

BRITISH COLUMBIA'S ISLANDS TRUST ON THE LOCAL GOVERNMENT
CONTINUUM: ADMINISTRATIVE AGENCY OR LOCAL SELF-GOVERNMENT?

by

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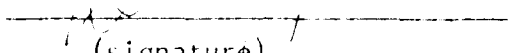
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British Columbia's Islands Trust on the Local Government Continuum: Administrative Agency or Local Self-Government

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ABSTRACT

The Islands Trust is a local institution established by the British Columbia government under the *Islands Trust Act* in 1974 with the unique mandate to "preserve and protect" the islands of Georgia Strait and Howe Sound. The Islands Trust was initially composed of locally elected trustees and provincial appointees, now directly elected local trustees and indirectly elected regional trustees only. The Islands Trust was formed to attempt to address the problems of rapid development and the lack of adequate governance on these Gulf Islands.

This thesis examines the Islands Trust to assess whether the Islands Trust can be considered a form of local government. The method of assessment was first to develop an analytical framework of formal characteristics of government: five of these--representation, revenue-raising, authority, autonomy, capacity to coordinate--formed the basis for the analysis and was applied to the Islands Trust as it was initially constituted and through its subsequent changes over the past twenty years.

The conclusions of this study are that when the Islands Trust was established it demonstrated very few formal characteristics of government. The Trust was established to recommend to the provincial government ways to "preserve and protect" the Trust area and to review land use regulation by the regional districts in the Trust area. Amendments to the *Islands Trust Act* in 1977 transferring land use planning and

zoning powers from the regional districts to the Islands Trust strengthened the Trust in terms of formal characteristics of government. In 1983 these powers were curtailed. A comprehensive revision of the *Islands Trust Act* in 1989 also affected Trust governance in terms of these characteristics.

Legislative alterations to the Islands Trust varied between "minuses" and "pluses" on the "local government continuum", but this thesis concludes that overall, the changes have moved the Trust closer to the local self-government ideal than the administrative agency at the opposite end of the continuum. Part of this was a product of institutional change, but as others have argued and this case study demonstrates, it was also a product of an activist citizenry, and an environmental mandate that created an organizational ideology. And, while formal characteristics still suggest something less than a true regional government, the Islands Trust has demonstrated a true capacity for regional governance in an environmentally sensitive region.

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BRITISH COLUMBIA'S ISLANDS TRUST ON THE LOCAL GOVERNMENT
CONTINUUM: ADMINISTRATIVE AGENCY OR LOCAL SELF-GOVERNMENT?

