits
3. Pursue the implementation of tree cutting permits and forest management regulations.
4. Use zoning (i.e. Conservation Zoning) as a way to regulate tree removal and retention on private lands.
5. Continue to pursue and support other tools available for "protecting and preserving the islands unique amenities and environment"

Several of these policy requests generally are associated with or directly relevant to current and ongoing strategic initiatives of the Island Trust. A brief review of each of the recommendations follows:

- 1. Establish Development Permit Areas to protect forest ecosystems and regulate forest practices on private lands**

The Islands Trust currently has the authority to protect forest ecosystems through the use of development permits. Currently there are forestry DPAs in the Galiano Island and North Pender Island Local Trust Areas. There are however limitations associated with how comprehensive the level of protection can be in the application of DPs to regulate forestry.

In 1997 the Islands Trust lost the case, Denman Island vs 4064 Company. In this matter the LTC established a DP area to protect forest areas and included a specific regime for tree cutting. The landowner challenged the DP, stating that the Trust did not have the authority to regulate forestry on a general landscape level. The courts agreed. Since then the Trust has had more confidence in establishing DPs for very specific forest elements, for instance stands of Gerry Oak or Douglas-fir. Galiano Islands LTC has a general development permit area that covers the island, but has exemptions for certain development and land in Private Managed Forest Land Reserve (PMFL). North Pender LTC has a woodland development permit area to protect woodland strands on the island, with exemptions for certain types of development, and land in PMFL.

Since this ruling, the Province established the Forest Land Reserve (FLR) and then subsequently converted that into Private Managed Forest Land (PMFL), which further protected forestry activities on forest designated lands. Accordingly, to best address the authority to prescribe effective DPs, some accommodation from the current PMFL regime would be needed.

The Islands Trust is currently in discussions with the Ministry of Forests, Lands and Natural Resource Operations and Rural Development (FLNRO), to seek some ability for the Islands Trust and LTCs to have authority over PMFL. Following the meeting between the Executive Committee and with the Minister in September 2020, the Trust shared documentation on how the PMFL Act could be amended to our satisfaction. We await significant uptake on our proposal.

The University of Victoria's Environmental Law Centre opinion provided by Raincoast Conservation Foundation seeks another route, that being amendment of S 29 of the Islands Trust Act to allow LTCs to comprehensively use DPAs to protect forestry areas. This would be a special request given the unique nature of the Islands Trust, as the intention would not be to extend this authority to Regional Districts. This approach could be researched more fully vs other options described in this report, for viability.

Next action: Further review by staff on viability of amendment of S 29 with a referral to Regional Planning Committee.

## **2. Seek enforceability of Development Permits**

This matter is currently under significant discussion with the Ministry of Municipal Affairs and Housing as part of the suite of amendments to the Islands Trust Act that the Islands Trust requested in 2018 and following the Islands Trust's [UBCM resolution](#) endorsed by UBCM in 2019. We are at an impasse at this time. They indicate that we have the right to enforce development permits via municipal ticketing authorities, whereas staff consider we would have legal vulnerability if we proceeded. Further discussion with the Ministry is scheduled once a Minister has been appointed. At that point the Islands Trust will need to decide whether it initiates a ticketing scheme, with the attendant legal jeopardy, or seeks further legislative changes. AS UBCM endorsed the resolution in support of this initiative, they may be an ally in advocating on this provincially significant issue.

Next action: continued negotiation with the Ministry of Municipal Affairs as part of legislative change.

- 3. Pursue the implementation of tree cutting permits and forest management regulations.** At the September meeting, Trust Council also passed the following specific motion:

*THAT Islands Trust request the Province enhance the Trusts jurisdiction over tree cutting bylaws to make its jurisdiction equal to that of municipalities under Section 08 of the Community Charter.*

This is explicit direction for the Islands Trust to move forward with advocacy for legislative change to achieve this outcome. This request came during the 2020 Provincial Election period, during which there are no Provincial Ministers. Accordingly staff have written to Ministry staff outlining the request and asking for further meetings to provide detail and indicating that a letter from the Chair would be forthwith to the new Minister. Ministry staff indicated that they look forward to receiving a formal request from the Islands Trust, that the matter of tree cutting is historically complex within the Trust Area and that the current municipal authority is directed towards tree cutting in urban environments. By the time Trust Council meets in December the letter to the Minister should have been sent.

Executive Committee will recall that this request was considered by the last Trust Council as a possible legislative change, however, it was removed as an option based at Trust Council direction. While achieving a similar authority to municipalities under S 8 of the Community Charter would provide an expansion of the ability of LTCs to protect forest lands, Division 7 of the Charter also provides for exclusions (in the municipal context) for woodlots and PMFL, which may have the effect of having us back where we started. It is likely that the Ministry will request more detailed explanation of the Islands Trust's goals and objectives and specific desired authorities if this proceeds.

See Appendix A for a more detailed discussion of this option.

