



The Islands Trust Object: Past, Present, and Future

Policy Statement Amendment Project Discussion Paper

March 2021 Trust Council Meeting

*This discussion paper, prepared by Trust Area Services,
and reviewed by Trust Programs Committee and Executive Committee,
is meant to inform the March 2021 full-day Trust Council session
on the Islands 2050 Policy Statement Amendment Project.*

ACKNOWLEDGMENT

The Islands Trust acknowledges that the Islands Trust Area is located within the treaty and territorial lands and waters of the BOKÉCEN, Cowichan Tribes, Halalt, Xwémalhkwu, K'ómoks, Klahoose, Ts'uubaa-asatx, Lək' wəŋən (SXIMELEŁ, Songhees, T'Sou-ke), Lyackson, MÁLEXEŁ, Penelakut, Qualicum, Scia'new, səlilwətaʔt, SEMYOME, shíshálh, Snaw-naw-as, Snuneymuxw, Skwxwú7mesh, SÁÁUTW, Stz'uminus, Tla'amin, scəwáθən məsteyəx^w, We Wai Kai, Wei Wai Kum, WJOŁEŁP, WSIKEM, and x^wməθk^wəyəm.

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EXECUTIVE SUMMARY

This discussion paper aims to support a comprehensive March 2021 Trust Council discussion on key questions pertaining to the Policy Statement Amendment Project. Trust Programs Committee (TPC) has identified a list of questions where feedback from all trustees is desired to support the amendment drafting process. This discussion paper intends to provide relevant historical context and current analysis to support an informed and fulsome Trust Council discussion on key questions relating to Trust Object interpretations, the regional/local balance of policy directives, preliminary recommendations from the TPC working groups, and a summation of engagement with First Nations governments to date.

The questions to be discussed at the March 2021 Trust Council meeting are as follows:

Discussion Session 1:

Dialogue regarding Section [1.1](#) (Truth Precedes Reconciliation) and Section [2.1](#) (Reconciliation)

Discussion Session 2:

The *Islands Trust Act* sets out that:

“The object of the Trust is to preserve and protect the Trust Area and its unique amenities and environment for the benefit of the residents of the Trust Area and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia”.

Q.1: How would you define the “unique amenities” that are to be preserved and protected “for the benefit of the residents of the Trust Area and of British Columbia generally”?

Q.2: How do you feel that Islands Trust ecosystem preservation and protection policies relate to policies primarily about community need? Should guidance be provided for cases where they may conflict?

Q.3: Would you like to see more mandatory directive policies in the Policy Statement? If so, are there particular topics where you would support more specific or explicit direction to Local Trust Committees / Island Municipalities?

Discussion Session 3:

Q.4: Based on the policy directions outlined in Section [2.2](#) (Climate Change), please share your ideas.

Discussion Session 4:

Q.5: Based on the policy directions outlined in Section [2.3](#) (Affordable Housing), please share your ideas.

Part 1 – Understanding the Foundations of the Islands Trust:

Section 1.1 of the paper touches on a small portion of the history and legacy of colonization and oppressive legislation as it relates to First Nations people who lived in the Islands Trust Area since time immemorial. Reconciliation is a fundamental objective of the Policy Statement Amendment Project; at no time during the formation of the Islands Trust was the history and legacy considered, or the treaty and territorial lands and waters acknowledged. Understanding the truth of what happened in the Islands Trust Area provides perspective as legislation is aligned with the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), and Trust Council continues its commitment to the Islands Trust Reconciliation Declaration.

Section 1.2 provides some brief history of the developments that led to the creation of the Islands Trust in 1974, particularly focusing on a 1973 *Report of the Select Standing Committee on Municipal Affairs* which outlined the provincial vision for this special purpose government. While today's Trust Council is empowered to interpret the Trust Object according to its own particular insight and current collective values, some trustees have expressed a desire to better understand the original intent of the provincial legislation that led to the creation of the Islands Trust in 1974 in order to inform current day questions pertaining to the Policy Statement amendments.

Section 1.3 considers the regional/local balance of decision making in relation to the Trust Object and Policy Statement. An examination of the pros and cons of decentralization, the value of regional / area-based approaches, and the pre-eminence of the Trust Object aims to inform the discussion on how explicit or directive Trust Council should be in its Policy Statement guidance to Local Trust Committees and Island Municipalities.

Section 1.4 is centred on a 1986 Islands Trust Position Paper which provided explicit, detailed interpretations of the Islands Trust Object. While the Trust has evolved significantly since 1986, this set of detailed interpretations offer a useful basis for reflection and discussion to determine which interpretations may still hold true today and which may not. As the Policy Statement is a statement of policies to fulfil the Trust Object, Trust Council's current interpretations of the Trust Object are needed to guide current amendment recommendations.

Part 2 – Preliminary Policy Directions:

Section 2.1 (Reconciliation), **Section 2.2** (Climate Change), and **Section 2.3** (Affordable Housing) offer details on the policy directions emerging in each of these three priority areas.

After reading the preliminary policy directions outlined in these sections, Trust Council will have an opportunity to provide preliminary feedback on each theme that will guide the amendment drafting process leading up to First Reading.

INTRODUCTION

Project Scope

Trust Council's Policy Statement Amendment Policy (1.2.i) states that, each term, Trust Council will identify Policy Statement review and/or amendment tasks. This term's Trust Council has assigned the Executive Committee (EC), with involvement from Trust Programs Committee (TPC) as appropriate, to coordinate an update of the Policy Statement. Council has directed that this update includes the following:

- General update of the following sections: Introduction, Part 1, Part 2 and 'Schedule 1 – Definitions';
- Update of the whole document through the lens of Reconciliation;
- Update of the whole document through the lens of Climate Change;
- Update regarding Affordable Housing to ensure that the document:
 - gives affordable housing a greater profile for its role in sustainable communities;
 - includes a reference to affordable housing in its policy direction to Local Trust Committees (LTCs) and Island Municipalities (IMs);
 - includes a clear and well thought-out definition of 'affordability';
 - includes a clearly articulated vision, goals and objectives for affordable housing.

Project Timeline

The first three stages of the Policy Statement Amendment Project (PSAP) have been focused on ongoing First Nations engagement and relationship building, two phases of public engagement, regular meetings of three TPC working groups, a number of special TPC meetings, and ongoing staff research and analysis. The TPC working groups and staff have been leading the policy analysis process on the three priority themes of reconciliation, climate change and affordable housing. The working groups were each comprised of three to four trustees and each met approximately seven to ten times between July–December 2020. The project is now entering Stage Four of its timeline, which is dedicated to the important task of amendment drafting and further review with First Nations and treaty councils and associations. Staff are now working to synthesize, analyze and integrate input from the First Nations and public engagement processes, TPC working groups, and broader trustee feedback, aiming to provide draft amendment recommendations to TPC in April 2021 and to Trust Council in June 2021 (First Reading). The project timeline aspires to reach Fourth Reading by the end of the term.

March 2021 Trust Council Discussion Background

At the December 2020 Trust Council meeting, TPC highlighted some key questions relating to interpretations of the Trust Object that the Committee had been grappling with over the past six months. Specific questions were identified where TPC was hoping to seek more feedback from Trust Council members prior to making specific amendment recommendations this Spring. Trust Council resolved to dedicate a full day's worth of discussion to these topics at its March 2021 Trust Council meeting. In January 2021, three questions were sent to all trustees for early written feedback. The consolidated early feedback is attached to the March Trust Council package.

Purpose of Discussion Paper

The Islands Trust Policy Statement is meant to be a general statement of the policies of Trust Council to carry out the Trust Object. However, Trust Council members have different interpretations of the Trust Object and the nature of the Trust's special purpose mandate which are directly impacting TPC's ability to recommend specific amendments relating to the priority areas of reconciliation, climate change and affordable housing. This discussion paper therefore intends to provide relevant historical context and current analysis to support an informed and fulsome Trust Council discussion on key questions relating to Trust Object interpretations, the regional/local balance of policy directives, and preliminary recommendations from the TPC working groups.

PART 1: Understanding the Foundations of the Islands Trust

1.1 TRUTH PRECEDES RECONCILIATION

We all have to recognize that we are part of a heritage and ongoing reality of colonialism. Whether we have benefited from it or whether we have been victimized by it, we have to understand how we have been impacted by this dominant system. Oftentimes, we have been influenced to such an extent that we often don't even know that we're discriminating or being discriminated against. We must question what we've been taught and explore the possibilities of how things should be in the future.¹

- Senator Murray Sinclair, Chief Commissioner of the Truth and Reconciliation Commission of Canada (TRC)

No Acknowledgment of Place

When contemplating Policy Statement amendments through the lens of Reconciliation, it is important to acknowledge that First Nations have been excluded from legislative debates, policy and planning dialogues and cooperative partnerships throughout most of the history of the Islands Trust. The area in which the Islands Trust has existed as a jurisdictional body since 1974 is located within the treaty and territorial areas of the BOKÉĆEN, Cowichan Tribes, Halalt, Xwémalhkwu, K'ómoks, Klahoose, Ts'uubaa-asatx, Lək ʷəŋən (SXIMEĒĒ, Songhees, T'Sou-ke), Lyackson, MÁLEXĒĒ, Penelakut, Qualicum, Scia'new, səliiwətaʔt, SEMYOME, shíshálh, Snaw-naw-as, Snuneymuxw, Skwxwú7mesh, SʔÁUTW, Stz'uminus, Tla'amin, scəwəθən məsteyəxʷ, We Wai Kai, Wei Wai Kum, WJOLĒĒP, WSIKĒM, and xʷməθkʷəy̓əm (the First Nations). Yet, there is no evidence in Hansard Reports, policy papers, or academic reviews that First Nations were ever part of the dialogue on the formation or boundaries of the Islands Trust Area.

Missing from the Trust Object

The Object of the Trust has never specifically named Indigenous Peoples or First Nations as agencies to cooperate or coordinate with, despite the fact that the Trust makes land use decisions within First Nations' treaty and territorial lands and waters:

It is the object of the trust to preserve and protect, in co-operation with municipalities and the Government of the Province, the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of the Province generally. (Islands Trust Act, 1974)

The object of the Trust is to preserve and protect the Trust Area and its unique amenities and environment for the benefit of the residents of the Trust Area and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia. (Islands Trust Act, 2018)

Objectives of the Islands Trust Council would be to request First Nations be added to the object of the Trust after the words “for the benefit of the residents of the Trust Area, Indigenous Peoples, and of British Columbia generally, in cooperation with First Nations governments, municipalities...”.

