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October 16, 2024

File No.: 4700-20-Prov

Email: MUNI.minister@gov.bc.ca

The Honourable Anne Kang
Ministry of Municipal Affairs
PO Box 9056
STN PROV GOVT
Victoria BC V8W 9E2

Dear Minister Kang,

RE: Request for Provincial Review of Islands Trust

We write further to the previous Minister of Municipal Affairs's letter of September 23, 2022, responding to our request for a provincial review of the Islands Trust mandate, governance and structure.

In his letter, the Minister noted that local government elections were imminent and asked that the incoming Trust Council provide its perspective on the requested review. After nearly two years in office in which we have faced the same structural limitations as the previous Trust Council, we can advise that we have reached the same conclusion: without systemic change the Islands Trust cannot meet the challenges of our time. Accordingly, at its September 24-26, 2024 meeting, Trust Council affirmed its support for the original request made under section 8(2)(e) of the *Islands Trust Act* by resolving:

1. *That Trust Council request the Lieutenant Governor in Council for the Province of British Columbia to conduct a review of the Islands Trust's mandate, governance and structure.*
2. *That Trust Council make the request by submitting the letter attached as Appendix 1 to the Lieutenant Governor under Section 8(2)(e) of the Islands Trust Act outlining the potential scope of a review, including, but not limited to:*
 - a. *An assessment of the optimum governance model to preserve and protect the Trust Area pursuant to the Province's vision for the future of the Trust area.*
 - b. *The object of the Islands Trust Act and clarification of the mandate of the organization.*
 - c. *The governance structure of the organization.*
 - d. *The alignment of decision-making processes and structures with the Declaration on the Rights of Indigenous Peoples Act.*
 - e. *The geographic scope of the organization and in particular authority over marine areas.*
 - f. *The funding mechanisms provided to the organization in light of a clarified mandate.*
3. *That the Executive Committee of Trust Council, in conjunction with staff, develop a communications strategy that informs the public of Trust Council's request for a review of the Islands Trust Act and the reasons for it.*

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Trust Council asks that as the Minister responsible for the Islands Trust you advance our recommendation to the attention of the Lieutenant Governor in Council for decision.

Trust Council identified challenges

The Islands Trust's unique statutory mandate to "preserve and protect the trust area and its unique amenities and environment" has become increasingly difficult to fulfill as the challenges it faces have become ever more complex. The *Islands Trust Act* is 50 years old and has not been systemically reviewed by the Province in 37 years, creating gaps in the Islands Trust's ability to address the current-day issues of greatest importance to the Trust Area. If the Islands Trust is to deliver effective solutions to these challenges its enabling legislation requires reexamination and, where necessary, amendment.

Alignment with the Declaration on the Rights of Indigenous Peoples Act

It is of paramount importance that Islands Trust decision-making processes appropriately acknowledge the rights and interests of the Coast Salish Peoples for whom the Trust Area has been home since time immemorial.

Advancing meaningful reconciliation in the Trust Area demands that 13 Local Trust Committees, the Islands Trust Conservancy Board, and Trust Council engage with the 27 Indigenous Governing Bodies that have interests in the Trust Area. This is an undertaking of enormous scope that requires significant financial and staff resources that are unattainable under the Island Trust's current funding model. It also represents a significant opportunity to advance reconciliation in the Province. Additionally, while Trust Council has authority to engage in coordination agreements under section 9 of the *Islands Trust Act*, the statute does not provide a framework for Trust Council to develop collaborative decision-making arrangements with Indigenous Governing Bodies.

Governance

The *Islands Trust Act* establishes a governance structure under which Trust Council is given responsibility for allocating resources and approving all local trust committee legislative decisions. This generates an inherent tension between the Island Trust's federal model and the principle of representation by population that is fundamental to democratic accountability. We fully understand that in creating a body with equal representation from all areas, the Province wished to emphasize the importance of having Trust Council focus on the Trust Area as a whole. However, the assignment of equal voting power to each Trustee ignores the extreme discrepancies in voting populations by Local Trust Area, with the result that greater voting power per capita is allocated to the least populated Local Trust Areas than to the more densely populated ones that provide the greatest financial contribution to Islands Trust operations.

In making this observation, Trust Council is not critiquing the Province's 1974 decision that established the Islands Trust's current governance arrangement. We are asking that the Province reassess whether the arrangement remains appropriate in light of the Trust Area's modern day challenges.

The Object of the Trust

Section 3 of the *Islands Trust Act* mandates preservation and protection of the Trust Area and its "unique amenities" and environment. The undefined term "unique amenities" has led to competing interpretations of the meaning and scope of the Islands Trust's jurisdiction and has generated division among trustees and the public in this and previous terms. As a consequence, Trust Council deliberations are persistently troubled by inconclusive debates about the relative importance and prioritization of

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environmental protection versus the facilitation of flourishing human communities. In order to function effectively, Trust Council needs the Province to provide a clearer definition of the Islands Trust object.

