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December 18, 2018

File No.: 0110-20

via email: MAH.minister@gov.bc.ca

The Honourable Selina Robinson
Minister of Municipal Affairs and Housing
Parliament Buildings
Victoria BC V8V 1X4

Dear Minister Robinson:

Re: Request for legislative change

This request follows our January 23, 2018 meeting to discuss matters of importance to the Islands Trust Executive Committee, including potential legislative changes to the *Islands Trust Act* and other relevant legislation. At that time you requested a prioritized list of *Act* amendments that could form the basis for a review by Ministry and Islands Trust staff. I also understood from that discussion that it would be important that the Islands Trust ensure that it was fully utilizing its current authorities to achieve its preserve and protect mandate and that any proposed amendments to the *Act* would need to be demonstrably necessary.

We have taken that advice to heart and believe that we have identified realistic and achievable amendments to our primary legislation that will support the efforts of the Trust on behalf of all British Columbians. At their September 18, 2018 meeting Trust Council requested that I write to you asking for legislative change along three broad themes, as follows:

ENFORCEMENT AND ADMINISTRATION: Improvements to the Islands Trust's ability to enforce its current regulatory and legislative powers in support of the preserve and protect mandate of the Trust and its land use planning function. The Islands Trust does not have the same enforcement tools as other land use jurisdictions in British Columbia but is expected to provide a similar service. The recommended amendments are:

1. Allowance for entry warrants;
2. Development permit area enforcement via municipal ticketing;
3. Adoption of development approval information bylaws by local trust committees;
4. To enable the ability to charge fees for telecommunication applications.

MODERNIZATION: The *Islands Trust Act* has not been substantially amended in a number of years and there are areas that require updating in order for the organization to remain relevant. Recommended amendments are:

5. Amending the *Act* to add "First Nations" to the list of those with whom we work "in co-operation;"
6. The ability to delegate development permit and temporary use permits to staff;
7. Clarification of foreshore zoning authority and jurisdiction throughout the Trust Area;
8. In keeping with broader powers afforded regional districts, relative to S. 294 of the *Local Government Act*, to allow the Islands Trust entities, "incidental or conducive powers;"
9. To include reference to the ecosystem in section 8.2 of the *Islands Trust Act*.

ADVANCING THE MISSION OF THE ISLANDS TRUST: Diverse communities are a key element of Trust Council's vision for the Trust Area and relates to its current land use authority. Recommended amendments are:

10. Affordable Housing: to be able to enter into agreements with third parties to administer affordable housing, to be able to operate a housing service, and for local trust committees to be able to acquire and dispose of land.

(Appendix A attached provides a brief rationale and implementation requirement for each of the above amendments)

These amendments vary in terms of the difficulty or complexity of implementation with, in our minds, the foreshore jurisdiction and affordable housing service amendments being the most complicated and in need of a cooperative approach.

We would sincerely appreciate your Ministry's feedback on this proposal and how it could be achieved. We are hopeful that you will be able to dedicate some Ministry staff time in order to work with us on developing a defensible and modern update to the *Islands Trust Act*. Of course, we also wish to understand your priorities and if they can be realized through this work. Trust Council considers that this is an important opportunity for the Islands Trust, and the region, and we wish to work with you to implement reasonable change.

A topic as important as legislative change to the *Islands Trust Act* will require public engagement and I would appreciate collaboration with the Ministry on how it would foresee an appropriate process. Undoubtedly full and authentic public engagement will generate additional suggestions for legislative changes from the community itself. We are mindful that Island communities are participatory, feel their future is vested in the Trust and want to contribute to that future.

In closing, I note that Bill 52, : *Agricultural Land Commission Act 2018* has passed into legislation and I am struck by the symmetry of how the Islands Trust and the Agricultural Land Reserve, born of a certain era in BC politics, have stood the test of time. We believe it is time that the *Islands Trust Act* is given appropriate and similar attention.

Of course, if it would be convenient to you or beneficial to this request, we are happy to meet with you at your convenience.