Missing from History

The history of the Islands Trust Area and the colonization of the Gulf Islands is one of violence and erasure. It is important to understand that the history of the Islands Trust Area did not begin at the time of colonization in the 1880s; neither did it begin at the formation of the Islands Trust in 1974. The historical legislative policies and conceptualization of the Gulf Islands never acknowledged or recognized that the area had been home to Indigenous Peoples since time immemorial. The beauty and “unique amenities” of the Gulf Islands are the very reasons why the area was home to Indigenous Peoples for thousands of years, and are reflected in the telling of

¹ Globe and Mail: *For Senator Murray Sinclair, leadership is defined by humility*, Jan 24, 2021

First Nations' creation stories, relationship to the lands and waters, and stewardship of those lands and waters for future generations.

It should be underscored that the Islands Trust Area was, and still is, the location of permanent village sites with homes, longhouses, cultivated gathering areas for harvesting, clam gardens, and cultural sites. This occupation, over thousands of years, lay the foundations for the unique environment and amenities of the islands as we know them today. The Salish Sea Basin had one of the highest pre-contact population densities in North America, and has the earliest physical evidence of human seafaring and island occupation in the Americas. At this time, there are approximately 28,000 Coast Salish peoples living in and around the Islands Trust Area and 56,000 in the Coast Salish transboundary region. The climate and resources located in the Islands Trust Area were ideal for large village sites, evidenced by extensive scientific reviews of middens and archaeological sites in the area and oral history told by Cultural Knowledge Holders and Elders.

In a recent First Nations engagement meeting with Islands Trust staff, an Elder mentioned how longhouses on islands were burned to the ground and how the posts in the ground were cut to erase all evidence that the longhouse had even existed. The concept that these lands and waters had not been occupied and were free for the taking arose as residential schools were being built and the reserve system was enacted to segregate First Nations peoples away from their homelands so that they could be settled by non-Indigenous populations. From 1974 to current day times, there has been very little historical reference or acknowledgement of the longstanding presence of First Nations in the lands and waters of the Islands Trust Area.

Terra Nullius

For the settler communities who were colonizing the Islands Trust Area, the mentality of the day was one of “taming” the lands, and claiming lands through philosophical frameworks of Doctrine of Discovery² and terra nullius³. Beginning in 1875, the area was subject to *The Gradual Civilization Act*. The *Act* supported the concepts of private land ownership through the forced removal of First Peoples from the islands to reserves, away from locations deemed desirable for European settlement. As well, the *Act* ensured Indigenous Peoples did not have voting rights or citizenship rights to their own lands and waters. Further oppressive legislation restricted Indigenous Peoples to the reserve, did not allow them to gather in groups larger than three people, and denied them the ability to buy or hold land or hire legal representation. *The Gradual Civilization Act* was just one of the many oppressive legislative tools that facilitated the genocide of Indigenous Peoples, their homelands, their language, culture, and governance and family structures in the formation of Canada and the Islands Trust Area.

Residential Schools

The Islands Trust Area was the location of the Kuper Island Indian Residential School from 1889 to 1975, a place where cultural genocide occurred with the forced removal of children as young as five years old from the surrounding communities of Beecher Bay, Burrard, Chehalis, Chemainus / Chemainus Bay, Chilliwack, Clemclem / Clemclemluts, Cole Bay, Comeaken / Comiakem, Comox, Cowichan, Equimalt, Galiano, Khenipsen / Ghenipsen, Halelt / Halalt, Katzie, Koksilah, Kuleets, Kwaw Kwaw A Plit, Ladysmith, Langley, Lyackson, Malahat, Musqueam, Nanoose, Patricia Bay, Pauquachin, Penelakut, Qualicum, Quamichan, Saanich, Siccamen, Skawahlook / Skawollock, Skwah, Somenos, Songhees, Sooke, Squamish, Tsartlip, and Tsawout⁴.

² UNDRIP para. 4: all doctrines, policies and practices based on advocating superiority of peoples or individuals on the basis of national origin or racial, religious, ethnic or cultural differences

³ Oxford Reference: land that is unoccupied or uninhabited for legal purposes. The application of English law to overseas possessions distinguished between settled colonies

⁴ National Centre for Truth and Reconciliation

The school earned the name “Alcatraz” for its remote location on the small island. Right from its founding by the Catholic Church, the scale of suffering at Kuper Island was beyond the pale . . . Even school officials described Kuper Island as “ruinous” and “insanitary (sic),” with the school’s notoriously poor conditions exacerbating outbreaks of typhus, smallpox and tuberculosis.

- National Centre for Truth and Reconciliation

10,000 Years of Knowing

At the time of the formation of the Islands Trust in 1974, the government of the day recognized the importance of the unique “amenities” of the lands and waters. There was understanding that the environment of the area was fragile and could be greatly impacted by development and resource extraction or overuse. However, it was not acknowledged or understood that this unique environment was the result of thousands of years of active cultivation and stewardship by Indigenous Peoples. Hence, the government failed to consider Indigenous Knowledge of the lands and waters of the Salish Sea, the “10,000 years of knowing” (a term stated by Chief Leah George-Wilson of the Tsleil-waututh Nation), in the formation of policies and legislation that directly impacted First Peoples’ homelands in the Islands Trust Area.

Throughout its forty-seven years of preserving and protecting the Trust Area the Islands Trust has consistently failed to recognize or acknowledge resource gathering areas, spiritual places, medicinal plant areas, and culturally significant species. The Islands Trust has managed the Islands Trust Area with a disconnected, single-species view of the ecological landscape versus a relational, interconnected acknowledgement of what truly makes the Islands Trust Area unique. Indigenous ways of knowing are not only important to reconciliation efforts, but also to the effective stewardship of these lands and waters.

Double Standards

Despite the fact that, in the formation of the Islands Trust, it was recognized that rapid population growth and development could greatly impact the communities that had established themselves on the islands and that quality of life should be sustainable and minimize negative effects⁵; it was never considered that the areas in question had been subject to the forced removal of Indigenous children to the horrors of residential school and the forced removal of their parents to reserves far from the growing populations of settlers. Efforts to protect the well-being of constituents in Trust Area communities were not equally exerted to protect the well-being of the First Peoples who were no longer residents of the islands due to their forced removal.

Failure to Protect Cultural Heritage

Cultural heritage sites and features, and ancestral loved ones, remain throughout these islands from which First Nations have been forcibly removed. This cultural heritage, and the ancestral loved ones, have been desecrated, destroyed, and impacted as settler communities built on top of First Nation village sites, and extracted resources from culturally significant areas. With the enactment of the *Islands Trust Act* in 1974, the Islands Trust became the planning body that determined the impacts to cultural heritage sites and ancestral loved ones via its land and water use decisions. From its earliest version the *Islands Trust Act* acknowledged the importance of preserving and protecting cultural heritage. In 1974, it stated under s. 3(2)(d) that the Islands Trust was to “locate and identify archaeological and historical sites within the trust area” and under s. 3(2)(a) “make recommendations . . . for the preservation and protection of the trust area and its unique amenities and environment”. The Gabriola Island Community plan of 1978 acknowledged the “fragile nature of the environment” and the “special natural and archaeological areas” of the island.

⁵ BC Round Table on Environmental and Economy, and the Commission on Resources and Environment 1990-1994

It is therefore surprising to find no evidence to suggest that Islands Trust Council, or local trust committees, ever undertook to locate and identify the archaeological areas, or to preserve and protect the ancestral loved ones' resting places and cultural heritage such as fish weirs, clam gardens, artifacts, burial cairns, petroglyphs, or middens that exist extensively on all islands within the Islands Trust Area. However, in 1984, the Islands Trust did document and identify the settler heritage buildings in the Islands Trust Area in an extensive publication.⁶

In 1992, the Islands Trust encapsulated the views of the public in a *Summary Report on the Islands Trust Public Forums: These Islands of Ours . . . Framing Our Common Future*. At the public forums, people listed "history and archaeological heritage" and "archaeological record" as key attributes they valued about the Trust Area. In 1994, the Islands Trust received more opportunities to cooperate and enter into new relationships with First Nations with treaty and territorial rights and title in the Islands Trust Area. Amendments were made to the *Islands Trust Act* that allowed the Islands Trust to enter into agreements with First Nations governments. In the 1994 legislative debates⁷, legislators sought to clarify section 20(1)(b): the opportunity for the Islands Trust to enter into agreements with First Nations. Debate included the ability for the Islands Trust to enter into "a separate or bilateral set of negotiations" with First Nations to build "a very good working relationship" related to "conflicts over aspects that are considered to be heritage" and statements that "this is not just a question of the preservation of site-specific artifacts" but to provide the Trust with "a significant amount of empowerment". Debate further centred around the importance of First Nations heritage for the future, and how the preservation of sites in Haida Gwaii was an example of successful agreements. Unfortunately, despite this growing public consciousness and increased authority to preserve and protect First Nations' cultural heritage and establish stronger, more collaborative relationships with First Nations in the Trust Area, the Trust continued its pattern of inaction.

In 1994, the Islands Trust was also granted new legislative authority through amendments to *Bill 21 Heritage Conservation Statutes Amendment Act, 1994*, changes to the *Islands Trust Act*, and changes to the *Municipal Act*. Amendments to the *Islands Trust Act* included new powers to engage in "activities to gain knowledge about the history and heritage of the trust area and to increase public awareness, understanding and appreciation of the history and heritage" and to "conserve heritage property". Heritage property under the *Municipal Act* was defined as "property that in the opinion of a body or person authorized to exercise a power under this Act in relation to the property has sufficient heritage value or heritage character to justify its conservation, or is a protected heritage property". Protected heritage property is defined as "protected under section 6(2) of the *Heritage Conservation Act*".