Funding model

The Islands Trust exists to preserve and protect the Trust Area not only for the benefit of its residents, but for all British Columbians. The Islands Trust's funding model, which sees property taxes generated only from Trust Area property owners as the primary source of revenue for its operations, does not reflect this statutory acknowledgement. Moreover, provincial funding to the Islands Trust under the Regional District Basic Grant program is based heavily on area population, which fails to recognize the true extent of the Islands Trust's beneficiary base.

Islands Trust Governance Review

The previous Minister's September 23, 2022 letter referenced implementation of the recommendations that emerged from the Islands Trust's most recent governance review as a means to address some of the emerging concerns and pressures identified by Trust Council.

That review, however, was limited to assessing "the policies and processes by which the work of the organization is directed and managed, not the framework of the legislation which enables the authority and limitations on authority of the organization". As such, Trust Council does not regard the proposed actions discussed in the governance review as germane to our recommendation that the Province undertake a comprehensive review of Islands Trust's legislative scheme.

To be clear, Trust Council remains committed to weighing and, where appropriate, implementing the recommendations that emerged from the governance review. We have established a Governance Committee as a standing committee responsible for advising Trust Council on governance related matters. Trust Council has also made progress advancing more robust corporate planning practices, and is taking steps to improve meeting procedures and facilitate structured decision-making. A program of extensive internal reform, however, is a necessary complement to, but not a substitute for, the systemic reassessment of the *Islands Trust Act* that only the Province can undertake and the organization urgently needs.

Moving Forward

Although the Ministry has introduced legislative amendments from time to time over the years, the challenges that now confront the island communities of the Trust Area require more than incremental change. The Islands Trust operates in a dynamic context in which continually evolving environmental, social, and economic concerns cannot be separated from each other, and it is an open question whether a federal model remains appropriate for advancing the Islands Trust's preserve and protect mandate. If so, it is far from clear that a governance structure that centralizes authority in an undemocratic Trust Council can be justified given modern expectations of accountability.

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Addressing the need to establish meaningful collaboration with Indigenous Governing Bodies in Trust Area governance and other current challenges requires changes to the Islands Trust's enabling legislation. It is beyond the capacity of the Islands Trust to develop amendments of that magnitude. More fundamentally, it falls to the Province, not the Islands Trust, to define the policy direction of any systemic changes. In that regard, only the Province can lead: first by confirming its vision for the Trust Area in consultation with the Islands Trust, Indigenous Governing Bodies, the communities of the Trust Areas and other stakeholders; and, then, by working with Trust Council to develop the amendments to the *Islands Trust Act* that will give the Islands Trust the structure and authorities necessary to fulfill that vision.

It is Trust Council's strong recommendation that the Province conduct a comprehensive legislative review similar in scope to the work of the select committee that led to the creation of the Islands Trust 50 years ago. This time, however, it is essential that the many Indigenous peoples with interests in the lands and waters of the Trust Area be involved through their governing bodies not only as participants in the review, but also as partners in the development of its terms of reference. We look forward to your response.

Respectfully, on behalf of the Trust Council of the Islands Trust,



Peter Luckham, Chair
Islands Trust Council
pluckham@islandstrust.bc.ca

cc: The Honourable Janet Austin, Lieutenant Governor of British Columbia
The Honourable David Eby, Premier of British Columbia
Cowichan Tribes
K'ómoks First Nation
Lyackson First Nation
Malahat Nation
Pauquachin First Nation
Penelakut Tribe
Qualicum First Nation
Semiahmoo First Nation
shíshálh Nation
Skwxwú7mesh Úxwumixw (Squamish Nation)
Snaw-naw-as First Nation
Snuneymuxw First Nation
Songhees Nation
Stz'uminus First Nation
Tla'amin Nation
Tsawout First Nation
Tsawwassen First Nation

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Tsleil-Waututh Nation
Ts'uubaa-asatx Nation
Wei Wai Kum First Nation
We Wai Kai Nation
WJOLĒLP First Nation (Tsartlip First Nation)
W̱SIKEM First Nation (Tseycum First Nation)
Xeláltxw First Nation (Halalt First Nation)
Xwémalhḵwu First Nation (Homalco First Nation)
Xwsepsum Nation (Esquimalt First Nation)
x^wməθk^wəyəm Indian Band (Musqueam First Nation)
Capital Regional District Board
Comox Valley Regional District Board
Cowichan Valley Regional District Board
Metro Vancouver Board
Qathet Regional District Board
Regional District of Nanaimo Board
Sunshine Coast Regional District
Bowen Island Municipal Council
Islands Trust Conservancy Board
Islands Trust Council
Islands Trust website

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