I. INTRODUCTION

A. The Gulf Islands and the Islands Trust

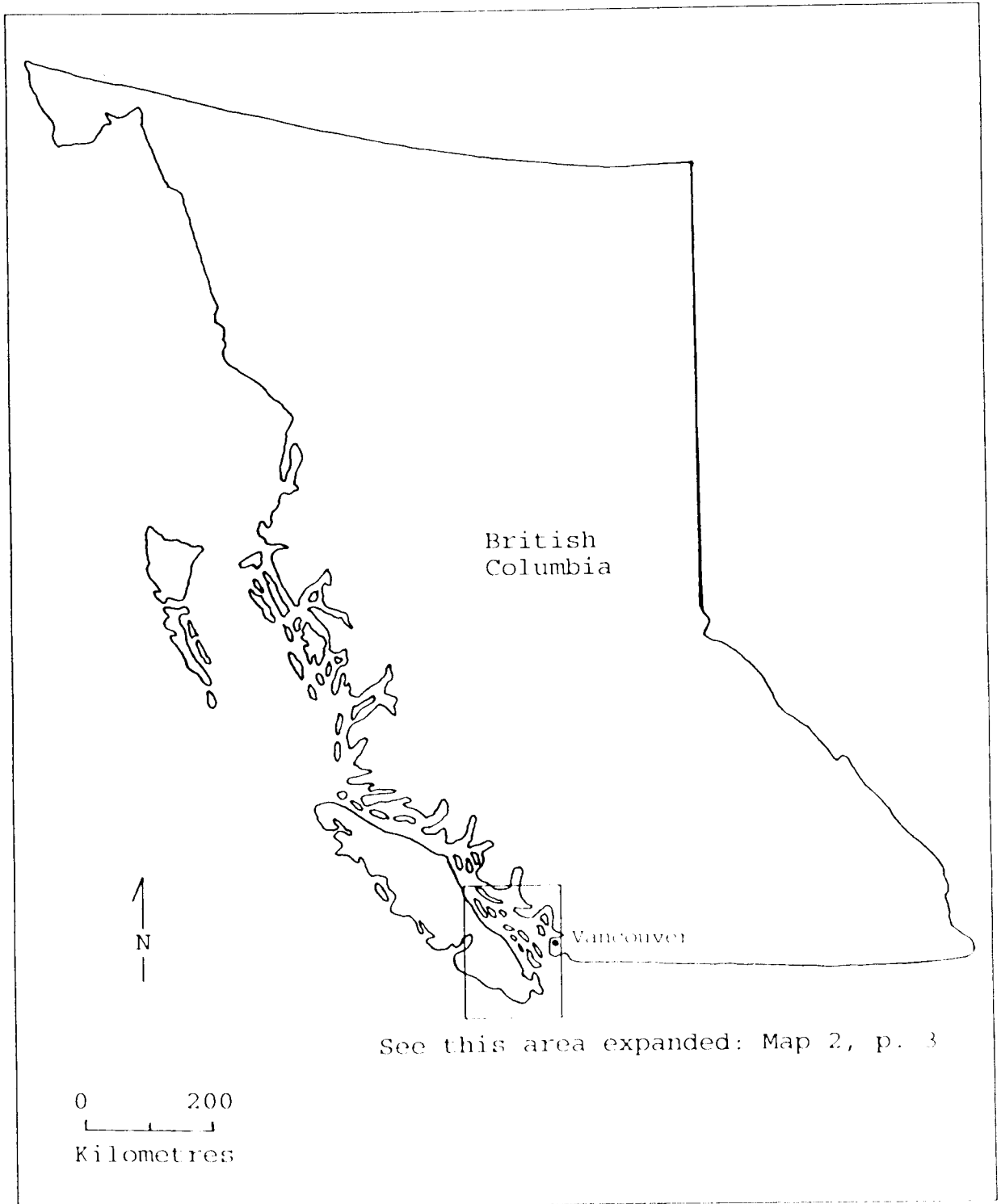
British Columbia's Gulf Islands are often spoken of in terms of reverence: beautiful, tranquil, serene, unique. (See location of the Gulf Islands: Maps 1 and 2, pp. 2 and 3.) The following quote is an example of this reverence for the islands. It also expresses well the conundrum that is faced as population growth and development are seen by some to threaten the islands' character:

For they are places of stunning physical beauty, enjoying perhaps the most benign climate in Canada, abundant with animal, bird, marine and plant life, and lending themselves to a pace and quality of rural living which are still markedly distinct from that of mainstream urban culture.... But as the islands' popularity and populations have risen, so have the problems associated with change. Widely divergent views have emerged concerning how the islands should be developed, what measures should be taken to preserve their ecology and community, how restrictive should land-use regulations become before they curtail the sense of freedom that drew so many to the islands in the first place.¹

The potential for problems associated with dramatic change to the ecology and communities of the Gulf Islands was recognized in the 1960s when sizable tracts of land were purchased and prepared for subdivision into small lots.