The *Heritage Conservation Act* states that heritage property is protected and it is illegal to "damage, excavate, dig in or alter, or remove any heritage object from, a site that contains artifacts, features, materials or other physical evidence of human habitation or use before 1846". The Islands Trust Area is within a historically rich and culturally abundant place of significant heritage value and properties. As noted above, the role and responsibility of the Trust was to recognize and protect the cultural heritage and historical significance of the area, which included the heritage of Indigenous Peoples. Land use decisions, bylaws, and official community plans should have been reflective of these new legislative powers to ensure the preservation and protection of significant sites such as Poets Cove, Grace Islet, and Harbour House to name just a few. The devastating impacts of the removal of ancestral loved ones from their resting places to institutions such as the Royal BC Museum, Simon Fraser University, University of British Columbia, and the Museum of Civilization contributed to cultural genocide within the Islands Trust Area.

⁶ Islands Heritage Buildings: A Selection of Heritage Buildings in the Islands Trust Area 1984

⁷ Legislative Session: 3rd Session, 35th Parliament, Volume 17, No. 2 June 29, 1994

Continued Legacy of Inaction

The history of the Islands Trust has unfortunately been one of complacent disregard for the history of Indigenous Peoples in the Trust Area and a lack of will to protect the collective heritage of the area for Indigenous Peoples, British Columbians, and Canada as a whole. Throughout the entire Trust Area, the destruction of archaeological sites, gravesites, cultural areas, and villages continues to this day. The history of cumulative impacts and destruction to the culture and historical understanding of area has been devastating to First Nations communities and their well-being, and has contributed to a general lack of trust in the role of Islands Trust. Despite the clear mandate to preserve and protect against development pressures in this fragile area, the Islands Trust has facilitated development on village sites that had existed for thousands of years, leading to the destruction of those areas and the unearthing of ancestral loved ones. This is especially tragic given that Indigenous Peoples were forcibly removed from the area and stripped of their ability to preserve and protect their own heritage through land use decision-making.

The formation of the Islands Trust in 1974 made it uniquely positioned to ensure the preservation and conservation of historical sites and archaeological areas for future generations of Indigenous Peoples and all British Columbians. As noted in legislative debates from 1974 to 1994, this had always been part of the rationale for the formation of the Islands Trust. Nonetheless, the Islands Trust has generally seemed to lack the will to compel other ministries and government agencies to prioritize the heritage of Indigenous Peoples, despite having the authority to do so, and despite being granted additional powers to work cooperatively with First Nations through amendments to the *Heritage Conservation Act* in 1994.

The Islands Trust did enter into protocol agreements with some First Nations after 1994; however, those agreements did not lead to additional protections or land use decision policies to protect the heritage of Nations or create collaborative relationships at a government-to-government level. The looting of ancestral remains and cultural artifacts has long been a known practice in the area, outlined in media articles in local newspapers, in meetings held with island communities, and in community conversations going back before the formation of the Islands Trust. Unfortunately, Islands Trust enforcement policies were not coordinated with other ministries or First Nations to address the looting of cultural artifacts or sites, and advocacy efforts have not been successful at curbing these unlawful activities that lead to the erasure of cultural heritage and desecration.

We end this section on the history and legacy of the Islands Trust Area with a quote from Chief Roland Wilson, West Moberly First Nation:

You can show Canada and the world that the only way to escape our colonial history of neglect and betrayal is to act boldly and honourably in the decisions that lie before us today.

1.2 CREATION OF THE ISLANDS TRUST

Many of the important questions facing Islands Trust Council today are not new. Indeed, an examination of the Trust's history reveals recurring questions, doubts, experiments and lessons learned over the last fifty years. While today's Trust Council is empowered to interpret the Trust Object according to its own particular insight⁸, some trustees have expressed a desire to better understand the original intent of the provincial legislation that led to the creation of the Islands Trust back in 1974. Although it is out of the scope of this discussion paper to provide a complete history of the Trust, excellent chronologies can be found in *The Islands Trust Story* written by Salt Spring Islander and former Islands Trust trustee, Peter Lamb ([Lamb, 2009](#)) as well as the 1994 thesis entitled, *British Columbia's Islands Trust on the Local Government Continuum: Administrative Agency or Local Self-Government* ([Jones, 1994](#)). Some highlights, including excerpts from the September 25, 1973 *Report of the Select Standing Committee on Municipal Matters* ([Hansard, 1973](#)), are offered below.

1960s – Growing Concerns, Lack of Representation

In the early 1960s, there was no meaningful form of local government outside the boundaries of municipalities in British Columbia. This meant that residents of the Gulf Islands were largely left to fend for themselves in dealing with local issues and soliciting public services, mostly through locally-developed organizations. In 1965, regional districts were created to provide public services more economically and efficiently to non-incorporated areas. However, the minimal representation of the islands on regional district boards meant that the unique needs of islanders were still largely neglected. Meanwhile, land developers were increasingly creating large subdivisions on the islands to position the area as a recreational destination for residents of nearby urban areas such as Vancouver, Victoria, Nanaimo and Seattle. This growing pressure for development prompted Gulf Island residents to express widespread concern that the unique character of the islands was under threat.

1970s - Ten-Acre Freeze & New NDP Government

This widespread public concern prompted the Province to institute a minimum ten-acre lot size freeze on subdivisions in the Gulf Islands as a temporary fix in 1969. However, in the five months it took to bring the freeze into effect, over 2500 new lots were created through subdivisions in the Gulf Islands. Local residents vocalized the need for more input into land use planning in the area, a power which regional districts of the day did not hold. In 1972, a provincial election ended twenty years of Social Credit Party rule and brought to power the New Democratic Party (NDP) under Premier David Barrett, who had campaigned on the promise that he would not tolerate unrestricted development of the Gulf Islands. The new government quickly brought forward some radical environmental and land reform policies, including the creation of the Agricultural Land Commission in 1973.

1973 - Report of the Select Standing Committee on Municipal Matters

In 1973, the Minister of Municipal Affairs, James Lorimer, directed the Select Standing Committee on Municipal Matters to inquire into the future of development on the Gulf Islands, including the development of community plans. The Committee presented its [report](#) on September 25, 1973, on “the matters affecting islands in the Strait of Georgia and the adjacent waters” and reported on its engagement visits to North Pender, South Pender, Salt Spring, Galiano, Mayne, Saturna, Bowen, Gambier, Keats, Denman, Hornby, Lasqueti, Gabriola, Kuper, and Thetis.

⁸ 2020 Publicly Released Legal Opinion: Policy Statement Amendment Project (see Appendix A)

The **Select Standing Committee on Municipal Matters (The Committee)** observed:

It is apparent to the Committee that the islands are of extreme importance to the Province of British Columbia; they are fragile; their location is crucial, between the two largest cities in the Province; it is felt that people are entitled to use them and enjoy them to the capacity which they are able to serve.
(Hansard, 1973)

The report went on to list a number of observations about the unique **“special interests”** of the region...

- Local residents, many of whom are retired, and others who have to make their living locally;
- Large numbers of summer residents and/or visitors
- Large landowners, usually absentee, often corporate and foreign
- A larger or “provincial” interest of the general public
- Land developers and speculators
- Tree-farm license holders (TFL)

...along with **unique challenges**:

- Large subdivisions and over-development
- Ineffective representation / communication with seven different regional districts

A Call to Preserve and Protect

The Committee foresaw that the ten-acre freeze would not be sufficient over the long term and felt that more sophisticated and imaginative planning techniques such as clusters and green belts would be more effective. It highlighted a need for more supervised public spaces, beach access points, hiking trails, campgrounds, etc. on virtually every island, reflecting the Province’s view that the islands were to be of recreational benefit to all British Columbians and not just private landowners. Recognizing the need to ensure employment opportunities for residents, the Committee gave a green light to strictly controlled limited commercial development, light industry, and agricultural activity that was compatible with the lifestyle of the islands. Nonetheless, it stressed that future development should emphasize recreation, moderate residential use, and the preservation of a rural atmosphere. Moreover, the Committee highlighted with alarm the hoarding of land by resident and absentee owners and condemned the subdivision trends of the past. It stated: “Our belief is that the islands are too important to the people of Canada to be left open to exploitation by real-estate developers and speculators.”

Primary Concerns

It is also interesting to note that, even back in 1973, the Committee flagged that “virtually without exception, shortage or potential shortage of potable water is of major concern to practically all islands and to this Committee”. The need for better control and coordination of water transportation was highlighted and the Committee also called for land use planning that would encourage pedestrian versus vehicle transit. Waste and garbage disposal were flagged as being of major concern. And, perhaps most surprisingly, the Committee underscored the potential to conserve many archaeological sites on the islands – a potential that has yet to be realized. Indeed, each of these priority themes remain critically relevant almost fifty years later.

A Call for Cooperative Leadership

It is also important to note the Committee’s vision that the Islands Trust assume the primary responsibility for all Gulf Island affairs within government jurisdiction and that it be fully representative of all interests. Its task was to bring together each group, agency, or department of government to act in the best interests of the islands and their residents with due regard for the broader and province-wide interest. This would signify not only a call for leadership of inter-agency cooperation to support the preserve and protect mandate, but also a call for more meaningful collaboration with First Nations in the Trust Area.

Call for a Special Purpose Government

The 1973 *Report of the Select Standing Committee on Municipal Affairs* culminated in a series of recommendations, including a review and adjustment of regional district boundaries, a precautionary approach to subdivisions and a continuation of the ten-acre freeze. Most notably, the Committee recommended that the Province **establish an “Islands Trust”** (or commission).