With appreciation,



Peter Luckham, Chair
Islands Trust Council

The Honourable Selina Robinson

December 18, 2018

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cc: Islands Trust Area MPs
Islands Trust MLAs
Islands Trust Electoral Area Directors
Assistant Deputy Minister Faganello
BOKÉĆEN (Pauquachin) First Nation
Cowichan Tribes
Halalt First Nation
Homalco First Nation
Klahoose First Nation
K'ómoks First Nation
Lake Cowichan First Nation
Lekwungen (Songhees) Nation
Lyackson First Nation
MÁLEXEŁ (Malahat) Nation
Penelakut Tribe
Qualicum First Nation
Scia'new (Beecher Bay) First Nation
SEMYOME (Semiahmoo) First Nation
shíshálh First Nation
Snuneymuxw First Nation
Sḵw̓xwú7mesh (Squamish) Nation
Snaw-naw-as (Nanoose) First Nation
SḶÁUTW (Tsawout) First Nation
Stz'uminus First Nation
SXIMEŁEŁ (Esquimalt) Nation
Tla'amin (Sliammon) Nation
Tsawwassen First Nation
Tseil-Waututh Nation
T'Sou-ke Nation
Wei Wai Kum (Campbell River) First Nation
We Wai Kai (Cape Mudge) First Nation
WJOLEŁP (Tsartlip) First Nation
W̓SIKEM (Tseycum) First Nation
x̓m̓əθk̓əy̓əm Musqueam
Bowen Island Municipal Council
Islands Trust Council
Islands Trust website

Appendix A

Summary of potential amendments to the *Islands Trust Act, 2018*

ENFORCEMENT AND ADMINISTRATION AMENDMENTS	
<p>1. Allowance for Entry Warrants</p>	<p>S. 28(1.1) of the <i>Local Government Act</i> is applicable to Regional Districts but not the Islands Trust. This authority should not be excluded from Islands Trust/local trust committees and the lack of authority impacts delivery of enforcement of land use planning decisions.</p>
<p>Implementation</p> <ul style="list-style-type: none"> i. Amend Section 28 (1.1) of the <i>Local Government Act</i> to add “Islands Trust”. ii. Staff training and administrative training would be required. Actual bylaw enforcement procedures would require some change management process to ensure appropriate use. iii. There does not seem to be any cogent policy reason for excluding s. 424 of the <i>Local Government Act</i> (entry warrants) from the bundle of enforcement powers conferred on local trust committees. With this amendment of s. 28(1.1) of the <i>Islands Trust Act</i>, Division 1 of Part 12 of the <i>Local Government Act</i> including s. 424 would apply to the local trust committees and s. 424 in turn applies s. 275 of the Community Charter. Section 275 enables a justice to issue an entry warrant if satisfied that access to property is necessary for the purposes of the <i>Local Government Act</i>, which is the source of the enforcement powers that are conferred on local trust committees by s. 28(1.1) of the <i>Islands Trust Act</i>, in connection with which an entry warrant would be sought. 	
<p>2. Development Permit Area Enforcement Using Tickets</p>	<p>The use of ticketing to support the administration and delivery of a robust development permit authority would be the preferred outcome. The Trust has made this request of the Ministry in the past, most recently in 2016.</p>
<p>Implementation</p> <ul style="list-style-type: none"> i. Pilot project in the Islands Trust Area – by conferring additional enforcement powers by regulation under Section 54(2) of the <i>Islands Trust Act</i>. ii. Add to s. 28 a section to the effect that under s. 264 of the Community Charter, applicable to local trust committees under s. 414 of the <i>Local Government Act</i> and s. 28(1.1) of the <i>Islands Trust Act</i>, a local trust committee may also designate ss. 489 and 501(2) of the <i>Local Government Act</i> for the purposes of s. 264. Section 489 is the section of the <i>Local Government Act</i> that prohibits subdivision, etc. in a development permit area if a development permit hasn’t been obtained. Section 501(2) is the section that requires land to be developed strictly in accordance with the permit. <p>There are currently no jurisdictions that have the authority to issue tickets for development permit violations, so the Islands Trust would be joining municipalities and Regional Districts in requesting this change. While this authority would be useful to all local governments, it is particularly relevant for an entity with a statutory mandate to “preserve and protect” an area of the province that is environmentally sensitive, since the key land use management tools in relation to environmental protection are development permit area designations and development permit conditions. However, allowing local governments to ticket for an offence against a provincial statute is a novel idea.</p> <p>The Ministry may want to consider proposing this amendment as a “pilot project” for the Islands Trust only, following the evaluation of which the Province might consider extending the authority to municipalities and regional districts, and offering to partner with the Province in monitoring and evaluating the enforcement</p>	

