



Islands Trust Council

Quarterly Meeting Agenda Addendum

Date: September 24 - 26, 2024

Location: Dodd Narrows Rooms A/B - Vancouver Island Conference Centre
101 Gordon Street, Nanaimo BC

		Pages
6.	EXECUTIVE	5:00 PM - 12:00 PM
6.2	<u>Discussion / Decision Items</u>	
6.2.3	Interpretation of Islands Trust Act Section 3: Islands Trust Object - Briefing	8:30 AM - 10:00 AM
6.2.3.1	6.2.3 Supporting Materials	2 - 21

From: KEES LANGEREIS <[REDACTED]>
Sent: Thursday, May 2, 2024 1:14 PM
To: Executive Admin
Cc: MUNI Minister
Subject: Islands Trust-concerns about section 3
Attachments: Former Trustees - Concerns About Sec. 3.pdf

To the Executive Committee of the Islands Trust.
Sending on behalf of the signatories to the letter.
Please find attached a letter from 34 former Islands Trust trustees. We respectfully request that it be included on the June 2024 Trust Council meeting agenda for consideration.
Thank you.
Sincerely,

Kees Langereis
Gabriola Island
[REDACTED]

May 2, 2024

To Executive Committee and Trust Council of the Islands Trust

As former Islands Trust trustees from various islands in the Trust Area, we are writing to inform you of our concerns regarding Trust Council's intention to broaden the meaning of the words 'unique amenities' in Section 3 of the Islands Trust Act (the Object). The spirit and intent of those words seem unmistakable in light of the 1986 Ministry of Municipal Affairs/Islands Trust "Position Paper; The Object of the Islands Trust: Renewing the Consensus", that specified a combination of many natural factors.

Following an in-camera meeting on September 26, 2023, it was reported that Trust Council had come to a "consensus" on how Section 3 of the Act that created the Islands Trust would (not 'should') be interpreted. What those conclusions were and how they had been agreed upon was not revealed. A silence, lasting almost four months, followed before the "[Islands Trust Council Highlights](#)" with a link to "[Trust Council's consensus statement](#)" was officially released on January 18, 2024.

It was then that the details of Trust Council's conclusion were revealed to the general public. 'Unique amenities' were to include, "but not be limited to, housing, infrastructure, livelihoods, and tourism". How and by whom these four categories were identified and selected for inclusion is not mentioned.

Apart from consideration of legal opinions, we question the propriety of holding this discussion during an in-camera meeting. We have heard different explanations of how Council's decision was arrived at - from staff, the Executive Committee, and from trustees. These contradictory responses are problematic and confusing. There is no evidence of a motion being passed by Council which would provide a record of Trust Council's approval for the addition of these items under the umbrella of 'unique amenities', or how individual trustees voted. It would have been helpful knowing whether this "consensus" was reached by referring to the 1986 Ministry of Municipal Affairs/Islands Trust "[Position Paper; The Object of the Islands Trust: Renewing the Consensus](#)" and the 2021 "[Discussion Paper: The Islands Trust Object: Past, Present and Future](#)".

These additional categories, now identified as 'unique amenities', are not unique to the Trust Area. Further, housing, infrastructure, livelihoods, and tourism are services provided by regional districts and government agencies. More alarming, this expansion and interpretation of 'unique amenities' has the potential of influencing or compromising environmental policies. The Trust is limited to regulating land use in

order to preserve and protect the natural environment and rural character of the Trust Area for all residents of BC, a duty specific to its intended purpose and function as a "trust".

How will this new interpretation of 'unique amenities' influence Trust Council as it embarks upon a review of the Trust Policy Statement? Will this decision result in environmental policies being compromised or excluded to facilitate development?

Pertinent and fundamental questions have been raised by numerous individuals and groups regarding both the process and the conclusions of that process over the course of the past six months and, as of this date, none have been addressed by the Chair of the Islands Trust Council.

We believe the credibility of the Islands Trust's promise of a transparent and open public process has been hurt by the manner in which this decision was reached, the lack of a rationale for this decision, and the lack of information provided.

We ask, therefore, that the Chair make a public statement with full disclosure of why the interpretation was not made in an open meeting, how a "consensus", unanimous or not, was arrived at, the reasoning used to arrive at this interpretation of the words 'unique amenities' and how this interpretation will influence the Trust Policy Statement review.

