From: Alex Lidstone <Alex.lidstone@lidstone.ca>
Sent: Tuesday, February 17, 2026 4:43 PM
To: Islands2050; Laura Patrick
Cc: HMA.Minister@gov.bc.ca; rob.botterell.mla@leg.bc.ca; Rueben Bronee; Don Lidstone
Subject: Draft Trust Policy Statement
Attachments: LT L. Patrick Re Draft Trust Policy Statement.pdf

Dear Chair Laura Patrick,

We are instructed on behalf of several residents of the Islands Trust to communicate with you regarding the draft trust policy statement. Our letter is enclosed.

We're happy to meet with you or to follow up with further information and opinions.

Best regards,

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February 17, 2026

BY E-MAIL

Chair Laura Patrick
Islands Trust Council
200 - 1627 Fort Street,
Victoria BC V8R 1H8

Dear Chair Laura Patrick and Trust Council:

Re: Draft Trust Policy Statement

We are writing to comment on the Trust Council's draft Trust Policy Statement (the "**Draft TPS**"). The *Islands Trust Act*[1] ("***ITA***") grants power to the Trust Council to adopt a Trust Policy Statement for the purpose of carrying out the object of the Trust under s. 3 of the *ITA*.[2] It is our opinion that the Draft TPS does not achieve the purpose of carrying out the object of the Trust and a decision to adopt it would be "unreasonable". If the Trust Council decides to adopt the Draft TPS in its current state, we anticipate receiving instructions to consider proceeding with our clients' application to the British Columbia Supreme Court.

All bylaws of local Trust committees and island municipalities ("**LTCs and IMs**") within the Trust Area must be aligned with the Trust Policy Statement, so the substance of the TPS is critical for the future of the Islands Trust.[3] As such, if the Trust Policy Statement fails to further the object of the Trust, then other bylaws within the trust area will in most cases fail in the same way.

[1] RSBC 1996, c 239.
[2] *ITA*, s. 15.
[3] *ITA*, s. 15(4).

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Reasonableness as a Legal Standard

In the decision of *Canada (Minister of Citizenship and Immigration) v Vavilov*,[4] the Supreme Court of Canada re-affirmed that challenges to local government decision-making will be decided on the reasonableness standard in most cases, and the Court refined the process for judicial review on a reasonableness standard.

When reviewing a decision on a reasonableness standard, the court will consider both the decision itself and the rationale for the decision to determine if it was unreasonable. The court in *Vavilov* explained, "a reasonable decision is one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (at para 65). The court will generally look to the reasons for the decision to determine the rationale, and it will take a reasons first approach. In cases where the decision does not have reasons, such as when a municipality passes a bylaw, "the court will look to the record as a whole for the decision."[5] In the case of bylaws specifically, the court will typically deduce reasons from the "debate, deliberations, and statements of policy that give rise to the bylaw."[6] In reaffirming this standard, the Supreme Court of Canada in *Auer v Auer*[7] stated, "statutory delegates are empowered to interpret the scope of their authority when enacting subordinate legislation, but their interpretation must be consistent with the text, context, and purpose of the enabling statute."[8]

Principles of Statutory Interpretation

Today we use the modern approach to statutory interpretation (*Rizzo & Rizzo Shoes Ltd. (Re)*, [1998] 1 S.C.R. 27, at para. 21):

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

In the context of interpreting local government enabling legislation, the relevant principles of statutory interpretation can be summarized as follows:[9]

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[4] 2019 SCC 65 [*Vavilov*].
[5] *Vavilov* at para 137.
[6] *Catalyst Paper Corp. v North Cowichan*, 2012 SCC 2, at para 29.
[7] 2024 SCC 36 [*Auer*].
[8] *Auer* at para 64.
[9] *Denman Island Local Trust Committee v 4064 Investments Ltd.*, 2001 BCCA 736 at paras. 44-47.

