

Delegation to the Islands Trust Council from
Michael Sketch for the fourth quarter business meeting.
6 December, 2017 at 2:00 pm, the Victoria Marriott Hotel

**Significance of the joint Confederation and Federation governance model
in preserving and protecting Trust Area agricultural soil ecosystems**

Confederation Trust area policy and regulation -

Federation local government policy and regulation -

Local planning services

Ladies and gentlemen of Trust Council, Staff and the public - My submission to Trust Council is founded on respect for the potential of the Islands Trust Act. First and most important, I ask Trust Council to direct change in the delivery of planning services to LTC decision makers to better realize the potential for preservation and protection in the Act. As said in the courts, the requirement to preserve and protect is no mere piety.

Where there is application for a change in land use in the Trust area, I advocate that LTC local government decision makers consider and then follow that application using assessment resources in order of importance:

1) Confederation Trust area policy and regulation

2) Federation local government policy and regulation

This needs explanation and I shall. But from the public perspective, current practice is for LTCs to receive and to use these assessment resources in reverse order.

the governance model

The Act establishes a governance model which we see as a green flag for nature's interests and the public interest in the Trust area. There are intrinsic checks and balances to preserve and protect amenities and environment; the model is unique in Canada. Assuming the best in our human nature, we will speak for nature's interests using the tools of the Islands Trust Act to best advantage.

the governance model and land use planning

Yes, the Act is visionary. But it was a lack of land use planning which inspired the Act. *Today, land use planning is our key to preserving and protecting.* Does the planning process make best use of the potential of the Act?

Our Islands Trust website says "the Islands Trust is a unique federation of local governments", but that is only half the story.

Trust Council and island government LTCs are bound by legislation - *both* the "preserve and protect" *Trust object* and *Trust policy* to implement the object. These are the statutory instruments of *confederation* in the governance model.

a unique governance model with confederation and federation components

The Islands Trust is both a confederation and a federation. Both components are needed throughout the land use planning process to preserve and protect.

preserve and protect agricultural soil ecosystems and agricultural lands

Of the Trust area amenities and environments, I will use the example of agricultural soil ecosystems and agricultural lands.

Arguably, agricultural land in the Trust area is wholly dependent on the agricultural soil ecosystems. Few would dispute that both must be preserved and protected in policy and by regulation. That sentence rolls off the tongue, but is there both policy and regulation? A quick answer is that yes, there is Trust policy but regulation is - at best - once removed to federation member Land Use Bylaw (LUB) regulation.

recitals of the 1996 protocol agreement between ALC and the Islands Trust

The 1996 protocol agreement and letter of understanding between the Agricultural Land Commission (ALC) and Islands Trust are important confederation tools to protect agricultural soil and farmland. There is room for improvement.

The 1996 protocol agreement recitals state that the Agricultural Land Reserve (ALR) is part of the unique amenities of the Trust area and further that the protection of ALR land is shared between the two jurisdictions. The implications are important and should persuade. However these two recitals should be part of the binding agreement.

an example from the North Pender federation member

For North Pender, for instance, LUB regulation is silent on directive Trust agriculture and soil resource policies.

After five years of contention and controversial land use planning process, a current draft LUB amendment would allow a land use which I argue is contrary to both an order of the Agricultural Land Commission and contrary to Trust policy. ALR land was unnecessarily used for an access road. Despite the conflict, the bylaw was sent for agency review.

The land was an immediate casualty in 2012. Although there is statutory provision for remediation, prime agricultural soil was stripped and replaced with fill from a regional district infrastructure project.

Trust Council should ask: *How could it have happened?*

My point is that had Trust policy been applied as a 'filter' to rezoning and ALC referral applications, to Staff Report advice to the LTC and to LTC decisions, *it should not have happened.*

which suggests a Trust area regulatory Land Use Bylaw (Appendix 1)

Had there been zone independent Trust area regulation, it would not have happened.

Please do ask Staff for a copy of my delegation submission to the LTC for 23Nov2017 - a copy which has not been redacted.

the 2007 Stantec consultant's report for local planning services (Appendix 2)

Finally, recall a 2007 consultant's report intended to guide improved efficiency for Local Planning Services. Stantec recommended changes to improve efficiency but the consultant didn't address the effectiveness of land use planning in furthering the Trust object. To the contrary, the consultant notes as follows:

"The existing structure of governance for the Islands Trust is, of course, one of the issues that create complexity for planning in the area. From the perspective of LPS, there would be benefits from a more streamlined governance structure."