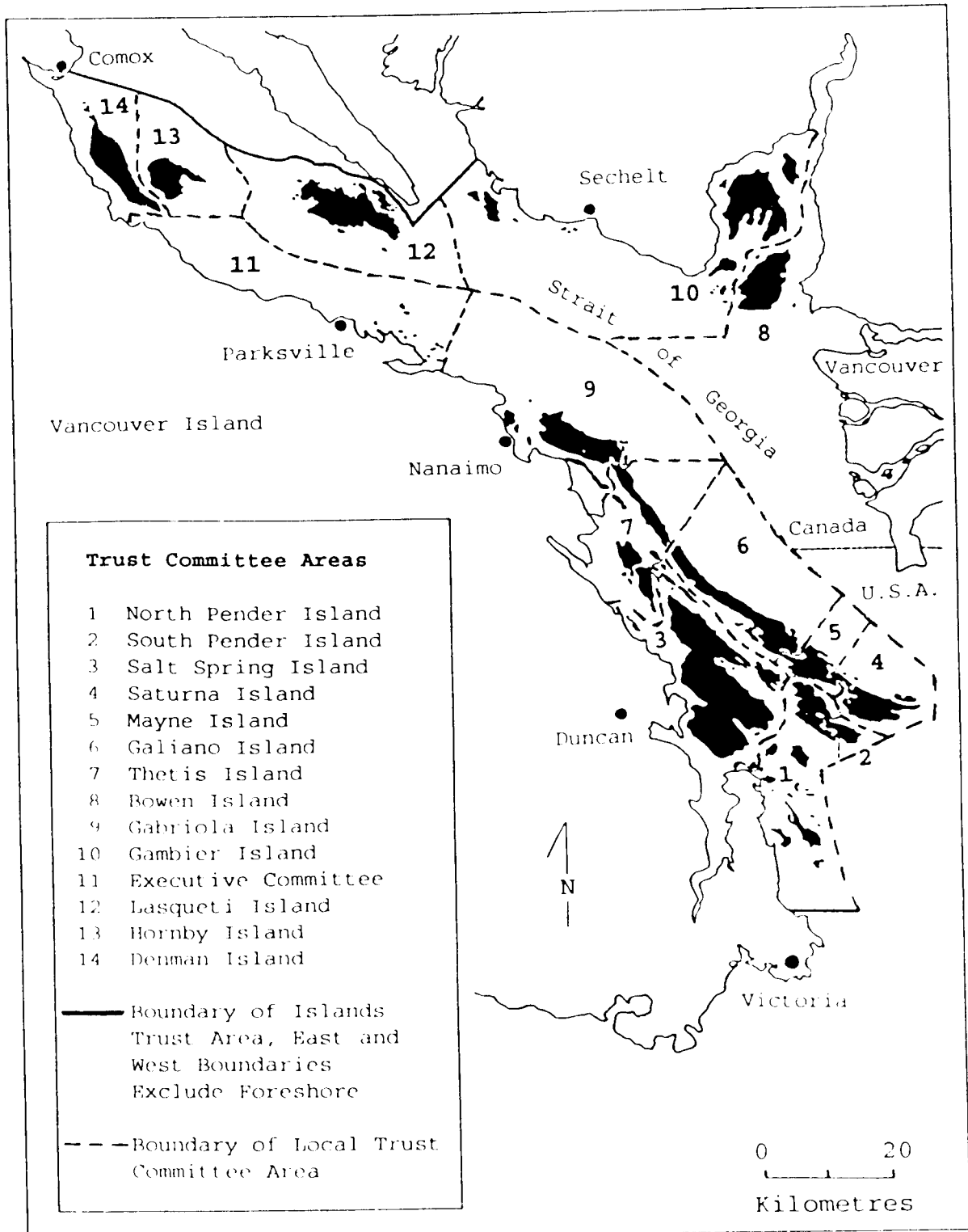
¹ Des Kennedy, "Whither the Gulf Islands," *Canadian Geographer*, Oct./Nov. 1985, 40, as quoted in Arthur Sweet, *Islands in Trust* (Gantzville, B.C.: Oolichan Books, 1988), 58.

Map 1. The Southern Georgia Strait and Howe Sound Area in British Columbia



British Columbia outline adapted from: Province of British Columbia, Commission on Resources and Environment, *1992-93 Annual Report* (Victoria: Queen's Printer, 1993), 25.

Map 2. Boundaries of the Islands Trust Area and Boundaries of the Local Trust Committee Areas



Source: Islands Trust, *Islands Trust Annual Report 1992 1993* (Victoria: Queen's Printer, 1993), 2.

The provincial government enacted the *Islands Trust Act*² in 1974 to establish the Islands Trust to attempt to address the problems associated with dramatic change to the islands. The unique object of the Islands Trust, stated in s. 3, was "to preserve and protect the Trust area and its unique amenities and environment for the benefit of the residents of the Trust area and for the Province generally ...".³

This thesis examines the Islands Trust to assess whether the Islands Trust can be considered a form of local government. The method of assessment of the Islands Trust is to develop an analytical framework of formal characteristics of government such as representation, revenue-raising, authority, autonomy, and capacity to coordinate. Then, this framework is used to analyze the Islands Trust for the purpose of considering what the Islands Trust was intended to be when it was established and how it has changed over its twenty year history. Does the Trust demonstrate strong characteristics of government? If the Islands Trust does not demonstrate strong characteristics of *government*, does it nevertheless provide *governance* for the Trust area despite the lack of formal characteristics of government? That is, *government* representing the specific characteristics and powers of a