1. When interpreting a local government's enabling statutes, a broad and purposive approach may be taken. However, one should also look at the scope of powers expressly conferred by the legislation. Local governments only have those powers expressly conferred on them, powers necessarily following from these, or powers essential to local government purposes.[10]

2. The words of an individual provision are to be read in their grammatical and ordinary sense, in the light of the legislative intent of the *ITA* as a whole, as well as the object and the scheme of the *ITA*. If the words are clear, unambiguous and comply with the intention, object and scheme, this is the end of the analysis.

3. If the words are obscure or ambiguous, then a meaning that best accords with the legislative intent, object, and the scheme of the *ITA* is to be given, as long as the words are reasonably capable of bearing that meaning.

4. If, notwithstanding that the words are clear and unambiguous when read in their grammatical and ordinary sense, there is disharmony within the statute, then an unordinary meaning that will produce harmony is to be given the words, as long as the words are reasonably capable of bearing that meaning.

The Legislative Intent, Object, and Scheme of the *Islands Trust Act*

The legislative purpose of the *ITA* is set out in s. 3:

> 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.

Section 3 of the *ITA* is a unique provision in BC's local government legislation,[11] and its importance for interpreting the powers in the *ITA* cannot be overstated. In *Costello v Hornby Island Local Trust Committee*,[12] the Court explained, "the Islands Trust is a unique creature of statute. While similar to local governments, its actions must be viewed through the statutory framework and stated objects in s. 3 of the [*ITA*]". In *Macmillan Bloedel*, Mr. Justice Finch said the following:

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[10] *Nanaimo (City) v Rascal Trucking Ltd.*, [2000] 1 S.C.R. 342 at para. 35.
[11] *Macmillan Bloedel Ltd. v Galiano Island Trust Committee*, 1995 CanLII 4585 [*Macmillan Bloedel*].
[12] 2009 BCSC 1334.

> [177] The history of the *Islands Trust Act* indicates a legislative intent to increase the powers of local trust committees. It also shows an intent to give increased effect to the object statement now contained in s. 3 by setting out the object statement in a separate section of the Act. I think it a clear inference that local trust committees exercising the powers conferred under the Act, including the powers conferred in both s.4(4) and s.27(1)(a), have a legislative mandate to act in conformity with object statement in s. 3.

The *ITA* also imposes this mandate to act in conformity with the object of the Trust on the Trust Council.

The *ITA* creates three bodies to govern the Trust Area *for the purpose of carrying out the object of the Trust*: the local trust committees, the Trust Council, and the Executive Committee.[13] Sections 4(1) and (2) of the *ITA* establish the Trust Council for the purpose of carrying out the object of the Trust and to establish the general policies for carrying out the object of the Trust.

Section 8 of the *ITA* lists the responsibilities and powers of the Trust Council, which includes a duty to adopt a Trust Policy Statement for the purpose of carrying out the object of the Trust.

> 8 (1) <u>For the purpose of carrying out the object of the trust</u>, the trust council must
>
> [...]
>
> (b)adopt a trust policy statement in accordance with section 15

Section 15 of the *ITA* reiterates that the Trust Policy Statement must be a general statement of policies to carry out the object of the trust.

> 15(1)The trust council must, by bylaw, adopt a trust policy statement that applies to the trust area.
>
> <u>(2)The trust policy statement</u>
>
> <u>(a)must be a general statement of the policies of the trust council to carry out the object of the trust,</u>
>
> (b)may establish different policies for different parts of the trust area, and
>
> (c)has no effect for the purposes of subsection (4) unless it is approved by the minister.
>
> (3)Between first and second readings of a bylaw under subsection (1), the trust council must refer the proposed trust policy statement to the board of each regional district, all or part of which is in the trust area, for review and comment by the board.

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[13] *ITA* s. 4(1).

