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**Sent:** Tuesday, June 30, 2020 8:22 PM

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**Subject:** M Sketch delegation submission to Trust Council for Wednesday 17Jun2020

**To better realize potential of the Islands Trust Act**

oral presentation 7 1/2 minutes to Trust Council 17Jun2020

written submission submitted 30Jun2020

Trust councillors and staff - My attached delegation submission to you for Wednesday 17Jun2020 "To better realize potential of the Islands Trust Act" recommends further remedy for the problems I see in planning staff process and have documented in constructively critical submissions to Trust Council, last trustee term and this.

This delegation submission complements my submissions to Trust Council for Dec2019 (Victoria) and Mar2020 (Salt Spring) which I copied to you for review 14Jun2020.

My submission for 17Jun2020 is in three parts.

**1) Critique of local planning staff process, wherein:**

- i) the receipt of applications for changes in ALR land use and
- ii) consequent recommendations to LTC decision makers and
- iii) staff report advice during implementation of decisions from the land commission and
- iv) local bylaw development, which all too often precedes and conflicts with ALC decisions

together can and sometimes have confounded the intention of each of Islands Trust and ALC Acts to preserve and protect.

Accountability of staff process is questioned and reason given to conclude a 'culture of impunity'.

The public may reasonably believe that Islands Trust staff look first to leadership from the superior provincial ALC jurisdiction when protecting ALR farmland, but too often Islands Trust staff presume ALC permissions, whether or not the explicit conditions of ALC approval have been met.

**2)** Recommend Trust Council bylaw to set out staff procedure (Islands Trust Act, section 11) to address point 1).

**3)** Request that Trust Council recommend to the Cosevanct Board; ownership of Trust area land for community benefit land trusts, thereby expanding the Conservancy mandate and better integrating Conservancy with the remainder of Islands Trust bodies.

I believe these matters are fundamental to the health of Trust governance. I hope Trust Council will give political direction to planning staff, advice to the Conservancy Board and to the Trust Programs Committee, all to better realize potential of the Islands Trust Act.

In anticipation, thank you.

Michael Sketch  
North Pender Island

**Delegation submission to the Islands Trust Council from  
Michael Sketch for an electronic quarterly meeting,  
agenda item 9.5, 10:00 a.m. session on 17 June, 2020**

Excerpts from pages 1 to 4 for 7 1/2 minute oral presentation

***to better realize potential of the Islands Trust Act to preserve and protect***

Councillors, staff, members of the Trust Programs Committee and the Conservancy Board -

I argue that the potential of the Islands Trust Act is not realized. That collectively, public and staff advice givers and the decision makers can do better.

In the last trustee term and this, my submissions gave constructive criticism of planning staff report advice to decision makers, or lack of advice, and the consequence thereof. The purpose was to flag issues which I think need direction from Trust Council.

Effective cooperation with the Agricultural Land Commission (ALC) is my first request for Trust Council action. For some, the ALR is development potential. But for the rest of us, the consequence of pandemic and a climate emergency are necessary and sufficient rationale to protect prime agricultural soils. I'll remind you of Section 11 of the Act shortly (Appendix 1).

My second request is that Trust Council recommend an enhanced mandate for the Islands Trust Conservancy, so better integrating exemplary 'preserve and protect' dedication with the remainder of Trust bodies. There is opportunity to better weight the federal component of Islands Trust governance, with more effective federal guidance to local area land use governments, as is intended by the current Act.

**Potential of the Islands Trust Act to preserve and protect the trust area not realized**

Constructive criticism is needed. In one case, endangered species were extirpated. There are examples where provincial legislation and trust policy are sidestepped. Bylaws have been incorrectly recommended or adopted respecting land in the Agricultural Land Reserve (ALR). In another case, the productivity of what had been prime agricultural soil was the casualty.

**Role of land use planners not given in the Trust Policy Statement - accountability**

The Trust Policy Statement encourages trust area residents to participate in land use planning. That role for public advice givers is stipulated, *but the policy statement is silent on the role of the local planning service in giving advice to decision makers.*

To whom or what body is the land use planning process accountable?