Sincerely,

Nerys Poole, 2008-2011 (Bowen Island) [REDACTED]

John Rich, 1976-1984 (Bowen Island) [REDACTED]

Kim Benson 1993-2008 (Gambier Island) [REDACTED]

Harlene Holm, 1978-1984 (Denman Island) [REDACTED]

Roxanna Mandryk 1992-1996 (Denman Island) [REDACTED]

David Critchley 2014-2022 (Denman Island) [REDACTED]

Deb Ferens 2011-2014 (Gabriola Island) [REDACTED]

Gisele Rudischer 1996 to 2008, 2011-2014 (Gabriola Island) [REDACTED]

Kees Langereis 2018-2022 (Gabriola Island) [REDACTED]

Debbie Holmes 1996-99, 1999-2002 (Galiano Island) [REDACTED]

Tahirah Rockafella 2018-2022 (Galiano Island) [REDACTED]

Sheila Anderson 2002-2005 (Galiano Island) [REDACTED]

Sandy Pottle 2008-2018 (Galiano Island) [REDACTED]

Tony Law 1996-2005, 2007-2018 (Hornby Island) [REDACTED]

Barry Kurland 1986-1990 (Lasqueti Island) [REDACTED]
Peter Johnston 2011-2015, 2018-2022 (Lasqueti Island) [REDACTED]
Tom Weinerth 1999-2002 (Lasqueti Island) [REDACTED]
Jen Gobby 2008-2011 (Lasqueti Island) [REDACTED]
John Barrett 1982-1986 (Lasqueti Island) [REDACTED]
George Ravenscroft 1996-1999 (North Pender Island) [REDACTED]
Ben McConchie 2018-2022 (North Pender Island) [REDACTED]
Christine Torgimson 2008-2011 (Salt Spring Island) [REDACTED]
Peter Lamb 2005-2008 (Salt Spring Island) [REDACTED]
David Borrowman 1996-2002 (Salt Spring Island) [REDACTED]
Elaine Jacobsen 1986-1996 (South Pender Island) [REDACTED]
David Greer 2008-2011 (South Pender Island) [REDACTED]
Wendy Scholefield 2014-2018 (South Pender Island) [REDACTED]
Wendy Munroe 1984-1988 (South Pender Island) [REDACTED]
John Rumble 1996-2000 (South Pender Island) [REDACTED]
Cameron Thorn 2018-2022 (South Pender Island) [REDACTED]
Bruce McConchie 2014-2018 (South Pender Island) [REDACTED]
Liz Montague 2011-2014 (South Pender Island) [REDACTED]
Steve Wright 1982-1990, 1996-2000, 2018-2022 (South Pender Island) [REDACTED]
Doug Fenton 2018-2022 (Thetis Island) [REDACTED]

c.c. The Honourable Anne Kang, Minister of Municipal Affairs

From: [REDACTED]
Sent: Thursday, May 30, 2024 11:09 AM
To: Executive Admin
Subject: Draft Trust Policy Statement

Trustees;

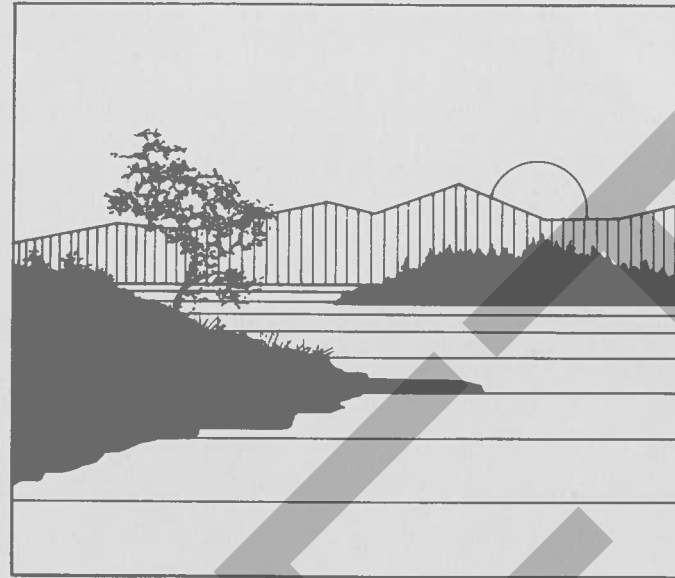
We support the letter by the 34 former trustees (GI Driftwood - May 22nd 2024) and its criticism of the Trust Council in-camera meeting where a new definition of "unique amenities" suddenly appeared. Items like housing, infrastructure, livelihoods, etc, in other words, "all about human needs", which are a part and parcel of every municipality in Canada, have now supplanted the original Preserve and Protect philosophy of the uniqueness of the natural ecosystems that exist ONLY here on the Gulf Islands.