> (4)A bylaw
>
> (a)submitted to the executive committee under section 27 (1) or 38 (1), or
>
> (b)referred to the trust council under section 27 (3) or 38 (3)
>
> must not be approved by the executive committee or the trust council, as the case may be, if it is contrary to or at variance with the trust policy statement.

Looking at the whole of the *ITA*, and specifically the sections on the trust policy statement and the Trust Council, reading the words in their grammatical and ordinary sense, in the light of the legislative intent, it is clear that the powers conferred on the Trust Council, including the power to adopt the Trust Policy Statement, are for the purpose of carrying out the object of the Trust and not merely to articulate general precepts that do not carry out the object or are inconsistent with the object.

THE OBJECT OF THE TRUST

It is necessary to interpret the object of the trust to understand the purposes for which the Trust Council must exercise its powers. For convenience of reference, we have repeated the object of the trust below:

> 3. 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.

The first step in statutory interpretation is to read the words in their grammatical and ordinary sense considering the legislative intent of the *ITA*. Here the terms "preserve", "protect", "unique", and "amenities" are not defined in the *ITA*. The grammatical and ordinary meaning of a statutory provision is the "natural meaning which appears when the provision is simply read through."[14] While dictionary definitions are not determinative, as a starting point, they can assist with determining the ordinary meaning.[15]

Beginning with the phrase "preserve and protect," the Oxford English Dictionary definition for preserve is, "to protect or save from" or "to maintain (a condition or state of affairs); to keep up."[16] The Oxford English Dictionary definition for protect is "to defend or guard from danger or injury; to support

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[14] *Canadian Pacific Air Lines Ltd. v Canadian Air Line Pilots Assn.*, 1993 CanLII 31 (SCC), [1993] 3 S.C.R. 724, at p. 735.

[15] *Telus Communications Inc. v Federation of Canadian Municipalities*, 2025 SCC 15, at para 43.

[16] *Oxford English Dictionary Online* (Oxford University Press, 2026) "preserve".

or assist against hostile or inimical action; to preserve from attack, persecution, harassment, etc.; to keep safe, take care of; to extend patronage to; to shield from attack or damage."[17] Based on these definitions the ordinary meaning of the phrase "preserve and protect" is likely to maintain the "unique amenities and environment," and to keep them safe from danger or injury.

Moving to the phrase "unique amenities and environment," the Oxford English Dictionary defines unique as, "of which there is only one; single, sole, solitary."[18] The Oxford English Dictionary defines an amenity as, "with reference to a place or location, the quality of being pleasant, appealing, agreeable, or advantageous in terms of situation, aspect, appearance, climate, etc."[19] Black's Law Dictionary also defines the term amenity, and it uses the following definition: "something tangible or intangible that increases the enjoyment of real property, such as location, view, landscaping, security, or access to recreational facilities."[20] Based on these definitions, the ordinary meaning of the phrase "unique amenities and environment" likely means the specific features of the Islands Trust Area which are one of a kind and which make the Trust Area pleasant, appealing, agreeable, and advantageous.

Following the principles of statutory interpretation, if the words are obscure or ambiguous, then a meaning that best accords with the legislative intent, object, and the scheme of the *ITA* is to be given, if the words are reasonably capable of bearing that meaning. There has been evidence of differing interpretations of the object of the trust. The Ministry of Municipal Affairs recognized that there were differing interpretations of the object of the trust in 1986, and it released the Islands Trust Position Paper No. 1 (the "**Position Paper**") to assist in the interpretation of the trust object. The Position Paper provides a meaning for each phrase of the object of the trust. As such, the Position Paper is a helpful way to discern the legislative intent for determining the meaning of the object of the trust. Since there is evidence of differing interpretations, the legislative intent becomes a necessary step to statutory interpretation.

The Position Paper discusses each of the important phrases in the Object, and it provides a meaning or interpretation for each.