- 4. Use zoning (i.e. Conservation Zoning) as a way to regulate tree removal and retention on private lands**

There remains opportunities for the use of zoning as protection measures throughout the Trust Area. The current Policy Statement amendment process has the potential to inform OCP amendments and further the ability to use this type of zoning to protect forest lands. Generally, if downzoning is implemented to protect areas of ecological value on private property that restricts the use of land to a public use without the landowner's agreement, there is the possibility of compensation being provided. Landowner agreements avoid the need for compensation and can be realized through conservation covenants, or agreement at the time of a zoning amendment.

Next Action: referral of the issue of conservation zoning to the Regional Planning Committee and Trust Programs Committee for consideration and recommendations to incorporate into a greater number of OCPs.

- 5. Continue to pursue and support other tools available for "protecting and preserving the islands unique amenities and environment"**

This recommendation is central to the ongoing Policy Statement amendment project and the current Strategic Plan which is providing increased focus on model bylaws and a more comprehensive adoption process by LTCs than has been seen in the past. This issue of balancing Trust Council powers with respect to progressive land use policy with the regulatory function of LTCs is a long standing matter at the Trust and this is a current conversation for the working groups of Trust Programs Committee. The Strategic Plan includes the activity: Amend legislation to increase the percentage of the Natural Area Protection Tax Exemption Program (NAPTEP) to act as an incentive for the protection of forest cover for climate change mitigation and adaptation in the Islands Trust Area.

Next action: Initiate conversations with Ministry of Finance staff about potential amendments to the NAPTEP regulation.

Next action: Continue to support Trust Program Committee's stewardship education program and improvement to communications to help the public understand their role in preserving and protecting

Next action: Continue to support the Conservancy Board in raising awareness about land protection options.

**ATTACHMENT(S):**

1. Discussion paper with regard to requesting legislative change to allow for tree cutting regulation

**FOLLOW-UP:** Staff will continue to work on the 'next action' activities noted above.

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**Reviewed By/Date:** David Marlor, Director, Local Planning Services/ November 12, 2020  
Clare Frater, Director, Trust Area Services/November 13, 2020

# APPENDIX A

## TREE PROTECTION BYLAW AUTHORITY: LEGISLATIVE CHANGE

### Discussion Paper

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This paper reviews, at a high level, key considerations for requesting legislative change to allow the Islands Trust to regulate tree cutting throughout the Trust Area.

**Amendment sought:** Change in regulation by order-in-council. Lieutenant Governor in Council may make s. 8(3)(c) of the Community Charter apply to LTCs under s.53(2)(j) of the Islands Trust Act.

#### Enabling Legislation:

- 1) Under Section 8(3)(c) of the *Community Charter*, municipal councils have the fundamental power to “by bylaw, regulate, prohibit, and impose requirements in relation to .... trees.”
- 2) Division 7 Community Charter— Authority in Relation to Trees

#### Restrictions in relation to authority

50 (1)A bylaw under section 8 (3) (c) [*spheres of authority — trees*] that is in relation to the protection of trees does not apply to the following:

(a) land and the trees on it if forestry practices on the land are governed by a tree farm licence, permit or other authority or tenure under the *Forest Act*;

(b) land and trees on it if section 21 of the *Private Managed Forest Land Act* applies to the land;

(c) tree cutting or removal that is undertaken by a utility, on land owned or held by the utility, and done for the purpose of safety, maintenance or operation of the utility's infrastructure.

(2) Subject to subsection (3), if a bylaw under section 8 (3) (c) would have the effect on a parcel of land of (a) preventing all uses permitted under the applicable zoning bylaw, or (b) preventing the development to the density permitted under the applicable zoning bylaw, the bylaw does not apply to the parcel to the extent necessary to allow a permitted use or the permitted density.

(3) A bylaw referred to in subsection (2) applies without limit to a parcel if the council, by resolution, commits the municipality to (a) pay compensation to the owner of the parcel for any reduction in the market value caused by the prohibition, or (b) provide, by development permit, development variance permit or otherwise, alternative means for the parcel to be used for a permitted use or developed to the permitted density.

(4) For the purposes of subsection (3), (a) the compensation must be as determined and paid as soon as reasonably possible in an amount set by agreement between the owner and the municipality or, if no agreement is

reached, by the Supreme Court, and (b) the council may issue a development permit or development variance permit on its own initiative without an application from the owner.

The preceding sections of the Community Charter provide limits to municipal power to regulate trees with regard to lands under the Forest Act, woodlots and PMFL. They also provide instances for compensation associated with any change in designation that results in a market value.

### **Background:**

Prior to 1999, all local governments (including municipalities, regional districts and the Islands Trust) were limited in their powers to regulate tree removal to only those areas considered hazardous. After 1999, amendments to the *Municipal Act*, *BC Community Charter*, and *BC Local Government Act (LGA)* provided municipalities (only) with the authority under Section 8 (3) (c) of the *Community Charter*, to regulate or prohibit the cutting and removal of trees on any land within the municipality.