For thousands of years, these islands have had land use planning deliberated and implemented by the residents, for the joint benefit of residents and the environment.

*The planning process was directly accountable to the beneficiaries.*

In the last hundred years, land use planning has moved to a *professional reliance model*. In principle, registered professional planners are accountable to both their registering body and to their employer. In practice, the public sees no evidence of accountability and certainly not to the public interest.

Indeed, across the province there are law firms devoted to the maintenance of local government - and therefore of planning staff - the registered professionals who are consistent long past the intentions of particular elected officials. Some say the courts rarely find against local government.

*The consequence, I argue, is a culture of impunity.*

## **Persuasion**

At face value, the measures I'm urging you to deliberate and advance should be effective in improving the effectiveness of the Act to preserve and protect.

There is a caveat.

Will policy and procedure trump culture where culture resists? Of course not. We've seen how Trust policy has been sidestepped. Directive Trust area policies aren't the gold standard when development applications are recommended, or not, to LTCs. Nor in the bylaw development phase.

But persuasion changes culture. Witness the Legacy leadership award given at your last December Council meeting. And Trust Area Services now publishes a synopsis of legislative changes relevant to local planning staff advice.

Please, Trust Council, persuade your employees.

## **Two Trust Council initiatives to better preserve and protect**

**First initiative:** The first concerns some 13% of Trust area land which is in the ALR and utilizes section 11 of the Act (Appendix 1) to require the procedure of all LTCs and therefore of planning staff who advise the LTCs, to be consistent, in letter and spirit, with Agricultural Land Commission (ALC) legislation.

The ALC Act predates the Islands Trust Act by a year and both statutes are intended to preserve and protect environment. ALC legislation takes precedence (section 46 of the ALC Act) over Islands Trust bylaws and the public expects close cooperation. But there are too many contraindications in recent planning staff reports. Last trustee term, I asked that all staff reports referencing an ALC interest be reviewed and co-signed by the legislative services manager, a constructive suggestion yet to be implemented.

Section 11 of the Islands Trust Act provides that Trust Council may, by bylaw, establish procedures that one or more LTCs must follow in exercising their authority. The intent of a section 11 Trust Council bylaw supporting ALC – Islands Trust cooperation follows:

Whereas:

- i) the Trust object requires LTC trust bodies to cooperate with provincial Agricultural Land Commission legislation and
- ii) Trust Council has agreed with the Commission that the ALR is a valued amenity in the Trust area and
- iii) Trust policy directs that productive soil ecosystems will be preserved and protected

Therefore planning staff shall incorporate the following in their procedures for recommending applications and draft bylaws in staff reports which advise LTC decision makers:

1. Trust area land which is in the ALR with prime (improved class 1 to 3 agricultural capability) soil shall not be considered for other use than agriculture and certainly not another use which may degrade agricultural capability and
2. applications to the ALC for non-farm use or exclusion will not be recommended for referral by an Islands Trust body where the policy component of directive Trust area policy is offended and
3. applications to the ALC for non-farm use or exclusion will not be recommended for referral by an Islands Trust body where the applicant has previously changed ALR land use without prior written approval from the Commission and the changes were inconsistent with ALC legislation or an order of the Commission and
4. where a landowner applies to both the Islands Trust and the ALC for land use changes, the Islands Trust application may be considered by the LTC but not advanced until full approval in law is received from the ALC. For certainty, a conditional approval from the ALC is not an approval in law unless and until all conditions of approval are met, as verified by the Commission and
5. Islands Trust draft bylaws will not be recommended by staff and shall not be adopted by a LTC where they either offend the policy component of directive Trust area policy or are inconsistent with ALC legislation or an order of the Commission.

### **Second initiative: community benefit land trusts**

The second Trust Council action to consider in order to better preserve and protect is a recommendation to the Conservancy Board that they expand their mandate to include ownership of community benefit land trusts. Island communities are hard pressed to acquire and rezone land for community benefit.