Firstly, the Position Paper states, to "preserve and protect" means "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." This interpretation aligns with the dictionary definitions of the terms "preserve" and "protect", since to ensure the

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[17] *Oxford English Dictionary Online* (Oxford University Press, 2026) "protect".
[18] *Oxford English Dictionary Online* (Oxford University Press, 2026) "unique".
[19] *Oxford English Dictionary Online* (Oxford University Press, 2026) "amenity".
[20] B.A. Garner, ed, *Black's Law Dictionary*, 12th ed (Thomson Reuters, 2024) "amenity".

continued existence of the unique amenities likely requires both maintenance and keeping them safe.

Secondly, the Position Paper explains, the "unique amenities and environment" refers to "the special amenities and environment of the trust area" which come from a combination of the following:

- a mild climate;
- approximately 500 islands and the extensive coastline and sheltered waters they provide;
- diverse and unusual natural features, vegetation, and wildlife, including Garry Oak Trees, Arbutus Trees, and on many islands Mediterranean-climate vegetation;
- 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;

This interpretation also aligns with the dictionary definitions of the terms "unique" and "amenities". The features which the Position Paper lists as unique amenities and environment constitute features of the Trust Area that are unique or special to the area and which make it pleasant, appealing, agreeable, or advantageous.

Finally, the Position Paper defines the phrase "for the benefit of the residents of the Trust area and of the Province generally." The Position Paper explains that a benefit must be something that is sustained and long-term, and it must not be at the expense of the amenities or environment of the islands or merely for the profit of existing island residents.

Altogether, reading the words in s. 3 of the *ITA* in their entire context, in their grammatical and ordinary sense, and in light of the legislative intent, the object of the trust must be to maintain and keep safe those features of the islands which are special, or one of a kind, and which make the islands pleasant, appealing, agreeable, or advantageous, including those features which are listed in the Position Paper. These features must be maintained and kept safe for the benefit of those living on the islands and in BC generally, and this must be done in cooperation with municipalities, regional districts,

improvement districts, First Nations, other persons and organizations, and the government of British Columbia.

While the court in *Macmillan Bloedel* did not explicitly interpret s. 3 of the *ITA*, it did determine that the motives of the local trust committee, to prevent or delay residential subdivision and development, were aligned with the object of the Trust. In his concurring decision, Mr. Justice Finch stated the following:

> [179] I return to the learned trial judge's conclusions in this case, measured against the powers conferred on the defendant by the Islands Trust Act and by the Municipal Act. He found the defendants true motives to be to prevent, or at least to delay residential subdivision, development and sale of the plaintiff's lands, and their long term intentions to be to obtain, in effect, park lands in several of the plaintiff's holdings by ensuring that no logging or only carefully controlled logging took place.
>
> [180] In my respectful view, both of these goals are clearly within the objects expressed in s. 3 of the Act "to preserve and protect the trust area and its unique amenities and environment ..."

This decision is illustrative of the type of conduct that the courts would consider constitutes carrying out the object of the trust.

The Draft Trust Policy Statement

With this interpretation of the object of the Trust in mind, it is our opinion that a decision to adopt the Draft TPS would be unreasonable since the Draft TPS does not carry out the object of the Trust, which is required under s. 15(2)(a) of the *ITA*. We will illustrate the ways the Draft TPS does not carry out the object of the Trust below, in part, through a comparison with the current Trust Policy Statement (the "**Current TPS**").

Firstly, the Current TPS includes an interpretation for the object of the Trust and guiding principles which are derived from the object of the Trust. This can be contrasted with the Draft TPS, which simply quotes s. 3 of the *ITA*, and it does not provide any interpretation of the Trust object. This is problematic because it hides the fact that the Draft TPS relies on an interpretation of the Trust object that is significantly different from that in the Current TPS. The difference in interpretation can only be discerned from the policies themselves, which show that the Draft TPS protects development and growth at the cost of the islands' ecosystems, and, in our view, this is not an interpretation of the Trust object that is reasonably available to the Trust Council.