A Vision Emerges

The text of this recommendation speaks to the vision of the Province that underpinned the creation of the Trust:

The Committee also recommends that the Provincial Government establish an “Islands Trust” (or commission), as the most appropriate body to be responsible for and to coordinate the future of each island within our terms of reference. It must be emphasized most strongly that the trust is to assume the primary responsibility for all Gulf Islands’ affairs within Government jurisdiction, including land use, future growth patterns, control of development, industrial, recreational and commercial activity, as well as parks and open space designations. It is essential that the Trust be fully representative of all interests, not only on the islands, but throughout the Province as a whole. While recognizing the rights of the islanders, the Committee suggests that this section of British Columbia is dramatically affected by private and public activity which does not have the same impact in other parts of the Province. The Committee again refers to the fragile nature of these coastal units. Because it is recognized that a variety of Government departments and agencies: Highways, Health, Ferries, Lands and Forests, Parks, etc, as well as regional districts and citizen groups on the islands, all have an important role to play in this respect, we emphasize that the proposed trust or commission must not be a separate and (or) remote agency, but rather a fully representative coordinating body, whose task it is to bring together each group, agency or department of Government and to act in the best interests of the islands and their residents with due regard for the broader and Province-wide interest. (Hansard, 1973)

A Trust is Born

The Committee’s Report was ultimately successful in paving the way for the first *Islands Trust Act* to be passed in 1974 which effectively brought the Islands Trust into being. At that time, the governance structure of the Trust was highly centralized, with three provincially appointed “general trustees” (acting as Executive Committee) and a separate set of twenty-six locally elected trustees. In the early days, the provincially-appointed trustees outnumbered the local trustees three to two within local trust committees, illustrating the Province’s strong centralized approach to this visionary mandate, as well as its cautious approach to this unprecedented governance system. But gradually over the years, a trend towards decentralization was witnessed, giving locally elected trustees far more responsibility and authority to make decisions on behalf of their islands. This meant eventually doing away with provincially-appointed trustees altogether and shifting the balance of power of local trust committees such that local trustees outnumbered general trustees two to one. (Jones, 1994)

RECOMMENDED FURTHER READING:

[*Report of the Select Standing Committee on Municipal Matters*](#) (Hansard Report – September 25, 1973)

[*British Columbia’s Islands Trust on the Local Government Continuum: Administrative Agency or Local Self-Government*](#) (David Keith Jones, Simon Fraser University, September 1994)

[*The Islands Trust Story*](#) (Peter Lamb, December 2009)

[*Review and Amendment of the Islands Trust Policy Statement – Final Report of the Islands Trust Policy Statement Amendment Task Force*](#) (Islands Trust, May 9, 2011)

1.3 THE REGIONAL / LOCAL BALANCE

Regional Governance Goals, Decentralized Governance Structures

Throughout the history of the Trust, one can observe a gradual transition towards decentralized governance and planning processes that are quite different from the centralized governance systems first instituted by the Province back in 1974. Underpinning this evolution was a strong recognition (by both the public and provincial government officials) that locally elected officials are the best placed to understand and represent the unique needs of their unique rural island communities and that a degree of local autonomy and flexibility is supportive of effective governance. However, this decentralization could also be seen to have compromised the core provincial vision and provincial interests that first gave rise to the creation of the Islands Trust and that extend beyond the interests of Trust Area residents alone. When addressing questions relating to the level of “prescriptiveness” to enact in Policy Statement directive policies, these questions of the effectiveness of regional/local decision-making figure prominently.

Strategic Area-Based Management

Some trustees feel that a more regional and/or ecosystem-based approach (beyond the political boundaries of individual local trust areas and island municipalities) would best serve the needs of local residents in their particular area. When examining the issues facing Trust Area communities today, it becomes clear that the actions that individual islands take (or don’t take) impact other islands in the region and the province as a whole. Destruction of cultural heritage on one island, for example, greatly impacts regional efforts to build trust with First Nations in the Trust Area. Similarly, density increases on one or two islands could significantly increase the carbon emissions of the whole region. Conversely, the protection of cultural heritage and natural carbon sinks on individual islands have positive effects for the region and the province as a whole. When making commitments as a regional Trust Council to broad-ranging and complex issues such as reconciliation and climate change, it is becoming increasingly difficult to rely on siloed, site-specific or even island-specific planning to achieve regional and provincial objectives. Rather, to truly enact these commitments, it may be beneficial to employ a more interconnected, area-based, regional governance paradigm that acknowledges the highly interconnected and transboundary nature of ecosystems, watersheds, wildlife corridors, contiguous forests and the communities who live interdependently with them.

The Potential of Trust Council

The existence of a coordinating body such as the Islands Trust Council offers an opportunity for truly integrated regional planning, led by local trustees through the regional body of Trust Council. The Policy Statement is intended to act as a supportive bridge between the provincial mandate, regional vision and local official community plans (OCPs) and land use bylaws. Abstracting from individual island needs, it aims to take a bird’s eye view to determine what is needed for the region as a whole, in the context of the provincial preserve and protect mandate that governs all activities of the Trust. It translates the Trust Object into guiding policies for Local Trust Committees (LTCs)/Islands Municipalities (IM) to implement in ways that are appropriate for their communities and for the Trust Area as a whole.

Pre-eminence of the Trust Object

Local trustees have a pre-eminent duty to the Trust Object above all else⁹. Thus, Trust Area conceptions of “community” extend beyond local residents alone, to include the environment and unique amenities of the Trust Area and the Province, more generally. LTCs and IMs play the most critical role in enacting Trust policies at the local level, in congruence with the needs of their resident communities. However, what makes the Islands

⁹ 2020 Publicly Released Legal Opinion: Policy Statement Amendment Project (see Appendix A)

Trust model different than traditional local government models is the pre-eminence of the provincial preserve and protect mandate. Residents of the Trust Area abide in a region that has been specially designated by the province as being a protected area and thus may be seen to have a different relationship with their elected officials.

The Question of “Prescriptiveness”

It is for these reasons that the Executive Committee must review local bylaws from the vantage point of the Trust Object. This can put a stop to local decisions that may be out of sync with the provincial mandate. But what about the policy guidance that simply isn’t proactively taken up by LTCs/IMs? If the Policy Statement gives guidance to LTCs/IMs to enact regionally important policies (e.g. protection of shorelines and foreshore for regional reconciliation and climate policy goals), should LTCs/IMs be left to decide independently to what extent they should address these priorities? The *Islands Trust Act* supports a requirement that local trust committees not only address certain subjects in their plans and bylaws, but that they address those matters in a specific way or to a specific effect. This has led some to recommend that the Policy Statement be more explicit or directive in some of its policy guidance to LTCs/IMs, in thematic areas where Trust Council deems a coordinated regional approach to be necessary – most specifically regarding Trust Council’s commitments to Reconciliation and the Climate Emergency.

November 2000 Publicly Released Legal Opinion Excerpt

A November 2000 legal opinion commented on the possibility of changing the language of current directive policies (that local trust committees and island municipalities shall "address" certain matters in their plans and regulatory bylaws) to a more mandatory requirement that they include those matters in their regulatory bylaws. An excerpt from the November 2000 legal opinion (three paragraphs released to the public by Executive Committee on October 19, 2010) is attached as Appendix B.

1.4 INTERPRETATIONS OF THE TRUST OBJECT

The Islands Trust Policy Statement is meant to be a general statement of the policies of Trust Council to carry out the Trust Object:

“The object of the Trust is to preserve and protect the Trust Area and its unique amenities and environment for the benefit of the residents of the Trust Area and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia”. (Islands Trust Act)

Interpretive Differences

Although the Trust Object sets out a clear mandate to preserve and protect the Trust Area, its finer details have long been subject to a wide range of different interpretations. Nonetheless, for a special purpose government like Islands Trust, it seems important that Trust Council members share some basic understanding of the special purpose they are working towards. In the past, the lack of this common understanding has been seen to have led to vague, unclear and highly interpretive policies. It therefore seems advisable that Trust Council come to some form of consensus or agreement around a commonly held, reasonable and rational interpretation of the Trust Object that could more effectively shape the development of policy guidance and decision-making in the Trust Area. Each time Trust Council amends the Policy Statement, it expresses its vision for the region and its values as a Council. Staff have reviewed prior attempts to explicitly define the Trust Object and found a 1986 position paper that offered a detailed interpretation which might be assistive to the March 2021 Trust Council discussions.

Elements of the Object ([Islands Trust Council, 1986](#))

1986 Interpretations

The provincial position paper, entitled [The Object of the Islands Trust: Renewing the Consensus](#) (Islands Trust, 1986), endorsed by the Islands Trust Council on September 5, 1986, noted:

From the experiences since the Trust has been in operation, the object appears to have been interpreted in a variety of ways. This divergence in perceptions has, in some instances, lessened the effectiveness of the Trust and other Provincial agencies in achieving the Provincial policy of sound management of the islands. To start to remedy this situation, in Summer, 1985, the Trust initiated a review and reinterpretation of its object. (Islands Trust, 1986)

This 1986 review dissected the various components of the Trust Object and provided detailed interpretations of each element. It is important to note that subsequent Trust Councils have gone in different directions than the interpretations outlined below. However, it is hoped that the clarity and detail of this particular interpretative document may provide a helpful basis for discussion and/or revision to suit the current context.

<u>Text</u>	<u>Interpretation</u>
<i>“to preserve and protect...”</i>	<p>To ensure the continued existence, either at current or enhanced levels of the ‘unique amenities and environment’ of the Trust area and to guide human activities on land and water accordingly.</p> <p>The Islands Trust program for management of the Trust area should focus on identifying the unique amenities and environment and protecting these. Appropriate developments can then be guided to areas which can best accommodate them with minimal erosion of unique amenities and environment. Plan and bylaw provisions such as setbacks and parcel size can be used as site specific protection measures where development is permitted.</p>
<i>“...in cooperation with municipalities and the government of the Province...”</i>	<p>A number of Provincial agencies, regional districts, and municipalities have statutory responsibilities and interests in the Trust area. The Trust is to assist in obtaining mutual recognition of these various interests, and achievement of the goals of these bodies. For this reason, all plan amendments and bylaws prepared by the Trust are referred to other affected government agencies before public hearings are held. The Trust recognizes that it does not have the powers to fulfill its mandate independently and must obtain the assistance of other jurisdictions.</p>
<i>“...the Trust Area...”</i>	<p>The Trust area is defined in Schedule A of the <i>Islands Trust Act</i> as being “all the land, except land situated within a reserve as defined in the <i>Indian Act</i> (Canada), on all the islands situated in the Strait of Georgia, Howe Sound and Haro Strait...” within the boundaries defined (see map attached to position paper). “Land” and “island” are defined in the Act to include private land, Crown land, and land covered by water.</p>