Conservancy may consider receipt of a parcel and apportion some for conservancy and the rest for community benefit.

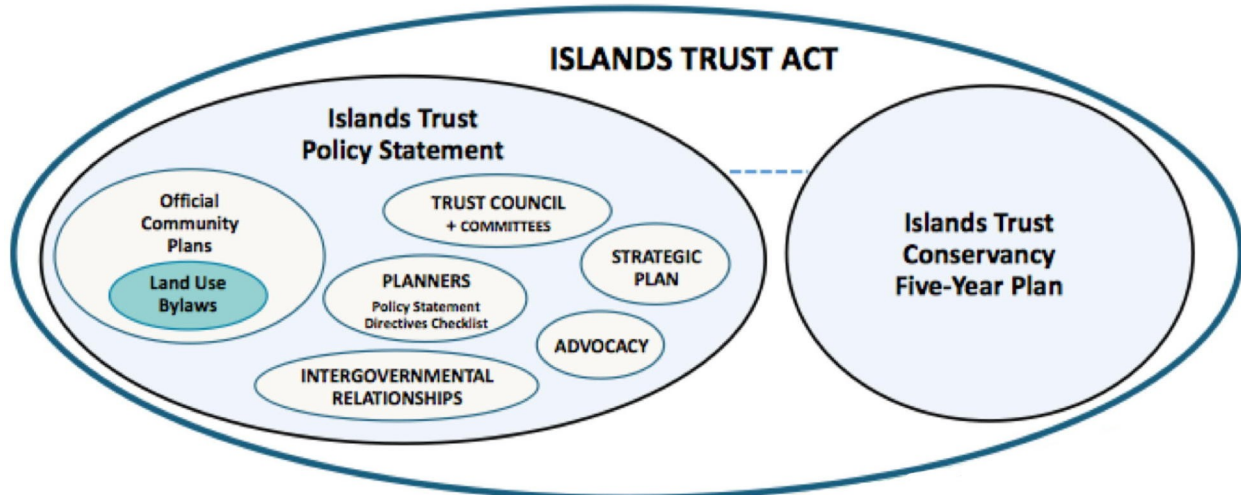
Community benefit agricultural land or community housing with onsite energy generation and storage are examples.

Light industrial land use is another example. For instance for community management of discarded materials such that a maximum is reused or recycled and the irreducible minimum is sent to landfill.

Conservancy's environmental expertise would benefit the entire Trust area. The federal governance component established by the Islands Trust Act would be better served, with Trust area services to include legislative management and Trust area land use planning; each service available to Conservancy.

A better integrated Conservancy would give a fresh perspective for the Trust Programs Committee in their fundamentally important work of revising the Trust Policy Statement. In that regard, please see (Appendix 2, copied below) a diagram which gives the 2011 Islands Trust understanding of Trust body relationships:

## INFLUENCE OF THE POLICY STATEMENT



Conservancy is demonstrably committed to preservation and protection and although arguably the poster child of the Islands Trust Act, it is seen as apart from the rest of Islands Trust governance. An unfortunate distance, for the Act requires that each Trust body further the Trust object. Local trust area jurisdiction planning may make the mistake of assuming "preservation and protection" is 'covered' by Conservancy and that most planning can proceed as 'municipal business as usual'.

Expanding the mandate would better integrate Conservancy in the Trust family.

Thank you for receiving my submission.

Michael Sketch

North Pender Island

## **Appendix 1 – Section 11 of the Islands Trust Act**

Trust Council may, by bylaw, establish procedures that one or more LTCs must follow in exercising their authority.

### **Islands Trust Act**

#### **[RSBC 1996] CHAPTER 239**

This Act is current to December 25, 2019

Excerpt from the Act; entire of section 11

#### **Procedures to be followed by local trust committees**

**11** (1) The trust council may, by bylaw adopted by at least 2/3 of its members present at the meeting at which the vote on adoption takes place, establish procedures that one or more local trust committees, as specified in the bylaw, must follow in exercising their authority and carrying out their responsibilities under this or any other enactment.