Secondly, the Current TPS poses the environment and the carrying capacity of the islands as a limitation on growth and development. For example, the Current TPS provides that LTCs and IMs shall "address any potential growth rate and strategies for growth management that ensure that land use is compatible with preservation and protection of the environment, natural amenities, resources, and community character." The Current TPS requires LTCs and IMs to "address means for achieving efficient use of the land base without exceeding any density limits defined in their official community plans." Additionally, policies throughout the Current TPS are aimed at protecting ecosystems from development and growth, specifically. For example, LTCs and IMs must "address the protection of unfragmented forest ecosystems within their local planning areas *from potentially adverse impacts of growth, development, and land-use*." Also, they must "address the planning for and regulation of development in coastal regions to protect natural coastal processes." Effectively, the Current TPS recognizes that both development and ecosystem protection cannot happen at the same time, especially on small islands with limited carrying capacity. One must limit the other, and the *ITA* stipulates that the preservation and protection of the unique amenities and environment must be the priority.

This can be contrasted with the language in the Draft TPS, which opens the door for growth and development without regard for the limits of the island ecosystems. The Draft TPS only requires LTCs and IMs to consider site capabilities, environmental and protected areas, and existing development patterns when determining the intensities of uses of land. We note that the Draft TPS removes any language on the density limits in relation to the ecosystems and carrying capacity of the islands. Additionally, the Draft TPS only asks LTCs and IMs to manage growth by "by directing residential, commercial, and industrial development into suitable locations." These policies do not limit growth and development based on the islands' ecosystems or other unique amenities, instead they ask LTCs and IMs to consider the impact on ecosystems in determining where to locate growth and development. Given the threat of development and growth on ecosystems and the environment, it is our position that these policies do not further the object of the Trust. In fact, prioritizing development over protecting and preserving the unique amenities and environment of the Trust area runs contrary to the object of the Trust.

Thirdly, the Draft TPS includes an entire section on housing, which does not exist in the Current TPS and is not required by the recently enacted provincial housing legislation. The housing section requires LTCs and IMs to identify locations for increased density and to support clusters of small dwelling units. Arguably, even if sprawl is somewhat contained (at least in the short term) by increasing density, the islands in the Trust area are small, and every additional person is one more that the ecosystems and fresh water supply

need to sustain. While increasing housing density is a laudable goal, particularly throughout the rest of the province where resources are more abundant, adding more people to the islands *without considering the limits of the ecosystems* does not align with the object of the Trust. This is evinced by the *Macmillan Bloedel* case, where Mr. Justice Finch stated that preventing or delaying residential development was aligned with the object of the Trust. The Draft TPS does the opposite of preventing or delaying residential development. We understand that there is a housing shortage on the islands, and there is a need to ensure that those working in the local economies have a place to live. However, there is still no scientific understanding of the actual carrying capacity of the islands regarding the fresh water supply, ecosystem capabilities, and a changing climate,[21] and based on the interpretation of the object in this letter, this limit should be ascertained scientifically and not subjectively by the local politicians before providing for increasing the population and construction footprints.

Also, short-term rentals continue to be a problem on the islands, and while the Draft TPS mentions this issue, it does not require LTCs and IMs to take any action to address it. The Draft TPS merely requires LTCs and IMs to "identify and assess the impacts of short-term rental dwellings", and to regulate and limit them "where necessary", as opposed to limiting them consistent with the object. Arguably, ensuring that the dwellings which already exist on the islands are used for those who live and work on the islands should be prioritized over building more dwellings. Overall, while housing remains a significant issue across the country generally and on the islands, the policies in the Draft TPS fail to consider the ecological limits of the islands, and they do not account for the dwellings that already exist. As such, these policies also fail to advance the object of the Trust.