For over 40 years here on Salt Spring Island we have been self employed, raised sons, contributed to our community and stewarded our land (we have hundreds of calypso orchids) while strongly supporting the Island Trust and its original mandate. That dedicated support is rapidly vanishing as our current two Trustees (and previous two) have shown zero interest in the island's ecosystems (one is a logger) and we have observed that on other islands similar "people first and foremost" Trustees are being elected by focused, well financed campaigns and backed by pro development/Libertarian beliefs. This Trojan Horse method has obviously worked at the Trust Council and the tragedy is the truly unique amenities of Nature on the Gulf Islands have and will continue to pay the price. It is time for the Minister of Municipal Affairs to intervene, maintain the original Trust Act and maybe time to reconsider even having elected Trustees. Most would be far more useful just growing their own vegetable garden!

Yours sincerely,

Rick and Juliette Laing,

[REDACTED], Salt Spring Island.



The Object
Of The Islands Trust:
Renewing The Consensus

Islands Trust Position Paper No. 1

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British Columbia
Ministry of
Municipal Affairs

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DRAFT

POSITION PAPER
ON
THE OBJECT OF THE ISLANDS TRUST
RENEWING THE CONSENSUS

Islands Trust
Munistry of Municipal Affiars
November, 1986

Position Paper #1

DRAFT

THIS POSITION PAPER
WAS ENDORSED BY THE
ISLANDS TRUST COUNCIL
ON SEPTEMBER 5, 1986

NOTES TO USERS

This is one of a series of position papers produced by the Island Trust. These papers have received the endorsement of the Islands Trust Council (an informal committee consisting of the 26 elected trustees of the Islands Trust). They describe the recommended approaches of the Trust Council regarding a variety of land use and development issues, but have not been adopted as policy by the individual local trust committees.

Under the Islands Trust Act, each local trust committee has the authority to develop land use regulations appropriate for their area. The position papers are used by the local trust committees to assist them in developing appropriate and effective plans and regulations, and in working with other government agencies to resolve land use and development issues.

A list of the position papers produced to date by the Islands Trust is provided below.

- No. 1 - The Object of the Islands Trust: Renewing the Consensus
- No. 2 - The Regulation of Home Occupations in the Islands Trust Area
- No. 3 - The Regulations of Bed and Breakfast Businesses in the Islands Trust Area

INTRODUCTION

The Islands Trust was established by the Islands Trust Act in 1974. The object of the Trust is defined very generally in the legislation (Section 4(1)).

"It is the object of the Trust to preserve and protect, in cooperation 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."

The Trust carries out this object through the preparation of official community plans and implementing bylaws under the authority of subsection 4(2)(h) of the Islands Trust Act and Part 29 of the Municipal Act; and through cooperative efforts with other agencies and recommendations to the Lieutenant-Governor in Council. The Islands Trust Act (Section 3) also states that the Trust shall administer a fund to acquire and manage land in the Trust area. However, this section of the Act has not been proclaimed.

Much of the authority needed to achieve the goals given to the Trust by the Legislation rests with other government agencies. The Trust, in turn, can provide assistance to these agencies in various elements of their programs within the Trust area. In recognition of this, the review of the interpretation of the Trust object included input and assistance from staff of all agencies which work with the Trust. In general, the response to the object from staff of other agencies was positive. Useful suggestions for improvement to the wording of the object were provided, and the staff representatives generally viewed the interpretation of the object as compatible with the goals and aims of their own agencies in the Trust area.

The interpretation of the object set out in the following paper provides a framework for the Islands Trust in carrying out its responsibilities for land use planning and regulation and in working with other agencies on matters of mutual interest.

BACKGROUND TO THE TRUST OBJECT

The islands and waters between the mainland of Canada and the southern third of Vancouver Island possess a combination of features which makes them particularly attractive for residence and recreation. This, coupled with the area's nearness to major urban centres, makes the islands and surrounding waters subject to considerable development pressure.

In recognition that insufficient direction of development was resulting in cumulative damage to the very amenities that makes the area so valuable, the Province established a special purpose agency in 1974 to manage the area. This agency is the Islands Trust.

The Trust has been given direct authority with respect to the regulation of land use and development. However, a key feature of the design of the Trust was that it should work in concert with other Provincial and local government agencies to achieve its mandate. By cooperation, it was intended that the powers of those agencies be used to assist in achieving the Trust's purpose. In turn, the Trust would be available to assist in the implementation of Provincial policy in the Trust area.

The object of the Trust is quite generally defined. The Islands Trust Act, Section 4(1), states that:

"It is the object of the Trust to preserve and protect, in cooperation 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."