<u>Text</u>	<u>Interpretation</u>
<p><i>"...and its unique amenities and environment..."</i></p>	<p>The special amenities and environment of the Trust area derive from the combination of:</p> <ul style="list-style-type: none"> • a mild climate; • approximately 500 islands and the extensive coastline and sheltered waters they provide; • diverse and unusual natural features, vegetation and wildlife; • almost a continuous tree cover and large undeveloped areas; • numerous areas of heritage or archaeological significance; • abundant and varied recreational opportunities accessible to adjacent major urban centres; • solitude, scenic beauty and a clean environment; • compact, marine-oriented settlements; • tranquil rural areas; • a range of lifestyles; • a unique water supply situation (i.e. small watersheds, shallow soils and heavy reliance on groundwater sources); • the self-sufficiency yet interdependence that island living entails; <p>Defining the unique amenities and environment of the Trust area is the focus of the Trust's program. Special areas such as the most outstanding beaches, the most significant landscapes featuring unusual grassland and wildflower areas or attractive open stands of Garry Oak, Arbutus or Douglas Fir, and intertidal and subtidal zones especially rich in a variety of marine life may be of National or Provincial importance and may require special attention (perhaps through preservation as a park or ecological reserve). Areas such as smaller, attractive sand beaches, promontories providing superior views, and major bays providing protection for boats from open water are of regional or local significance and may warrant special zoning or regulation to avoid loss or disturbance. Residential, commercial or tourism development appropriate to the services and lifestyle of the islands can, in this way, be steered to the most suitable areas.</p> <p style="text-align: right;">(cont...)</p>

<u>Text</u>	<u>Interpretation</u>
<p><i>“...for the benefit of the residents of the Trust are and of the Province generally.”</i></p>	<p>A benefit must be sustained and long-term, and must not be at the expense of the amenities or environment of the islands.</p> <p>“residents of the Trust area” includes those living on the islands, part-time residents, and absentee land owners.</p> <p>Benefits to the residents derive from:</p> <ul style="list-style-type: none"> • maintaining the amenities and environment which attracted them to the islands; and • compatible and sustainable economic development and an assured sustained yield of the forest, agriculture and marine resources. <p>The Trust has recognized the importance of public support in achieving its mandate. To gain this support, the Trust involves the public to the greatest extent possible in the development and amendment of plans and bylaws.</p> <p>Benefits to the Province include:</p> <ul style="list-style-type: none"> • development of a sustainable economic base, focused on retirement residence, crafts and creative endeavours, fisheries and mariculture, agriculture, forestry, and tourism, as well as other services; • continued availability of diverse and valuable recreational resources in close proximity to the majority of the residents of the Province; • preservation of a physically, ecologically, and socially diverse area for the continued enjoyment of future generations; • assistance in the implementation of policies of other government agencies aimed at sound management of the islands.

2021 Interpretations

The above-listed interpretations provide a basis for Trust Council to discuss whether these interpretations remain true today or whether they may need specific updates to align with the current interpretations of Trust Council. It is also worthwhile noting that the 1986 interpretation offers more clear guidance than the current Policy Statement with regard to the question of how different policies are to relate to each other and how they should be weighted in cases where they may conflict. For example:

- *“To ensure the continued existence, either at current or enhanced levels of the ‘unique amenities and environment’ of the Trust Area and to guide human activities on land and water accordingly.*
- *“Appropriate developments can then be guided to areas which can best accommodate them with minimal erosion of unique amenities and environment.”*
- *“A benefit (to residents/the Province) must be sustained and long-term, and must not be at the expense of the amenities or environment of the islands.”*
- *“Residential, commercial or tourism development appropriate to the services and lifestyle of the islands can, in this way, be steered to the most suitable areas.”*

2020 Publicly Released Legal Opinion

As part of the dialogue and engagement process, a legal opinion relating to interpretations of the Islands Trust Object was sought in late 2020. This legal opinion (public release version) is attached as Appendix A. The opinion helped to clarify that Trust Council is entrusted with the authority to interpret and work towards the fulfilment of the Trust Object according to its own particular insight and within a standard of “reasonableness”. However, this authority comes with a responsibility to provide reasoning that is rational, logical, transparent, and well-documented through staff reports and minutes of Trust Council. Hence, it is advisable that Trust Council explicitly address some of the more fundamental interpretive questions highlighted above and work towards defining a collectively held interpretation of the Trust Object.

PART 2: Preliminary Policy Directions

2.1 RECONCILIATION

Current Context:

The Islands Trust has committed to reconciliation and to the guiding principles of reconciliation. Trust Council undertook this work with the passing of Policy 6.1.1 First Nations Engagement Principles in 2016, the unanimous passing of the Islands Trust Reconciliation Declaration in March 2019, and the Islands Trust Reconciliation Action Plan 2018-2022. Local Trust Committees also committed to the implementation of the United Nations Declaration on the Rights of Indigenous Peoples with the Reconciliation Standing Resolution to guide respectful relationships with First Nations governments at the local island level. Local Trust Committees of Galiano, Denman, Hornby, Salt Spring, North Pender, South Pender, Mayne, Thetis, Gambier, Gabriola, Lasqueti, and Ballenas-Winchelsea all passed the Reconciliation Standing Resolution.

Reconciliation work undertaken by the Islands Trust is guided by the foundation documents of the Truth and Reconciliation (TRC) Calls to Action, the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the *Declaration on the Rights of Indigenous Peoples Act* (DRIPA), and the Missing and Murdered Indigenous Women and Girls (MMIWG) Calls for Justice (hereafter called the “foundation documents”). Staff as provincial employees are also guided by the Draft Principles that Guide the Province of BC’s Relationship with Indigenous Peoples (hereafter called “the principles”) and planning staff are also guided by the Canadian Institute of Planning policy statement “Planning Practice and Reconciliation” (“CIP planning principles”).

In 2018, the Islands Trust undertook to acknowledge the truth, history, and legacy of the Islands Trust Area and to begin meaningful engagement with First Nation governments and First Nation treaty associations in this work. Through engagement with Cultural Knowledge Holders and Elders, the Islands Trust began a comprehensive review of policy documents, processes, and training of staff and elected officials. The Islands Trust sought to provide training to staff and elected officials based on the guiding principles of the foundation documents, the principles, and the CIP planning principles. The Islands Trust also sought guidance and review of their processes from Hereditary Chief Bill Williams (Squamish), residential school survivors Bill Adsit (Tahltan) and Eugene Harry (Malahat), and Holocaust descendant Rima Wilkes (UBC Sociology).

From 2019 to 2021, the Islands Trust provided capacity funding to First Nation governments and First Nation treaty associations to review and engage on the Policy Statement amendment process. The Islands Trust also began dialogue with other ministries and agencies to collaboratively work together to fulfil the co-collaborative Object of the Trust and support the work of reconciliation in the Trust Area.

Trust Programs Committee (TPC) Working Group on Reconciliation:

Trust Programs Committee formed a Working Group on Reconciliation consisting of one Indigenous staff person and four non-Indigenous elected trustees. The Working Group reflected on the history and legacy of the Trust Area and how the Policy Statement could be reviewed and amended. The Working Group acknowledged that the Policy Statement contains offensive historical language that does acknowledge the treaty and territorial areas of First Nation governments. The Working Group reviewed the engagement process undertaken by the Trust in relation to the Policy Statement to ensure that it was meaningful and respectful of a government-to-government dialogue. Throughout this work, the Reconciliation working group members have looked to the guiding principles set out in the foundation documents.

The working group advocates for amendments to be reflective of key concerns raised during engagement with First Nations including:

- acknowledgement of treaty and territorial lands and waters;
- preservation and protection of cultural heritage and sacred sites;
- information sharing and interagency cooperation;
- collaborative decision-making and engagement processes;
- ensuring the inherent right to harvesting and gathering;
- marine shoreline protection;
- protection of culturally significant species and ecosystems; and
- economic reconciliation.

First Nations Engagement on the Policy Statement Review

Islands Trust staff and elected trustees have engaged with First Nations Chiefs, councils, staff, Elders, and Cultural Knowledge Holders as part of the Policy Statement engagement process. To date Islands Trust has engaged with:

First Nations Governments:

BOKÉCEN (Pauquachin) First Nation
Cowichan Tribes
Halalt First Nation
K'ómoks (Comox) First Nation
MÁLEXEŁ (Malahat) Nation
Penelakut Tribe
shíshálh (Sechelt) First Nation
Snuneymuxw (Nanaimo) First Nation
Sḵwxwú7mesh (Squamish) Nation
Tla'amin (Sliammon) Nation
səlilwətaʔt (Tsleil-waututh) Nation

Community Members:

Hereditary Chief Bill Williams (Sḵwxwú7mesh)
Harold Joe (Cowichan Tribes)
Elder August Sylvester (Penelakut)
Eugene Harry (MÁLEXEŁ)

Treaty and Tribal Alliances:

Cowichan Tribal Alliance
Cowichan Tribes
Stz'uminus (Chemainus) First Nation
Halalt First Nation
Penelakut Tribe
Lyackson First Nation
Naut'sa mawt Tribal Council (NmTC)
Halalt First Nation
Xwémalhkwa (Homalco) First Nation
Klahoose First Nation
K'ómoks (Comox) First Nation
MÁLEXEŁ (Malahat) Nation
Tla'amin (Sliammon) Nation
Snaw-naw-as (Nanoose) First Nation
Stz'uminus (Chemainus) First Nation
scəwáθən məsteyəxʷ (Tsawwassen)
səlilwətaʔt (Tsleil-waututh) Nation
T'Sou-ke Nation
W̱SÁNEĆ Leadership Council Society
W̱JOLEŁP (Tsartlip) First Nation
W̱ SIKEM (Tseycum) First Nation
S̱ÁUTW̱ (Tsawout) First Nation

First Nations engagement is ongoing and capacity-funding engagement will continue until the end of March 2021. On-going engagement will continue throughout the amendment period.