Fourthly, the Draft TPS significantly weakens the protection of ecosystems in comparison to the Current TPS. The Current TPS requires LTCs and IMs to "address the identification and protection of the environmentally sensitive areas and significant natural sites, features, and landforms in their planning area." This can be compared with the language in the Draft TPS which only requires LTCs and IMs to "identify, establish, and sustain a network of protected areas *of sufficient size and distribution* to preserve the environmental integrity of ecosystems in their planning area." The phrase *of a sufficient size and distribution* not only adds a level of subjectivity, but it allows for some protected areas to not be protected and sustained if they are not "of a sufficient size and distribution." The Draft TPS does not include any guidance on determining whether a protected area is "of a sufficient size and distribution", and this phrase effectively allows for some environmentally sensitive areas to not be protected. Environmentally sensitive areas

[21] Great Northern Management Consultants, Islands Trust Governance Review, February 2022 <https://islandstrust.bc.ca/document/governance-review-final-report-february-2022>.

constitute some of the unique amenities and environment of the Trust Area. In failing to adequately protect and preserve these environmentally sensitive areas, the Draft TPS does not carry out the object of the Trust.

Fourthly, in addition to growth and development, climate change is a significant threat to the island ecosystems. Climate change brings increasing risks of water shortages, forest fires, sea level rise, and pressure on ecosystems, and the Draft TPS fails to address climate change in any meaningful way. The Draft TPS mentions climate change in one policy, and it only requires LTCs and IMs to implement land use planning and management strategies to "minimize greenhouse gas emissions and adapt to climate change-related vulnerabilities." In our view, this direction is vague and unspecific, and the threat of climate change to the ecosystems and processes on the islands requires much stronger policies. Considering the threat that climate change poses to the unique amenities and environment of the Trust area (particularly coastal flooding and heat), the failure to meaningfully address climate change also runs counter to the object of the Trust.

In summary, reading the words in s. 3 of the *ITA* in their entire context, in their grammatical and ordinary sense, and in light of the legislative intent, the object of the Trust must be to maintain and keep safe those features of the islands which are special, or one of a kind, and which make the islands pleasant, appealing, agreeable, or advantageous, including those features which are listed in the Position Paper. We have provided several examples to illustrate the fact that the Draft TPS fails to carry out the object of the trust. In our view, the Draft TPS goes so far as to endanger the unique amenities and environment of the trust area at the cost of unchecked development. As a result, if the Trust Council were to adopt the Draft TPS, this would constitute an unreasonable decision because it cannot be justified in relation to the *ITA* which constrains the Trust Council.

The Duty to Consult

As a final note, we comment on the Minister's duty to consult with the First Nations who have a potential or existing claim or right in the Trust Area. The duty to consult with a First Nation arises when (1) the Crown has knowledge, real or constructive, of the potential existence of an Aboriginal claim or right; (2) the Crown contemplates a decision or conduct that engages the Aboriginal claim or right; and (3) the contemplated Crown decision or conduct may adversely affect the Aboriginal claim or right.[22] In *Squamish Nation v British Columbia (Community, Sport and Cultural Development)*[23] the Court confirmed that the duty to consult also applies to a Minister's decision to approve an official community plan. The Court said, the Minister's decision

[22] *Haida Nation v British Columbia (Minister of Forests)*, 2004 SCC 73, at para 35
[23] 2014 BCSC 991 [*Squamish Nation*].

to approve the OCP is a Crown decision, and it engages the Nations' claims (at para 136). Following *Squamish Nation*, the Minister's decision to approve a Trust Policy Statement is a Crown decision and it engages First Nations' claims or rights in the Trust Area. Therefore, the Minister has a duty to consult with the First Nations who have a potential or existing claim or right in the Trust Area before considering the approval of a Trust Policy Statement.

Sincerely,

LIDSTONE & COMPANY

Don Lidstone
Senior Partner
lidstone@lidstone.ca

cc. Hon. Christine Boyle

MLA Rob Botterell

CAO Rueben Bronee