THE NEED FOR REVIEW OF THE INTERPRETATION OF THE OBJECT

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.

THE PROCESS OF REVIEW

The review involved discussions amongst the elected Trustees of the Islands Trust and the staff within the Ministry of Municipal Affairs who provide planning and administrative services to the Trust program, as well as meetings between these staff and staff of other Provincial agencies and regional districts having responsibilities within the Trust area.

The primary objective of discussions with other agencies was to obtain comments on the interpretation and to ensure that the aims of these agencies for the Trust area are reflected in this document. Useful suggestions for improvement to the wording of the object were provided. Staff of other agencies generally were able to note compatible or complementary relationships between the Trust's object and the goals and objectives of their own agencies within the Trust area. The discussions were also useful in identifying ways of ensuring smoother working relationships and defining areas of cooperation to be pursued in future.

ELEMENTS OF THE OBJECT

This section of this paper provides the interpretation of the Trust object developed by the Islands Trust and reflects the changes suggested by staff of other government agencies.

Each phrase of the statement of the object in the Island Trust Act is quoted separately and a specific interpretation of the statement is provided.

"To preserve and protect ..."

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.

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.

"... in cooperation with municipalities and the government of the Province ..."

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.

"... the Trust area ..."

The Trust area is defined in Schedule A of the Islands Trust Act as being "all the land, except land situated within a reserve as defined in the Indian Act (Canada), on all the islands situated in

the Strait of Georgia, Howe Sound and Haro Strait ..." within the boundaries defined (see map attached). "Land" and "island" are defined in the Act to include private land, Crown land, and land covered by water.

"... and its unique amenities and environment

The special amenities and environment of the Trust area "derive from the combination of:

- 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 (ie. small watersheds, shallow soils and heavy reliance on groundwater sources);
- the self-sufficiency yet interdependence that island living entails;

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.

A benefit must be sustained and long-term, and must not be at the expense of the amenities or environment of the islands.

"residents of the Trust area" includes those living on the islands, part-time residents, and absentee land owners. Benefits to the residents derive from:

- 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.

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.

Benefits to the Province include:

- 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;

"... for the benefit of the residents of the Trust area and of the Province generally."

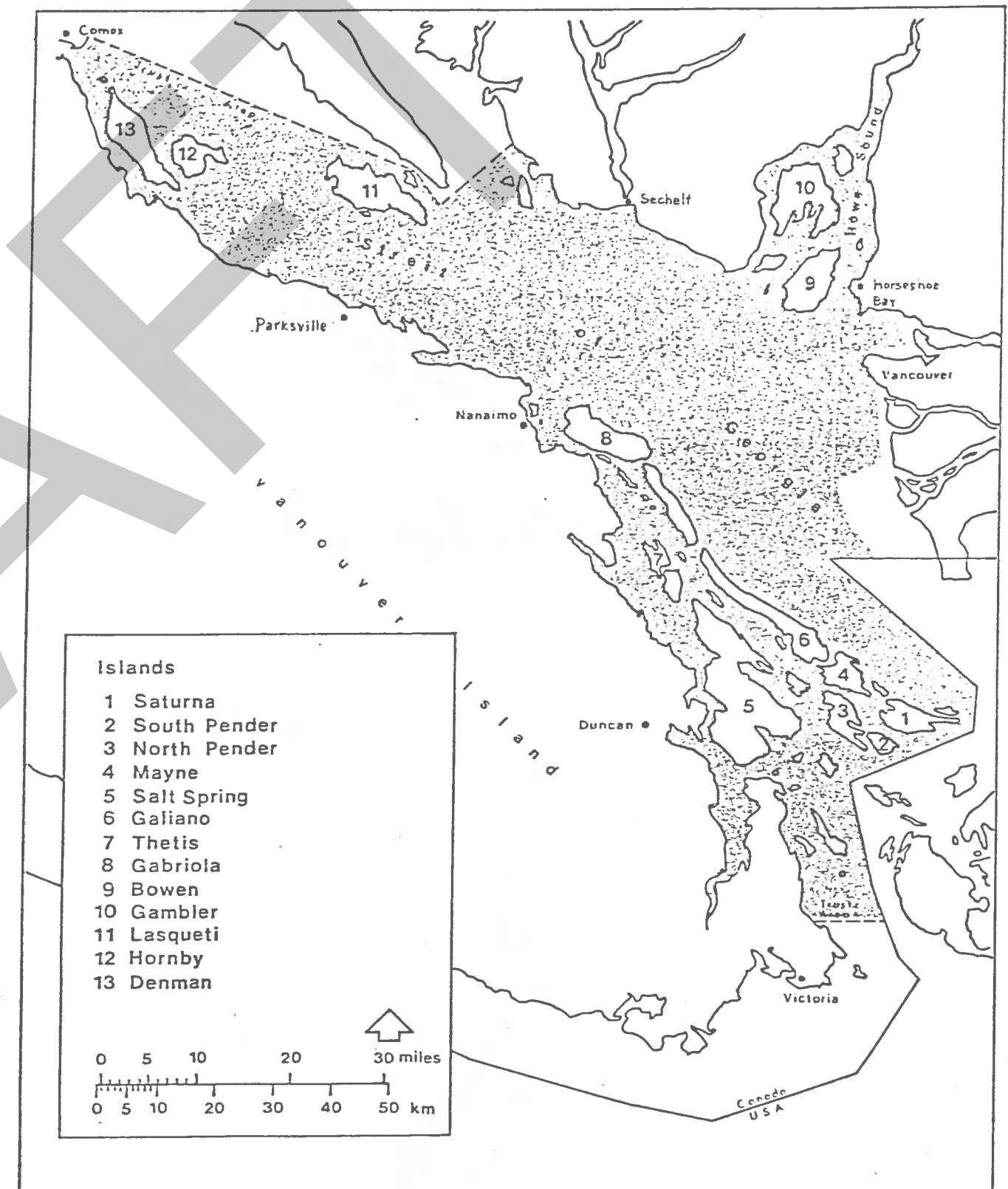
- preservation of a physically, ecologically, and socially diverse area for the continued enjoyment of future generations;
- assistance in the effective implementation of policies of other government agencies aimed at sound management of the islands.