The consultant's statement flies in the face of careful checks and balances in the Act to preserve and protect. And the public asks - is the Local Planning Service taking the consultant's opinion at face value? Is there evidence that the confederation component is put in the back seat while local federation interests dominate. Yes, I think there is.

In conclusion, my submission should raise important questions for Trust Council.

i) I advocate for regulation corresponding to - at the least - directive Trust policy. That might be called Trust Policy Regulation or a Trust Area Land Use Bylaw.

ii) Islands Trust *confederation and federation* policy and regulation are needed to effectively preserve and protect. But zone independent confederation policy and regulation are the greater need.

iii) Trust Council might ask for a qualified third party audit. How effective is the local planning service in advising decision makers to preserve and protect, as required by the Islands Trust Act - while at the same time advising the LTCs on considering applications for changes in land use, as required by the Local Government Act?

Michael Sketch
North Pender

Islands Trust Act

CONFEDERATION

(entire Trust area)

Trust object

which Trust bodies and staff must further

Trust Policy Statement

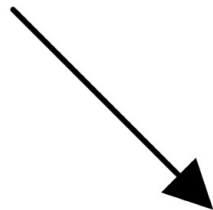
which policies are independent of land use Zones and must further the Trust object as implemented by Trust bodies and by staff

Trust area Land Use Bylaw

with regulation for the entire Trust area corresponding to select Trust policies

Agreements to Cooperate

with government agencies which would further the Trust object



FEDERATION

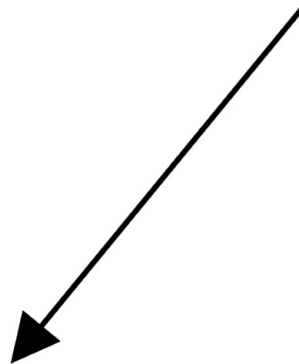
(of special purpose local government bodies within the Trust area)

Official Community Plan

policy bylaw with Zones for different land uses

Land Use Bylaw

with regulation for land use in local government jurisdiction



Local Planning Services

for each of the federation members

Confederation and federation components of revised governance model intended to maximize potential of the Islands Trust Act

Appendix 2

But it is the effectiveness of LPS and all Trust bodies in furthering the preserve and protect Trust object that should guide this review - then consider the efficiency of LPS.

ISLANDS TRUST
LOCAL PLANNING SERVICES REVIEW

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2007 Mar 23

Project No. 116922600

EXCERPTS

1. Introduction

The Islands Trust's Local Planning Services (LPS) is responsible for the delivery of local planning services to twelve Local Trust Committees.

There have been concerns about the effectiveness of LPS from a variety of perspectives. The Islands Trust engaged Stantec to provide an independent, third party review. The *Terms of Reference* for the assignment also suggested numerous specific issues that have been raised by trustees, staff, and external interests.

2. Process

The consultant reviewed the legislative framework, reviewed some of the planning documents (the Policy Statement, various OCPs and land use bylaws), and interviewed almost all of the Trustees, the Chief Administrative Officer, the planning staff, other members of the administrative unit, and staff from the Islands Trust Fund. Some outside stakeholders (such as landowners, applicants, lawyers, former employees, and consultants) were interviewed.

5. Recommended Changes

5.1 Agent of change

A new Director has been recently hired and will start soon. He should view his role as being a champion of change. The new Director's priority should be to work with the Chief Administrative Officer to implement these recommendations. Most of these recommendations are part of the administration's ongoing management function.

The Director is to provide the strategic leadership and management for LPS as it evolves into a more effective organization.

5.2 Functional reorganization

While the varied difficulties with the planning unit have diverse causes, the most significant improvement can be made through structural reorganization from the current geographic organization into two sections based on function:

- a **current planning section** that deals primarily with the day to day planning, mostly development applications and enforcement; and
- a **policy planning section** that focuses on the longer range planning, such as OCPs, land use bylaws, and other similar major projects.

5.22 Governance

The existing structure of governance for the Islands Trust is, of course, one of the issues that create complexity for planning in the area. From the perspective of LPS, there would be benefits from a more streamlined governance structure. This recommendation is likely outside our scope, but we note that this is one consideration that influences how effective LPS can be.

Mac Fraser succeeded by David Marlor in 2011

Islands Trust Act gives joint confederation & federation governance structure

Could this become a driver for recommending 2017 legislative changes?