2. See Appendix 1 for a chronology of events and Appendix 2 for the text of the *Islands Trust Act*, S.B.C. 1974, c. 43.

3. *Islands Trust Act*, S.B.C. 1974, c. 43, s. 3.

government body in a constitutional and legal sense, contrasted with *governance* as referring to the wider processes and abilities by which public decisions and policies are made and implemented. Is the Islands Trust different from other forms of local administration in British Columbia in terms of this government/governance dimension? If so, of what significance is this to the Trust area? What are the implications of this analysis for the Islands Trust, and for understanding local government more generally?

The following section provides the background for this study by describing the pre-Trust governance of the Gulf Islands, the formation of the Islands Trust and some alternative local government options to the Islands Trust. The chronological order of this background section is continued in the chapter IV analysis after the chapter II and chapter III literature survey and description of methodology, respectively.

B. Background

1. Pre-Islands Trust governance

Robert Bish describes the local government system in British Columbia prior to the 1965 creation of regional districts as follows: "there was no form of general local government outside the boundaries of municipalities in British

Columbia."⁴ For residents of unincorporated areas wanting services, "special districts of various kinds, direct provincial provision, or incorporation into municipal status were the alternatives."⁵

In the Gulf Islands, locally developed organizations had formed to deal with local issues. For example, the Islands Joint Committee operated as a local decision-making body on the islands prior to the 1974 formation of the Islands Trust:

The old committee was made up of delegates from chambers of commerce and other organizations who met regularly to consider transportation and other matters of concern to all the islands. During its final days of activity the committee even looked at zoning and came up with a number of recommendations before the provincial government stepped in with more forceful recommendations.⁶

John Money, a Saturna Island Islands Trust trustee, described that island's Community Club as another local organization that dealt with local issues before the regional districts and the Islands Trust were created. The

4 Robert L. Bish, *Local Government in British Columbia*, 2nd ed. (Victoria: Union of British Columbia Municipalities and the School of Public Administration, University of Victoria, 1990), 35.

5 Bish, 35.

6 "A new procedure," editorial, *Gulf Islands Prittwood*, 8 December 1982, 4. The *Gulf Islands Prittwood* is a weekly community newspaper published at Ganqes, Salt Spring Island. The *Gulf Islands Prittwood* reports on island events and issues considered important to the residents of Salt Spring Island and to the residents of the larger trust area. For this reason it is a useful historical source cited frequently in this thesis. For the same reason, Bowen Island's community newspaper *Undercurrent* and other newspapers published on the islands and in Vancouver and Victoria are also cited.

nucleus of the Community Club was the Community Hall with members paying annual dues of \$.50.⁷

In 1965, regional districts were created "to provide a federated approach to local control over problems transcending municipal boundaries in either a metropolitan or non-metropolitan area."⁸ The regional district system enabled residents of non-incorporated areas to provide public services more economically and efficiently than the non-incorporated areas could accomplish independently.

Seven regional districts include part of the Islands Trust area within their boundaries (see Map 3, p. 8). For example, Bowen Island is part of Electoral Area C in the Greater Vancouver Regional District ("GVRD"). The GVRD's responsibilities on Bowen Island include regional parks, recreational programs, fire regulation, dog control, library service and general administration.⁹

