

**Delegation submission to the Islands Trust Council from
Michael Sketch for an electronic quarterly meeting,
7:00 p.m. session on Tuesday, 9 March, 2021**

a draft trust policy statement

duty of care: an article of faith for the Islands Trust Act

Trust councillors, staff and the Trust Programs Committee,

In my delegation submission for your last quarterly meeting, I asked Council to give direction to revise the Trust Policy Statement so as to effectively implement direction of the Act.

Ambiguity and wriggle room in both i) wording of current directive policies and ii) Trust Council implementation policy, compromise preserve and protect. There is no direction that the entire process of land use planning; from application to bylaw, be demonstrably accountable to the trust object and to directive trust area policies.

But it's not just the failure in implementing preserve and protect trust policies that concern trust supporters and critics alike. Three quarters of the trust budget is allocated to the local planning service. The effectiveness of the federal governance level is minimized. That is the trust object, trust area policy, and, dare I say, trust council. With a revised structure, Islands Trust federal governance can and should ensure that preserve and protect are effective in practice.

Revision of the Trust Policy Statement

If the policy statement isn't effective in preserving and protecting, Council is responsible for remedy. Please take a fresh look at the current bylaw and give further direction to the Trust Programs Committee.

The Act requires that Council adopt, by bylaw, a general statement of policies to further the trust object. The current bylaw is overburdened with advocacy and explanation which is better placed on the trust website. Far better that the bylaw be compact, unambiguous and sufficient to be a regional plan to guide trust area local policy and regulation.

Administering changes in land use consistent with the trust object and therefore with the trust policy statement is the business of trust body corporations.

Taken together, the i) trust object and ii) statutory responsibility of trust bodies to further the object, confer a duty of care owed by trust bodies to the interests immediately affected by changes in land use.

Duty of Care

That duty of care should be acknowledged as an article of faith for the Islands Trust Act.

Then let a duty of care to the interests affected by changes in land use inform the first among Council's trust area policies.

The interests affected by changes in land use

The effect of changes in trust area land use to

- 1) the natural environment and
- 2) the predominantly rural built environment and
- 3) First Nations and
- 4) residents and
- 5) the people of British Columbia generally

are both manifest and immediate.

Preservation and protection of the natural environment is sometimes spoken for in the land use planning staff process and by decision makers. But not always.

It follows that a higher duty of care is due the natural environment. An important rationale for the Islands Trust Act.

First among trust area policies

A revised policy statement (Appendix 1) for the attention of Council and the Trust Programs Committee begins with:

“Trust bodies and the employees of trust council shall exercise a duty of care to the interests affected by changes in land use; in particular but not limited to the interests of the natural environment, which can not speak for themselves.”

The next policy addresses precaution in the exercise of trust body responsibility for changes in land use:

“Where there is perception but not necessarily certainty, that the built environment will prejudice the ability of natural environment resources to sustain development, then precaution shall inform limitation of growth of the built environment.”

Given the effects of a climate emergency and now the threat of pandemic, security for the most productive trust area agricultural lands is even more important.

Appendix 1 gives general policies for effective trust governance, followed by directive policies for agriculture. Other categories of directive policies can be added in the same format.

Based on a first draft of trust area policies (e.g. Appendix 1), Council’s Trust Programs Committee might consider online development of an open source policy statement, with UVIC Environmental Law and Simon Fraser Political Science as moderators. When time and content are right, Trust Council can adopt the result. There would be less emphasis on controlling and funding the process; more on creativity.

Thank you for considering my submission to Trust Council.

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Following:

Appendix 1 – A first draft of a trust policy statement

Appendix 1 – A draft Trust Policy Statement

The Islands Trust Act establishes a federal governance wherein Trust Council presides over a union of local area land use jurisdictions, each with authority over land use conferred by the Local Government Act

Council's Trust Policy Statement bylaw
is required at Section 15 of the Act and
is a regional plan for the trust area

Trust Council holds and recommends to the Conservancy board that:

- 1.1 The interests affected by changes in land use in the trust area are those of:
 - (a) the natural environment and
 - (b) the predominantly rural built environment and
 - (c) first nations and
 - (d) residents and
 - (e) the people of British Columbia generally.
- 1.2 Trust bodies and the employees of trust council shall exercise a duty of care to the interests affected by changes in land use; in particular but not limited to the interests of the natural environment, which can not speak for themselves.
- 1.3 Where there is perception but not necessarily certainty, that the built environment will prejudice the ability of natural environment resources to sustain development, then precaution shall inform limitation of growth of the built environment.
- 1.4 To further accountability and transparency in the day to day actions of trust bodies and their employees, the written meeting minutes for all trust bodies shall be published and be consistent with Roberts Rules of Order for meeting minutes which are to be published. For certainty, meeting minutes shall be a comprehensive written record of what was said, in addition to a strict record of was done.
- 1.5 In order that this regional plan for the trust area be effective in furthering the trust object and given that trust bodies are continued for the purpose of carrying out the trust object, policies of the trust policy statement shall be adhered to in the day to day actions of trust bodies and their employees. For certainty, policies of this trust policy statement shall be adhered to by land use planning staff in staff report and other advice to decision makers in the entire development and deliberation of draft bylaws pertaining to applications for changes in land use.

- 1.6 Consistent with the trust object and recitals of the 1996 protocol agreement on agricultural land reserve lands in the trust area, the agricultural land reserve forms part of the unique amenities of the trust area.
- 1.7 Given the certainty of a climate emergency and the potential for uncertainties of transportation and distant sources of food, the 13% of trust area lands which are in the agricultural land reserve shall be protected in the long term as a reserve and not treated as a resource for development.
- 1.8 Trust bodies and their employees shall be diligent in respecting and cooperating with shared jurisdiction authorities, including but not limited to the agricultural land commission and regional districts.

Implementation of Directive Policies of the Trust Policy Statement (better placed as a procedural bylaw under S.11 of the Act, with a requirement that the subject procedural bylaw be attached to the trust policy statement bylaw).

- i) Each local trust committee and island municipality shall effectively implement directive trust area policies in their official community plans and regulatory bylaws and
- ii) where a directive policy requires an action not within the local trust committee or island municipality jurisdiction, that directive policy implementation shall consist of advocacy in official community plan policy which details the necessary statutory changes or inter-agency agreements and
- iii) that all staff reports which advise decision makers respecting a change in land use or a policy change, shall include the relevant directive policies and corresponding address in official community plan and regulatory bylaws of the local trust committee or island municipality jurisdiction and
- iv) a local trust committee or island municipality may petition trust council to absolve, given a 2/3 majority vote, the local area jurisdiction from responsibility to implement the subject directive policy in their official community plan and regulatory bylaws and
- v) where a local trust committee or island municipality refuses instruction from trust council to implement one or more directive policies in their official community plan and regulatory bylaws, then trust council reserves the right to withhold sums from the budget allotment to the local area jurisdiction and to the responsible land use planning authority, until such time as the instruction is carried out.

Directive Agriculture Policies of the Trust Policy Statement

- 2.1 That productive agricultural soils shall be protected, particularly but not limited to protection through bylaws relating to soil removal and deposit.
- 2.2 That applications to trust bodies or referrals by trust bodies for other use than agriculture shall not be supported on trust area land in the agricultural land reserve which is determined by the agricultural land commission to include prime improved agricultural capability class 1 - 3 soils.
- 2.3 That applications to trust bodies or by trust bodies for exclusion from the agricultural land reserve shall not be supported where the subject land is determined by the agricultural land commission to include prime improved agricultural capability class 1 - 3 soils.
- 2.4 For land in the agricultural land reserve which does not include prime improved agricultural capability class 1 - 3 soils as determined by the agricultural land commission; land uses and activities that support the economic viability of farms, without compromising the agriculture capability of agricultural land, shall be encouraged.
- 2.5 The design of road systems and servicing corridors shall avoid agricultural lands unless the need for roads outweighs agricultural considerations, in which case appropriate mitigation measures shall be required to derive a net benefit to agriculture.
- 2.6 Agricultural land shall be identified and preserved for current and future use.
- 2.8 The permitted land uses on adjacent properties shall minimize any adverse affects on agricultural land.
- 2.9 Farming shall be preserved, protected and encouraged and the sustainability of farming and the relationship of farming to other land uses shall be incorporated in local area official community plans and regulatory bylaws.
- 2.10 That the use of Crown lands for agricultural leases shall be encouraged.

Other directive policy groups in this format.

End of Appendix 1 and of this delegation submission to Trust Council