Engagement Recommendations and Principles provided by First Nations during the Policy Statement Engagement Process

Overarching Principles

- 1 Acknowledgement of First Nations treaty and territorial areas within the Islands Trust Area;
- 2 Respect and acknowledgement of Indigenous rights and title as it relates to inherent rights, access, and stewardship of resources;
- 3 Respect for the government-to-government relationship that exists between First Nations governments and the Islands Trust;
- 4 Acknowledge of First Nations vital, long-standing and future-looking interest in the environment of their territories and treaty lands;
- 5 Working together to collaboratively build relationships based on mutual respect and interagency cooperation;
- 6 Share information and align policies and processes to the foundation documents;
- 7 That the Policy Statement operates within the inherent jurisdiction and governance structures of First Nations within the Islands Trust Area;
- 8 Land and water use decisions that impact First Nations interests cannot be the sole jurisdiction of local trust committees, and should be reviewed within the broader scope of the Islands Trust governance structure;

Environmental Principles

- 9 Ensure that climate change is recognized as a threat to environment, amenities, and the fragile ecosystem;
- 10 That Islands Trust move away from language such as “maintain” due to concerns related to how that is interpreted in regard to preserve and protect;
- 11 That terms such as stewardship be reflective of the role Indigenous Peoples have to actively steward their territorial areas;
- 12 Recognition that limitations must be determined since incremental growth, even green incremental growth, erodes the functionality of fragile and limited ecosystems and resources;
- 13 Islands Trust prioritize Indigenous land management regimes over Western-based management ideas;
- 14 Recognize that regulatory frameworks do not recognize impacts to sensitive species or culturally significant species, their cultural use, and cumulative impacts due to pollution, emissions, and development;
- 15 Agricultural land areas must not impact culturally significant species, areas, wetlands, or habitat, including impacts to cultural heritage and/or spiritual use;
- 16 Forest areas require archaeological impact assessments to ensure preservation and protection of cultural values, culturally significant species, and use;
- 17 Culturally significant species of vegetation, flora, and fauna must be conserved and protected, understanding the interrelationship between protected and healthy ecosystems and inherent rights to gather for well-being;
- 18 Foreshore areas must be preserved and protected to maintain access for shellfish harvesting, access and foraging;
- 19 Freshwater must be preserved and protected to ensure aquifers can support streams and wetland ecosystems;
- 20 Ecosystems that have been heavily impacted by development or industry must be restored and protected;
- 21 Study the impacts and create policies to address pollution and sewage impacts;
- 22 Official community plans must address the cumulative impacts to marine habitat from docks, anchorages, and seawalls;

Social Principles

- 23 Promote the well-being of Indigenous Peoples and their interests within the Islands Trust Area;
- 24 Recognize that community includes Indigenous Peoples;
- 25 That the islands and waters of the Islands Trust Area are integral to the health and well-being of First Nations with treaty and territorial areas within the Salish Sea;
- 26 Indigenous Peoples have an inherent right to gather, utilize, and manage their treaty and territorial lands and waters;
- 27 Indigenous Peoples have a right to express their culture, language, and spirituality within the Islands Trust Area;
- 28 Indigenous Peoples have a right to access cultural areas, culturally significant species/flora and fauna, and to care for and access ancestral loved ones resting places;
- 29 Islands Trust should advocate for policies and initiatives that eliminate the socio-economic gap between islanders, British Columbians in general and Indigenous Peoples;
- 30 Share information and collaborative work with First Nations governments to ensure land and water use decisions are reflective of their concerns;
- 31 Educate islanders and British Columbians about the history and legacy of the Islands Trust Area as it relates to First Peoples;
- 32 Islands Trust create appropriate land use planning tools to address First Nations economic development interests;
- 33 Ensuring consistency between planning bylaws and policies and First Nations land use plans, treaty agreements, and land use agreements with the Islands Trust Area;

Heritage and Cultural Principles

- 34 Recognize that “unique amenities” includes cultural heritage and protected heritage sites;
- 35 Re-establish pre-1995 heritage and cultural heritage/archaeological principles from past Policy Statements;
- 36 Include Indigenous place names and historical understanding in local trust committee areas signage and wayfinding, ecology and habitat areas;
- 37 Educate islanders and the general public on the illegality of damaging, looting, and possessing Indigenous cultural heritage and artefacts;
- 38 Ensure all agencies and ministries conform to heritage protection and conservation policies and principles as outlined by the Islands Trust and First Nations governments;
- 39 Develop Trust wide heritage preservation overlays to ensure the preservation and protection of cultural heritage, heritage buildings, and cultural sites.

Implementation Principles Related to Overarching Legislation

- 1 Enter into protocol agreements and management plans that address matters of mutual interest and concern;
- 2 Ensure that First Nations projects related to First Nations economic reconciliation are prioritized within the Islands Trust Area;
- 3 Develop a First Nations Advisory Committee on environmental and heritage preservation;
- 4 Ensure companies and business conducting ground work, archaeological assessments and monitoring within the Islands Trust Area are approved by First Nations governments and communities and uphold the foundation document principles in their operations;

Questions

- 1 Should house size or construction be restricted to reduce impacts on heritage sites?
- 2 Should seawalls be prohibited to preserve heritage foreshore?
- 3 Should Islands Trust reconciliation policies be implemented regionally versus at the local island level?

2.2 CLIMATE CHANGE

Current Context:

In the [2018-2022 Islands Trust Strategic Plan](#), Trust Council committed to amend the Islands Trust Policy Statement to add climate change mitigation, adaptation and resiliency policies; (and to...) amend Official Community Plans and land use bylaws to foster climate change resilience, including measures to protect Coastal Douglas-fir, foreshore and nearshore environments and groundwater.”

In March 2019, Islands Trust joined governments around the world in declaring a Climate Emergency and making a commitment to take urgent and equitable climate action. In Phase I of the Islands 2050 public engagement process, we asked the public: “In the context of a changing climate, what concerns do you have for the next 30 years?” The [“What We Heard” Report](#) highlighted several priority themes of concern. Ecosystem Change and Water were by far the top concerns expressed, followed in order of priority by the themes of: Land and Marine Use Decision-Making; Governance; Transportation; Community Resilience; Food Security; Fire Risks; Education; and Sea Level Rise.

Reflections from the Trust Programs Committee (TPC) Working Group on Climate Change:

“Place Protection”: Trustees in this working group generally agreed that bolder directive policies would be needed in order to properly address both climate change and reconciliation. In particular, it was felt that the existing language reflected an overly human-centric approach to land use planning which has evolved since the original drafting of the Policy Statement (both inside the Trust and globally). Examining the phrase “preserve and protect”, it was suggested that the Trust has a clear mandate to first preserve (via conservation) and then protect (via planning). In this way, the Trust Object is itself a climate action tool, safeguarding carbon sinks and biodiverse ecosystems, and limiting the rate and scale of emission-intensive growth and development. In the face of the projected impacts of climate change on the Trust Area, there is now a need for more targeted policy directives that can curb or adapt to the growing risks of biodiversity loss, shoreline erosion, wildfire risk, droughts, storm-surge flooding, salinity, acidification, temperature change, etc. Members of this working group generally agreed that, in the rich and unique bioclimatic zone of the Trust Area, conservation and protection of existing natural areas is the clearest pathway to climate resilience for ecosystems and communities alike.

“Unique Amenities”: Members of this working group tended to interpret “unique amenities” in the context of healthy coastal ecological communities, where human needs are just one element of community well-being. Working towards a definition, the group discussed what makes the Islands Trust Area unique and in need of special protection, which included some of the following defining elements: healthy coastal ecosystems; intricate web of biodiversity; rich ecological communities (e.g. Coastal Douglas-fir ecosystem); model of living lightly in a balanced, sustainable way; protection from overdevelopment, overpopulation, urbanization; First Nations cultural heritage; what was there vs. what settlers have created.

A Case for More Explicit/Prescriptive Directive Policies: Trustees in this working group felt that more prescriptive Policy Statement language would provide the policy backing needed for trustees to properly enact the Trust Object in their communities. Some have suggested that leaving too much room for interpretation also leaves room for politically-influenced “policy drift” away from the central Trust Object, which in turn compromises effective regional governance as set out in the Trust Object (“for the benefit of the residents of the Trust Area and of British Columbia generally...”).

Preliminary Policy Directions:

A high-level overview of the guiding principles and policy goals from the TPC Working Group on Climate Change is listed below. Specific amendment language will be presented closer to First Reading. These recommendations have not yet been endorsed by the wider TPC. All amendment recommendations will be reviewed through the lens of reconciliation principles and priorities (Ref: Sections 1.1 and 2.1 of this report).

The working group discussed preliminary guiding principles that should guide Policy Statement amendments:

- **Climate Emergency**
 - Climate Emergency Declaration needs to translate into bolder protective policies
 - climate change projections suggest we can't address climate change with business as usual
 - every day we continue business as usual, we push intensity of impact further into future
- **Place-Based Protection**
 - Trust Object is fundamentally about conservation-oriented, place-based protection model, not traditional human-centric land-use planning / development model
 - protecting the natural areas of the Trust Area protects the wider region (provincial interest)
 - need to protect those who can't speak for themselves (ecosystems and future generations)
- **Precautionary Principle**
 - where there is scientific uncertainty, proceed cautiously to avoid harm
 - define as a guiding principle for all policies contained in the Policy Statement
 - acknowledge limits of professional reliance model - site specific perspectives, little understanding of impacts to First Nations, paid by applicants = conflict of interest
- **Indigenous Knowledge**
 - prioritize Indigenous Ways of Knowing and Traditional Ecological Knowledge
 - learn from Cultural Knowledge Holders
 - understand and learn from First Nations' relationship with the land
- **Ecosystem-Based Approaches**
 - look at broader impacts to ecosystem / watershed; not just site-specific or island-specific
 - acknowledge that human well-being is dependent on well-being of ecosystems
 - favour nature-based solutions over technological workarounds that are not fully understood
- **Climate Equity**
 - work to understand the impacts of climate change on vulnerable segments of communities
 - foster climate resilience for those most vulnerable
 - work with other agencies to ensure resources for those who are most vulnerable

The working group felt the Policy Statement should be amended to achieve the following policy goals:

- **Preserve, Protect and Restore Carbon Sinks**
 - Bolder policies to preserve mature forests, greenspace, soils, wetlands and eelgrass meadows that act as important carbon sinks for the Trust Area and wider province/country
- **Foster Low-Carbon, Compact and Connected Communities**
 - Facilitate smaller building footprints (square footage limitations), clustered development (close to hubs, where appropriate), active transportation, low carbon agriculture and low carbon, energy efficient buildings
- **Preserve, Protect and Restore Biodiversity**
 - Bolder policies for the protection of sensitive Coastal Douglas-fir and Coastal Western Hemlock ecosystems, wildlife corridors, culturally-significant species and species at risk, and marine food webs for Southern Resident Killer Whales (for the Trust Area and wider province/country)
- **Safeguard Freshwater Sustainability**
 - Bolder policies for the protection of finite water supplies; regulate alternative water supplies with a precautionary approach (including rainwater harvesting, desalination plants, etc.)
- **Protect Shorelines and Foreshore**
 - Bolder protections of shorelines and foreshore habitats through setbacks and upslope protections; safeguard Indigenous shellfish harvesting areas and archeological sites
- **Mitigate Wildfire Risk**
 - Minimize fire risks through land use planning tools, advocacy and outreach

2.3 AFFORDABLE HOUSING

Current Context:

In the [2018-2022 Islands Trust Strategic Plan](#), Trust Council committed to strengthen housing affordability throughout the Islands Trust Area and listed a number of strategic actions to support that objective. These included the following actions pertaining to the Policy Statement Amendment Project:

- I. Review the Policy Statement to ensure that it:
 - a. gives affordable housing a greater profile for its role in sustainable communities
 - b. includes a reference to affordable housing in its policy direction to LTCs and IMs
 - c. includes a clear and well thought-out definition of ‘affordability’
 - d. includes a clearly articulated vision, goals and objectives for affordable housing

In the current version of the [Islands Trust Policy Statement \(2003\)](#), policy guidance and directives pertaining to affordable housing are notably sparse:

In the **opening preamble to Part V – Sustainable Communities**, it is stated:

*Communities within the Trust Area are predominantly rural in character and contrast markedly with surrounding urban areas. Each island community has developed somewhat independently of communities. Residents of all island communities value the safe and supportive nature of their island and their quality of life. Most feel strongly that **people of differing age groups and income levels should continue to have the opportunity to reside in island communities**. The health of a community is influenced by numerous factors such as economic security, education, social support systems, the cleanliness and safety of the environment, and **the availability of such necessities as educational and social services, transportation, affordable food and housing**. Public involvement in decisions that affect a community is also critical to the health of that community. Participation in the decision-making process influences whether an individual or group is able to realize aspirations, satisfy needs or cope with change.*

In addition, **Directive Policy 5.8.6** states:

*Local Trust Committees and Island Municipalities shall, in their Official Community Plans and Regulatory Bylaws, **address their community’s current and projected housing requirements** and the long-term needs for educational, institutional, community and health-related facilities and services, as well as the cultural and recreational facilities and services.*

In addition, **Section 473(2) of the Local Government Act** states:

An official community plan must include housing policies of the local government respecting affordable housing, rental housing and special needs housing.

Reflections from the Trust Programs Committee (TPC) Working Group on Affordable Housing:

Housing Needs: Many islands in the Trust Area are experiencing a shortage of safe, secure and affordable housing. Development patterns of the past that led to large single-family houses and rural sprawl have proven to be environmentally unsustainable and have led to social equity challenges. Trustees in this working group generally agreed that the core issues at hand are broader than mere “affordability” and explored alternative

terms such as “diversity of housing stock” and “accessible housing” that is “safe, secure, appropriate and affordable for low to medium income households”. It was noted that several Local Trust Committees (LTCs) and Island Municipalities (IMs) often face a tension between the ecosystem protection elements of the Policy Statement and community needs for densification to support affordable housing projects (e.g. constraints imposed by Directive Policy 4.4.2 – freshwater supply). This is exacerbated by the inability of vulnerable/low-income groups to find alternative (costly) pathways to address regulatory constraints. Looming crises such as pandemics and climate change are not experienced equally and can exacerbate inequalities and gentrification on the islands. Trustees also considered community needs for “aging in place” – i.e. facilitating safe, secure, appropriate and affordable housing for seniors as part of the housing mix. It was highlighted that different local trust areas and island municipalities will have different needs regarding affordable housing; thus, flexibility in policy options would be paramount. It was noted that the Official Community Plans (OCPs) of LTCs/IMs in the Trust Area currently have differing and outdated definitions of “affordable housing” or no mention at all. The *Local Government Act* has a requirement that OCPs include language around affordable housing, but is non-specific and leaves room for interpretation. Leaving it to each LTC/IM to proactively incorporate affordable housing considerations into their OCPs could be seen to compromise a strategic and regional approach. Including it in the Policy Statement may help LTCs/IMs to strike a more refined balance between ecosystem protection and community needs. The working group felt that the role of Islands Trust would be to facilitate (not provide, nor restrict) affordable housing, largely through rezoning.

The Islands Trust Object and “Unique Amenities”: Members of this working group tend to favour an inclusive Policy Statement that balances community needs with environmental protection and acknowledges their points of intersection. In early discussions of the working group, it was felt that the differentiation of “unique amenities” and “environment” in the Trust Object itself clearly recognized them as distinct, with “unique amenities” referring more to the unique social character of the islands. Trustees in this working group also highlighted that the approved inclusion of Part V in past versions of the Policy Statement suggests that the Province is in agreement with this broader interpretation. Furthermore, it was suggested that the use of the words “the Trust Area” and “for the benefit of...” in the Trust Object sets up a scenario where community values and community issues are clearly integral to the purpose clause.

Preliminary Policy Directions:

The following amendment recommendations have been suggested by the TPC Working Group on Affordable Housing. These recommendations have not yet been endorsed by the wider TPC. All amendment recommendations will be reviewed through the lens of reconciliation principles and priorities (Ref: Sections 1.1 and 2.1 of this report).

The working group discussed that affordable housing could be defined in the Policy Statement as:

- **Affordable Housing:** Safe, secure, appropriate and affordable housing for low to moderate income households. (The working group notes that further definitions may be needed for the terms “safe”, “secure”, “appropriate”, and “affordable”.)

The working group discussed preliminary guiding principles that should guide Policy Statement amendments:

- The acute lack of diverse, affordable housing options on many islands is exacerbating challenges pertaining to social equity and homelessness in Trust Area communities.

- Development patterns of the past that led to large single-family dwellings and rural sprawl have proven to be environmentally unsustainable and emission-intensive.
- There are environmental benefits to multifamily, compact, clustered, and connected affordable housing; Low-carbon housing is an essential component of climate action planning.
- Illegal dwellings that are not in accordance with regulatory bylaws are compromising the safety and security of housing options within the Trust Area.
- Short-term rentals may be impacting the affordability of housing in both negative and positive ways, but seem to incur a net harm to the availability of affordable housing options on some islands.
- Freshwater scarcity and the need to protect First Nations cultural heritage and sensitive biodiverse ecosystems are significant constraints to increasing density for multifamily, affordable housing units. In order to address the needs for affordable housing within these constraints, downzoning of previously subdivided residential areas is needed.
- There is a need to work closely with local governments, non-profits and other agencies to facilitate the provision of affordable housing in the Trust Area (advocacy policies)
- Advocacy for safe and secure housing will be guided by the Missing and Murdered Indigenous Women and Girls (MMIWG) Calls for Justice.
- The severity of affordable housing challenges varies amongst islands within the Trust Area – should the Trust stipulate different policies for specific islands where the lack of affordable housing is particularly acute? (e.g. Salt Spring and Gabriola?)

The working group suggested the following amendment language. This is the only theme where specific amendment language has been proposed to date. This is due to the fact that affordable housing policies are much more limited in scope than the themes of reconciliation and climate change, which require review of the entire Policy Statement and a much broader set of amendment recommendations.

- **General:**
 - *...Where and when the housing needs report for a Local Trust Area / Island Municipality concludes that there is a deficit of safe, secure, appropriate housing options that are affordable, in perpetuity, for those groups identified as being in core need, those housing options shall be given priority over market housing.*
 - *...Where islands have an identifiable village core, OCPs shall prioritize clustered, compact and connected affordable housing*
 - *...where LTCs/IMs and bylaws permit short-term rentals (STRs), they shall be regulated and limited in number*
- **Downzoning / Density Transfer:**
 - *...LTCs/IMs shall address imbalances in housing options by downzoning residential areas that do not have adequate water and densifying areas suitable for low-carbon, clustered and connected affordable housing*
 - **AND/OR**
... LTCs/IMs shall consider reducing density in areas “where development is inappropriate” and increasing density in areas “where there could be community benefits”
 - **AND/OR**
... LTCs/IMs shall not increase density in areas where there is water scarcity or in areas requiring extra protection due to the presence of First Nations cultural heritage, species at risk and/or high levels of biodiversity (e.g. Coastal Douglas-fir ecosystems)

APPENDICES

APPENDIX A – 2020 Publicly Released Legal Opinion

APPENDIX B – 2000 Legal Opinion (3 Paras for Public Release)

REPLY TO: VANCOUVER OFFICE

VIA EMAIL: cfrater@islandstrust.bc.ca

October 27, 2020

Clare Frater
Director, Trust Area Services
Islands Trust
200 - 1627 Fort Street
Victoria, BC V8R 1H8

Dear Ms. Frater:

Re: Policy Statement Amendment Project
Our File No. 00002-0020

You have requested our opinion on the several questions pertaining to the amendment of the Trust Policy Statement, which we will address in order:

1. *Is s. 3 of the Islands Trust Act to be interpreted in such a way as to restrict the scope of the Policy Statement to environmental conservation and cultural heritage matters, or can the Policy Statement include policies in respect of matters like sustainable communities and affordable housing that appear to relate more directly to the exercise of bylaw-making powers by local trust committees under Part 14 of the Local Government Act?*

The general scheme of the *Islands Trust Act* includes the creation of governance bodies that exercise jurisdiction pursuant to both the *Act* and pre-existing local government legislation, principally what's now Part 14 of the *Local Government Act*. In enacting this legislation, the Province withdrew certain regulatory powers from regional district boards and conferred them on elected local trust committees. The result is that local governance of the trust area is shared between the regional districts and the Islands Trust. In conferring governmental powers on the Islands Trust entities the Legislature identified the statutory object that is in s. 3 of the *Islands Trust Act*. For the purpose of carrying out that object, the Trust Council established under the *Act* must adopt a policy statement, the scope of which is not prescribed; the *Act* merely states that the policy statement must be a general statement of the policies of the Trust Council to carry out the object of the trust. The Trust Council may, according to the Supreme Court of Canada's decision in *Canada (Minister of Citizenship and Immigration) v. Vavilov* 2019 SCC 65, interpret s. 3 of the *Islands Trust Act* "applying its particular insight", and a reviewing court will defer to that interpretation unless it can be shown to be unreasonable; the interpretation need not be legally "correct".