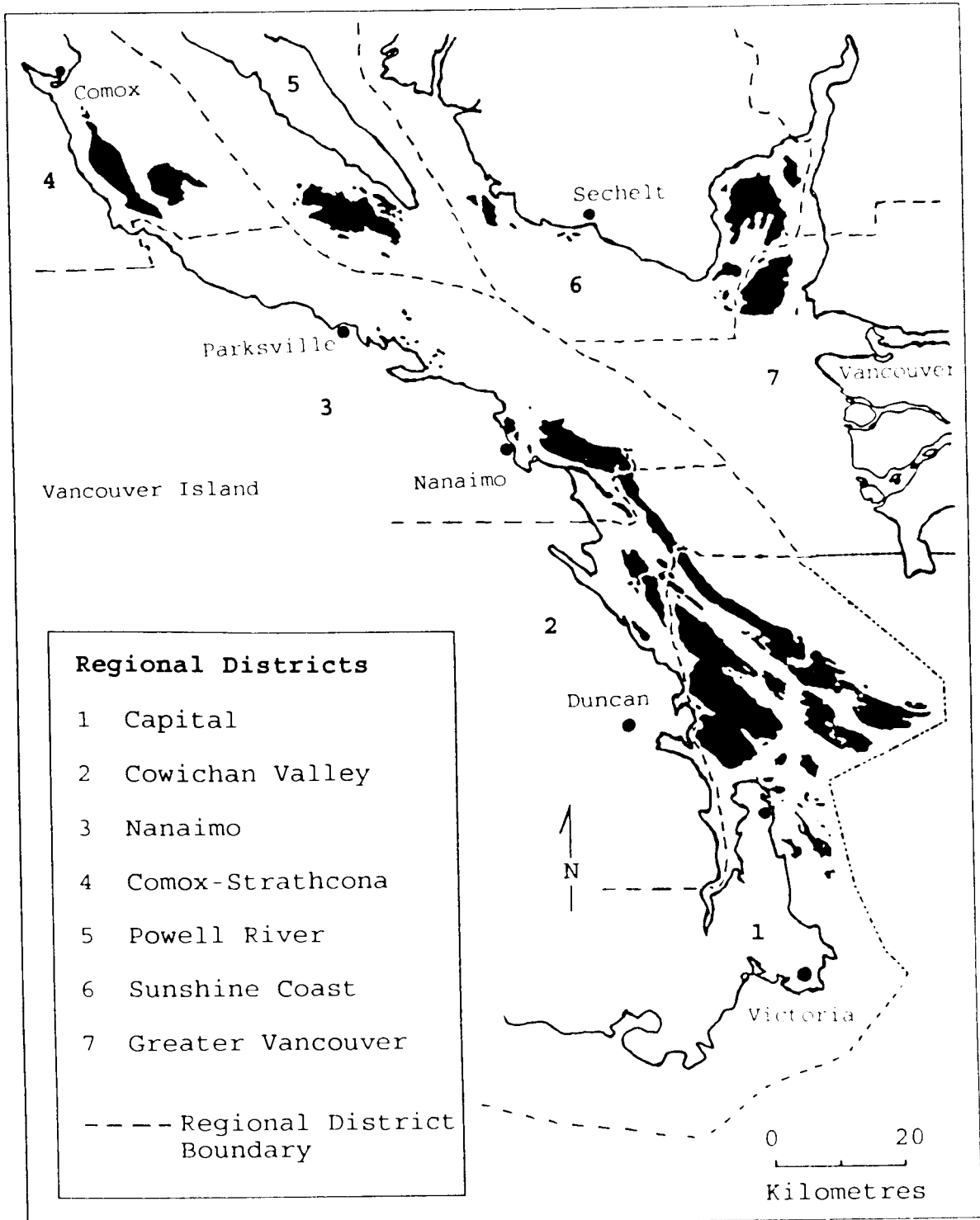
The regional district boards are composed of members appointed from municipal councils and elected from non-municipal electoral areas. The GVRD board has 28 members with a total of 78 votes distributed among the members according roughly to the proportion of the total region's

7 John Money, Saturna Island Islands Trust trustee, personal interview, Saturna Island, 15 August 1993.

8 Province of British Columbia, The Ministry of Municipal Affairs, Recreation and Culture, *Statistics Relating to Regional and Municipal Government in British Columbia, 1990* (Victoria: Queen's Printer, 1991), 1.

9 *Ibid.*, 54.