approach. This additional authority could be conferred on the local trust committees by Cabinet order under s. 54(2) of the *Islands Trust Act* on a pilot project basis.

<p>3. Adoption of Development Approval Information Bylaws by local trust committees (LTC)</p>	<p>Mainly an administrative improvement, this amendment would increase the efficiency and independent ability of LTCs to administer their areas. This should reduce wait times for applicants.</p>
<p>Implementation</p> <p>i. Amend <i>Islands Trust Act</i> by repealing s.29(3.1)</p> <p>Amendment of s. 29(3.1) of the <i>Local Government Act</i> is required. Implementation by the Islands Trust would be relatively easy, would simplify the process and would reduce staff/administrative time.</p>	

<p>4. For the Islands Trust to obtain the authority to charge a fee for telecommunications applications</p>	<p>A fee structure and process is needed to allow thorough review of antenna and telecom infrastructure applications.</p>
<p>Implementation (to be determined)</p> <p>The Ministry of Innovation, Science and Economic Development Canada (ISED) has jurisdiction over telecommunications. ISED looks for the relevant land use authority to issue a letter of concurrence, the production of which requires a public process.</p> <p>Section 462 of the <i>Local Government Act</i> restricts the ability for local trust committees to charge fees. The <i>Islands Trust Act</i> limits the Islands Trust to only proscribe fees associated with its land use authority. We would request assistance from the Ministry to find a means for the Islands Trust to charge a fee for such an occurrence as is described.</p>	

MODERNIZATION

<p>5. Support in principle for amending the <i>Islands Trust Act</i> to add "First Nations" to the list of those with whom we work "in co-operation"</p>	<p>This amendment is both timely and appropriate with the focus of Trust Council on principles of reconciliation and the adoption of a First Nations Engagement Plan.</p>
<p>Implementation</p> <p>i. amendment to the <i>Islands Trust Act</i>, Part 2, Section 9 to add First Nations.</p> <p>ii. amendment to <i>Islands Trust Act</i>, Part 3 to add "First Nations"</p> <p>This request was made to the Ministry in 2015. It would not be a significant challenge for the Islands Trust to implement. An amendment to Part 2 section 9 'Coordination agreements with other government bodies' would enable the Trust Council and its delegates to enter into coordination agreements with First Nations and this seems uncontroversial.</p>	

<p>6. Development Permit and Temporary Use Permit delegation to Staff</p>	<p>Unlike other jurisdictions in BC with land use authority, the Islands Trust does not have the ability to delegate via bylaw the authority to staff to issue development permits.</p>
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Implementation

- i. Amend Section 29 of the *Islands Trust Act* to enable local trust committees to delegate, by bylaw, the issuance of development permits and development variance permits, subject to the right of the applicant to have the local trust committee reconsider the matter without charge and to the local trust committee, in its procedures bylaw enacted under s. 460 of the LGA, establishing reconsideration procedures.

Each LTC would decide on whether or not to delegate issuance of development permits. This would reduce wait times, simplify the application process and reduce administrative costs. As development permits are issued based upon guidelines in the OCP or LUB, which are approved by LTCs, there is relatively little discretion afforded staff in issuing a permit. Implementation from an operating perspective would be straight forward once the delegation bylaws were adopted.