The *Vavilov* decision indicates that the scope of the policy statement should be determined according to its “text, context and purpose”. The context and purpose of s. 3 include providing the standard or benchmark for the bylaw approval function performed by the executive committee under s. 15 of the *Act* in respect of local trust committee and island municipality bylaws, and the broader but less binding purpose described in s. 39.1 of the *Act* which requires the council of an island municipality to have regard to the policy statement when enacting bylaws and issuing permits and licences. According to s. 15(4), the executive committee may not approve a bylaw if it is contrary to or at variance with the policy statement. The efficacy of the policy statement in preserving and protecting the trust area lies principally in the direction it gives to the enactment of Part 14 bylaws by the local trust committees and island municipalities. These are the core tools that the Legislature provided to the local trust committees to achieve the object of the trust.

The Trust Council has several options in respect of Part 14 bylaws. It may legitimately determine in respect of particular Part 14 bylaw-making powers that local trust committees and island municipalities can be left to exercise their Part 14 powers as they see fit, in which case the policy statement may be silent on that topic. In other cases, the Trust Council may see fit to state a policy favouring the enactment of a particular type of Part 14 bylaw without indicating in any detail what such a bylaw should achieve. In still other cases the Trust Council may wish to go further, by indicating substantive content for such a bylaw that is considered to be appropriate or necessary for achieving the trust object. Each of these could in our view be a legitimate policy choice for the Trust Council to make in relation to any particular Part 14 topic, and a reasonable interpretation of s. 3 of the *Act* and the provisions of the *Act* dealing with the policy statement. It is implicit in the foregoing opinion that we don’t consider that the policy statement must be restricted in its scope to environmental conservation and cultural heritage, since Part 14 powers extend well beyond those matters.

As to the meaning of the term “unique amenities” in the trust object, according to the Supreme Court’s reasoning in *Vavilov*, the B.C Legislature is presumed to have intended local and municipal trustees sitting in Trust Council to determine what constitutes a “unique amenity” that falls within the scope of the “preserve and protect” object, subject only to judicial review on a standard of reasonableness. In leaving the term undefined in the statute, the Legislature can be taken to have intended that the Trust Council would determine what features of the trust area warrant preservation and protection as “unique amenities”, by addressing the matter in the policy statement. As regards the text of the statute as referenced in the foregoing citation from the *Vavilov* decision, dictionaries merely define “amenity” as “pleasant feature”. The interpretation of these words in s. 3 seems to us to be an exercise that a reviewing court would see as quintessentially engaging the principle in *Vavilov* that the Legislature’s delegate (Trust Council) may employ its “particular insight”, based on local knowledge, in determining what features of the trust area it will seek to preserve and protect. We don’t interpret the adjective “unique” as meaningfully limiting the scope of the term “amenities”; rather, we think that the term “unique” simply acknowledges the juxtaposition of the trust area’s landforms, plant and

animal communities and so forth with the geographic position of the islands on which they are found, which is by definition unique.

2. *If not, given that local trust committees and island municipalities are required by Section 473 (2) of the Local Government Act to include housing policies in their OCP respecting affordable housing, rental housing and special needs housing, should this topic be addressed in the Policy Statement?*

We indicated above that it's up to the Trust Council to determine whether any matter that is within the scope of Part 14 of the *Local Government Act* ought to be addressed in the policy statement, whether or not the matter is particularly described in s. 3. Addressing or not addressing a particular topic in the trust policy statement has important implications for the operation of the rule in s. 15 that a bylaw must not be approved by the executive committee if it's contrary to or at variance with the policy statement, and the rule in s. 39.1 that the council of an island municipality must have regard to the policy statement when enacting bylaws and issuing permits and licences. It may be that some Part 14 matters are considered so critical to the achievement of the trust object (the use of development permit area designations for the protection of the natural environment might be an example) that trust council considers that the policy statement must address them, while others are more peripheral and can be left to local trustees and municipal councils without policy guidance. It's not our view that the policy statement would be legally vulnerable if it were to omit any reference to housing. Part of the trust council's role is to determine whether such matters related to housing warrant treatment in the policy statement, in view of the fact that the *Local Government Act* requires local trust committees and island municipalities to include housing policies in their OCPs and that if the policy statement is silent on those matters, there may be less leverage to pursue the trust object as interpreted by the Trust Council by refusing to approve an OCP that's contrary to or at variance with the policy statement.

3. *Can the Islands Trust Object, set out in s.3 of the Islands Trust Act, be interpreted to include a mandate to preserve and protect affordable housing?*

As regards housing affordability in particular, it seems to us that the Trust Council might reasonably consider that socially diverse local populations are part of the unique amenities of the trust area. We note that s. 3 refers to the trust area being preserved and protected "for the benefit of the residents of the trust area and of British Columbia generally". Policies that are directed at the maintenance of an adequate supply of housing that is affordable by persons in the income brackets who have historically populated the trust area would seem clearly to be "for the benefit of the residents of the trust area". Further, one of the consequences of preservation and protection of the trust area "for the residents of British Columbia generally" could be that they may visit the trust area, such non-resident enjoyment of the trust area being more feasible given the availability of local services such as visitor accommodation, restaurants, travel services and so forth that rely on an adequate supply of

affordable housing for operators and employees. Overall, we consider that a Trust Council interpretation of the term “unique amenities” in s. 3 as including a supply of affordable housing would likely pass the reasonableness test.

4. *Given that local trust committees and island municipalities are entrusted with local government duties under Part 14 of the Local Government Act, are their roles as members of local Trust Committees and Island Municipalities different from their roles as members of the regional Trust Council which is governed solely by the Islands Trust Act?*

We must distinguish between members of the Trust Council who are members of the council of an island municipality (municipal trustees) and those who are not (local trustees), in responding to this question.

In our view it is incorrect to consider local trustees to be “wearing different hats” when they are sitting in Trust Council and when they are sitting in a local trust committee exercising Part 14 powers. According to s. 9 of the *Islands Trust Act*, the Trust Council must adopt a trust policy statement “for the purpose of carrying out the object of the trust”. Section 24 of the *Islands Trust Act* provides that “for the purpose of carrying out the object of the trust”, each local trust committee may regulate the development and use of land in its local trust area in accordance with sections 29 and 31 of the *Act*, and must submit its bylaws to the executive committee for approval. Section 29 is the source of the local trust committees’ Part 14 powers. Thus, local trustees wear the same hat whether they are sitting in Trust Council dealing with the trust policy statement or sitting in local trust committee dealing with Part 14 matters, and are meant to be pursuing the same purpose in each case: the purpose described in s. 3 of the *Islands Trust Act*.

The situation of municipal trustees is somewhat different. They acquire Part 14 powers directly via the *Local Government Act* and are not mandated to exercise those powers “for the purpose of carrying out the object of the trust”; rather, the object of the trust is secured via special provisions in Part 5 of the *Islands Trust Act*. Section 39.1 requires the councils of municipalities in the trust area to “have regard to the object of the trust” in adopting a bylaw or issuing a permit or licence, and to submit for executive committee approval only their official community plans and zoning bylaws, which approval must (as is also the case with local trust committee bylaws) be withheld if the bylaw is contrary to or at variance with the trust policy statement. It may be that municipal trustees can reasonably be described as “wearing different hats” when they are sitting in Trust Council and when they are sitting in a municipal council exercising Part 14 powers; such a conclusion might be reinforced by the fact that each of them must make separate oaths of office in respect of their municipal council and trust council roles. However, it seems clear to us that local trustees have but a single role and mandate in all their activities: to secure the object of the trust set out in s. 3 of the *Islands Trust Act*.

We trust that these opinions will be helpful to the Trust Council as it considers amendment of the Islands Trust Policy Statement.

Sincerely,

YOUNG ANDERSON



Bill Buholzer

buholzer@younganderson.ca

BB/smj

copy to: Mr. Robert Barlow, Islands Trust

APPENDIX B

Excerpt of Publicly Released Legal Opinion (2000)

Excerpt from November 23, 2000 legal opinion for the Islands Trust

Re: Policy Statement Directive Policies

from Bill Buholzer (formerly Lidstone, Young, Anderson)

(3 paragraphs released to public by EC Oct 19, 2010)

Directive Policies

The thrust of the changes that are proposed to the "directive policies" is to change requirements that local trust committees and island municipalities "address" certain matters in their plans and regulatory bylaws, to a requirement that they include those matters in their regulatory bylaws. Presumably the intent here is to provide more definite policy direction to the local trust committees.

In principle, we see no reason that the more mandatory language cannot be adopted in the Islands Trust Policy Statement. Indeed, it could be argued that the proposed language of the directive policies is more consistent with the Islands Trust Act than the current, more neutral language. The scheme of the Islands Trust Act is that the Islands Trust Policy Statement forms a substantive policy context for local bylaws. The Islands Trust Act certainly supports a requirement that local trust committees not only address certain subjects in their plans and bylaws, but that they address those matters in a specific way or to a specific effect. Inherent in the choice of wording for policies of this nature, is a choice as to how much leeway the Trust Council wishes to leave to local trust committees in implementing the Islands Trust Policy Statement and, indirectly, the object of the Islands Trust. That is a matter on which we think that a court would defer to the judgment of the Trust Council, should any party, including any local trust committee, challenge the authority of the Trust Council to constrain the bylaw making powers of local trust committees in this manner.

As for the authority of the Trust Council to enforce the adherence of local trust committees to directive policies, the Islands Trust Act provides a very simple bylaw approval procedure permitting the executive council or the Trust Council, as the case may be, to determine whether a particular bylaw is contrary to or at variance with the trust policy statement. There is no question that the Trust Council and the executive committee have the authority to refuse to approve a bylaw if, in its reasonable opinion, the bylaw does not comply with a "directive policy" in the trust policy statement.