CONCLUSION

The review of the interpretation of its object statement has been of value to the Islands Trust, both in identifying its own role and in learning more about the objectives and programs of other agencies operating in the Trust area. It is hoped that, in addition, staff of agencies involved in the review obtained a better understanding of the programs of the Islands Trust.

The interpretation of the object provided in this paper will be used by the Islands Trust in establishing priorities regarding its legislated responsibilities in the Trust area. In addition, the Trust hopes to build on the useful discussions with staff of other agencies by maintaining closer working relationships with them. One mechanism that the Trust hopes to use in this regard is the development of protocol agreements with other agencies, as such matters as the referral by other agencies of their plans and approvals to the Trust for review and comment.

THE ISLANDS TRUST AREA



From: Julia Mobbs
Sent: Thursday, June 20, 2024 1:35 PM
To: Alexandra Trifonidis
Subject: FW: Clarification on s.3 correspondence request

Categories: To-do's

FYI

Cheers,

Julia Mobbs, CPA, CA
Director, Administrative Services
Islands Trust | T 250-405-5150

From: Deb Morrison <dmorrison@islandstrust.bc.ca>
Sent: Thursday, June 20, 2024 1:26 PM
To: Julia Mobbs <jmobbs@islandstrust.bc.ca>
Subject: Re: Clarification on s.3 correspondence request

Just the June TC correspondence

d

On Thu, Jun 20, 2024 at 1:21 PM Julia Mobbs <jmobbs@islandstrust.bc.ca> wrote:

Hi Deb,

When you asked for 'all' correspondence from the public on Section 3 be included in the Sept meeting agenda, do you mean all we have received in its entirety, or just all that was received at this June TC meeting?

Cheers,

Julia Mobbs, CPA, CA

Director, Administrative Services

Islands Trust

200-1627 Fort Street | Victoria, BC V8R 1H8

T 250.405.5150 | www.islandstrust.bc.ca

You can also reach us toll-free via Service BC 1.800.663.7867 | 604.660.2421

Preserving and protecting over 450 islands and surrounding waters in the Salish Sea

I respectfully acknowledge that the Islands Trust Area is located within the treaty lands and territories of the BOKEĆEN, Cowichan

Tribes, K'ómoks, Lyackson, MÁLEXEL, Qualicum, scəwəθən, səlilwətəl, SEMYOME, shíshálh, Skw 'xwú7mesh, Snaw-naw-as, Snuneymuxw, Songhees, Spune 'luxutth', STAUTW, Stz'uminus, łəʔəmen, Ts'uubaa-asatx, Wei Wai Kum, We Wai Kai, W JOEELP,

W SIKEM, Xeláltxw, Xwémalhkwi, Xwsepsum, and xʷməθkʷəyəm First Nations. Islands Trust is committed to reconciliation and to

working together to preserve and protect this ecologically, culturally, and spiritually significant region in the Salish Sea.

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 quintessential¹ 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

DRAFT