<p>7. Clarification of foreshore zoning authority</p>	<p>There are jurisdictional inconsistencies with how foreshore zoning is administered with regard Regional Districts throughout the Trust Area. This matter is long standing and is a function of language and mapping in the <i>Islands Trust Act</i> and the Islands Trust Regulation.</p>
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Implementation (to be determined)

Clarification on this matter would support consistency in interpretation and aid in working with other jurisdictions that have foreshore zoning powers. Implications of implementation of any potential changes are undetermined. Engaging in discussions with the Ministry on this issue would require dedicated staff time and legal analysis.

The matter is sensitive since it potentially affects the enforcement of Islands Trust and regional district bylaws throughout the water areas within the trust area, where some of the most controversial land use issues tend to arise. Jurisdiction should not be controversial in relation to either the foreshore areas immediately adjacent to the various Gulf Islands or the estuary areas immediately adjacent to the upland areas of the regional districts, because effective land use management in either case has to include jurisdiction over immediately adjacent water area. However, a dividing line between jurisdictions has to be established somewhere, and there may be legitimate differences of opinion on where it should be.

<p>8. Add language to <i>Islands Trust Act</i> similar to <i>Local Government Act</i>, s. 294, allowing for “incidental or conducive powers.”</p>	<p>A minor broadening of corporate power, similar to what Regional Districts have, would allow the Trust to undertake some supportive actions in support of the mandate of Trust.</p>
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Implementation

- i. Amend Section 4 of the *Islands Trust Act* by adding “The Trust Council, the executive committee, and the local trust committees have all the necessary power to do anything incidental or conducive to the exercise or performance of any power, duty or function conferred by this or any other enactment.”

This power is not a full ‘corporate person power;’ rather it would provide a backstop to a given jurisdictional issue or challenge. Some recommended language would be something like:

“the Local Trust Committee and, the Executive Committee, have all necessary power to do anything incidental or conducive to the exercise or performance of any power, duty, or function conferred on them by this or any other enactment.”

There is no logical reason that Islands Trust entities exercising exactly the same type of regulatory authority as other land use regulators should not have access to the same complementary authority to do things that are “incidental and conducive” to the exercise of their land use management authority. The wording of s. 294 makes the scope of these complementary powers exactly coterminous with the scope of the basic powers that have otherwise been conferred, so there is no substantive expansion of jurisdiction or authority and this should not be controversial.

<p>9. Include reference to the ecosystem in section 8.2 of the <i>Islands Trust Act</i></p>	<p>8.2 (f) and (h) of the ITA allows for 'support and give financial assistance to activities referenced to in paragraphs (f) and (g) that are undertaken by others. This section seems to all LTCs to fund heritage and history related activities but does not include "environment or ecosystem."</p>
<p>Implementation</p> <p>i. Amend s. 8(2)(f) of the <i>Islands Trust Act</i> to "amenities, environment, history and heritage"</p> <p>Clarity is sought as to whether LTCs can allocate funds for environmental activities undertaken by others, in a similar fashion to history and heritage conservation. We recommend amending "history and heritage" in two places in 8(2)(f) to "amenities, environment, history and heritage". Amenities and environment are the terms used in the object statement in s. 3 of the <i>Act</i>.</p>	

ADVANCING THE MISSION OF THE ISLANDS TRUST

<p>10. Affordable Housing and Housing service amendments</p>	<p>The Islands Trust has limited ability to provide affordable housing initiatives to communities and is reliant on Regional Districts to establish and deliver affordable housing services, in cooperation with the Trust. Increased authority in this area would be in keeping with both a key vision element of Trust Council and its strategic plan.</p>
<p>Implementation</p> <p>i. Amendments to confer the powers of a regional district board that would be required to establish and operate a non-profit housing service, including the authority to acquire and dispose of land and interests in land</p> <p>The Islands Trust would seek to be able to hold land for the purposes of affordable housing. We would seek to cooperate with relevant Regional Districts but also provide this service if a given Regional District does not provide a satisfactory service. Desired changes:</p> <ul style="list-style-type: none"> a) To be able to enter into agreements with third parties to administer affordable housing. b) To be able to operate a housing service. c) Local Trust Committees be able to acquire and dispose of land. 	