(2) Without limiting subsection (1), the trust council may establish procedures in relation to one or more of the following:

- (a) the conduct of local trust committee meetings;
- (b) the consideration and adoption of resolutions and bylaws;
- (c) the receipt and consideration of applications for amendments to bylaws and official community plans;
- (d) the receipt and consideration of applications for permits and the issuance of permits.

(3) The procedures established by a bylaw under subsection (1) are in addition to any procedures that apply to a local trust committee under this Act or any other enactment.

(4) If there is a conflict between a bylaw under subsection (1) and a bylaw of a local trust committee respecting its procedures in exercising its authority and carrying out its responsibilities, the bylaw under subsection (1) prevails whether it was adopted before or after the bylaw of the local trust committee.

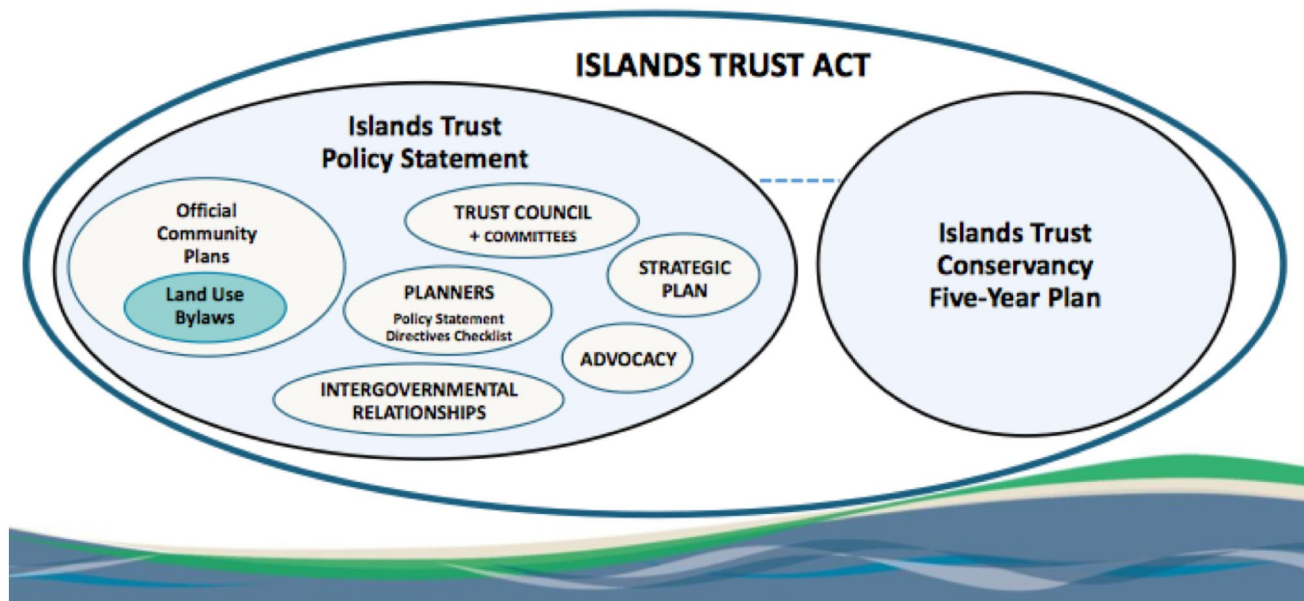


## POLICY STATEMENT AMENDMENT PROJECT

Highlights from the 2011 Policy Statement Assessment Task Force Report  
Presentation to Trust Programs Committee (TPC) - May 22, 2020

Excerpt from page 198 of  
agenda package  
for 16 June, 2020  
(electronic) Trust Council meeting

### INFLUENCE OF THE POLICY STATEMENT



End of appendix 2 and of this delegation submission to Trust Council for 17Jun2020