While municipalities were granted a fundamental power to protect, prohibit and regulate the removal of trees, regional districts and the Islands Trust remained limited in their authority, as follows:

- Section 500 of the *LGA* – a board (or local trust committee) may, by bylaw, regulate tree or prohibit tree removal in areas of land which they consider “may be subject to flooding, erosion, land slip or avalanche”; and
- Section 527 of the *LGA* – local governments may, by bylaw, “require, set standards for and regulate the provision of screening or landscaping for one or more of the following purposes: (a) masking or separating uses; (b) preserving, protecting, restoring and enhancing the natural environment; and (c) preventing hazardous conditions.”
- Section 488 of the *LGA* – Designation of Development Permit Areas in an OCP; a development permit may be required for the alteration of land (including tree cutting) in a DPA designated for any of the following purposes:
  - (b) Protection of the natural environment, its ecosystems and biological diversity;
  - (b) Protection of development from hazardous conditions;
  - (d) revitalization of an area in which a commercial use is permitted;
  - (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.

Islands Trust local trust committees generally exercise their authority through the designation of Development Permit Areas (DPAs) for the purpose of protecting development from hazardous condition (e.g. Denman Komas Bluff DPA) or protection of the natural environment, ecosystems and biodiversity (e.g. Galiano Tree Cutting and Removal DPA). They may also include landscaping and screening provisions within their land use bylaws (e.g. Lasqueti *Riparian Areas Regulation* implementation). There is a further opportunity for local trust committees to leverage their DPA powers to protect trees for the purposes of energy conservation, water conservation and GHG emissions reduction.

## **1. Benefit to the Islands Trust**

The question arises as to what greater benefit could be derived from granting the Islands Trust the same authority as a Municipality under Section 8 (3) (c). While local trust committees may currently adopt tree cutting bylaws in relation to hazardous land or for screening, they do not have the same broad discretion as municipalities. In addition to the ability to regulate tree removal in hazardous areas as per s. 500 of the *LGA*, to regulate screening or landscaping for the purposes noted in s. 527 of the *LGA*, and to designate DPAs which may result in tree protection, the broader power to protect, prohibit or regulate the removal of trees could provide the following benefits:

- Greater control during site development (e.g. establishment of requirements for a minimum treed area or specification of types of trees to be planted, or requirement for disturbed areas to be replanted);
- The ability to regulate the volume or rate of tree removal (e.g. general permission to landowners to remove two trees per year);
- The ability to protect specific varieties of trees, wildlife trees, heritage or culturally-significant landmark trees;
- The ability to require compensation for trees that are removed either through tree replacement or through financial compensation; and
- Greater control over the visual appearance or rural aesthetic qualities of islands, which is intrinsically related to both islanders' quality of life and local economics (i.e. tourism, the arts, recreation, etc.).

## **2. Costs of change, including general resource considerations.**

Provided local trust committees would wish to adopt tree protection bylaws, this would require a community consultation process. Such bylaws should reflect community goals and objectives for tree protection and, more broadly, conservation. Community consultation would logically be led by Islands Trust planners or consultants.

Once adopted, tree protection bylaws would need to be administered by Islands Trust staff. This would ideally include a certified arborist to review tree permits and to conduct any necessary inspections prior to or following tree removal or planting. On the applicants' side, it is anticipated that professionals such as arborists or foresters would need to be retained in order to advise on tree health assessment, and removal, retention and replanting options and plans.

Furthermore, tree protection bylaws would require a combination of education and enforcement in order to be effective.

## **3. Risks or challenges of change.**

A significant challenge would be obtaining public buy-in regarding the adoption of tree protection bylaws. Many islanders believe that they are already good stewards of their land and do not wish to have further regulations imposed upon them. Particular challenges would need to be overcome dealing with waterfront property owners with property rights as they relate to their ability to maintain views as justified by their property values and taxes.

In unserved areas such as Lasqueti Island, there is a particular challenge related to the use of trees as a source of heat energy. It is expected that many islanders would be opposed to a tree protection bylaw that would limit their ability to cut trees for firewood.

There is a risk that if tree protection bylaws are proposed, this may have the unintended consequence of land-clearing where property owners attempt to beat the clock by cutting their trees before they need to apply and pay for a permit.

There is also a challenge with enforcement of tree protection bylaws. It should be expected that bylaw violation complaints would rise in response to illegal cutting or clearing. In some cases, it may be challenging for Islands Trust staff to follow-up on bylaw complaints due to the remoteness of some islands or because of perceived personal safety risks.

#### **4. How this change would affect others**

As regional districts, like the Islands Trust, do not have broad tree protection powers, it is likely that a legislative change for the Islands Trust would also necessitate similar consideration for regional districts. To avoid this conflict a case would need to be made that the Islands Trust Act and the Trust Object make extension of this authority a unique and ultimately beneficial outcome for the region and all British Columbians.

#### **5. How it relates to the Object of the Trust, our mandate and our current authorities.**

The proposed authority supports the Islands Trust Object, implementation of the Policy Statement and local trust committee official community plans, and would supplement current authorities provided by the Act. Despite the implementation logistics indicated in this report, the actual granting of authority is straightforward, and certainly defensible as furthering the Object of the Islands Trust.