Map 3. Regional District Boundaries in the Islands Trust Area



Adapted from: Islands Trust, *Islands Trust Annual Report 1992-1993* (Victoria: Queen's Printer, 1993), 2.

population that a member's area comprises. Bowen Island and the other areas of the Lower Mainland included in Electoral Area C have one member with one vote on the GVRD board.¹⁰ The other islands in the Trust area have similar minimal representation on their respective regional district boards. This minimal representation of the islands on the regional district boards, and the perceived neglect of island concerns by the seven regional districts and the provincial government, was a problem that Minister of Municipal Affairs,¹¹ James Lorimer, identified when he introduced the *Islands Trust Act* to the B.C. Legislature in 1974. A second problem that Lorimer identified was the potential for the ruin of the islands by, in Lorimer's words: "unfortunate subdivisions and unfortunate development."¹² Land developers in the 1960s had created large subdivisions on the islands in response to the recognition of the islands' attractiveness as a recreation area for residents of the urban areas of Vancouver, Victoria, Nanaimo, and Seattle close to the islands:

At the Pacific National Exhibition in Vancouver you could buy a Magic Lake Estate on North Pender for fifty dollars down and financing to follow; as if by magic 1,263 new lots were created in the

10 *Ibid.*, 53.

11 The title of the Ministry of Municipal Affairs has changed with successive governments since 1974. In 1994 it is the Ministry of Municipal Affairs, Recreation and Housing, but the shorter term Ministry of Municipal Affairs will be used throughout this thesis.

12 Statement of James Lorimer, *B.C. Hansard*, 21 May 1974, 3259.

heart of this small island with a resident population of less than seven hundred.¹³

The accelerating pace of development spurred islanders to request local input into the planning process.¹⁴ This publicly expressed concern that the islands' unique character was being endangered by the rapid pace of development resulted in the provincial government imposing a minimum ten-acre lot size freeze on subdivisions in the Gulf Islands in 1969 under the *Local Services Act*.¹⁵ The *Gulf Islands Driftwood*, a weekly local newspaper for the southern Gulf Islands, reported Minister of Municipal Affairs Dan Campbell announcing the ten-acre freeze as a "breathing spell" because of the recognition that island residents were "concerned with the need for a plan for orderly development."¹⁶

Other political considerations may have also played a part in the imposition of the ten-acre freeze. One writer suggests that Premier W.A.C. Bennett's personal interest in the Gulf Islands was a factor:

13 Arthur Sweet, *Islands in Trust* (Lantzville, B.C.: Collihan Books, 1988), 61.

14 "Islanders Seek Planning Pender Plea," *Gulf Islands Driftwood*, 1, June 1969, 1.

15 *Local Services Act*, R.S.B.C. 1960, c. 224 (now R.S.B.C. 1979, c. 247), B.C. Reg. 274/69. A local area may be established in an unincorporated area under the *Local Services Act* by the Lieutenant Governor in Council upon the recommendation of the Minister of Municipal Affairs to prepare community plans, to regulate land use, and to provide specified services.

16 "Subdivision Ban Hits Developers," *Gulf Islands Driftwood*, 6, November 1969, 1.

Premier W.A.C. Bennett, who at times seemed bent on blacktopping the entire province, had made a specific exception for the Gulf Islands. They should be preserved just as they were, he declared. It was only coincidence, of course, that Bennett had recently bought a summer place on Salt Spring.¹⁷

Not all island residents were pleased with the freeze on subdivisions. Land developers and machinery operators concerned with the detrimental financial effect of the freeze on the local construction industry expressed the view that developments already under way should be allowed to go ahead.¹⁸ Another opponent of the freeze on subdivisions expressed, in a letter to the editor of the *Gulf Islands Driftwood*, his concern with what he viewed as the provincial government's unilateral action: "this would appear to be the first such edict in the province issued without local representation ...".¹⁹

The pleas of the detractors to the ten-acre freeze apparently fell on sympathetic ears as the freeze, although announced in November, 1969, did not take effect until March 31, 1970. In the five months between the announcement and proclamation of the freeze, developers who had instituted subdivision proceedings prior to the announcement of the

17 Peter Murray, *Homesteads and Smug Harbours* (Ganges, B.C.: H. S. M. & Schubart, 1991), 2.

18 Murray, 9.

19 C.R. Borel, "It is expropriation says Borel," *Gulf Islands Driftwood*, 6 November 1969, 8.

freeze had their plans approved if they complied with the then existing subdivision requirements.²⁰ In this five month period over 2500 new lots were created as subdivision plans were approved throughout the islands.²¹

The development pressures on the Gulf Islands led some island residents to call for planning on the islands. The chambers of commerce of Salt Spring Island, North Pender and South Pender requested the assistance of the Capital Regional District in planning for the islands, but the Capital Regional District did not have authority for planning in 1969.²²

Regional land use planning in British Columbia in the post-war era began when the Lower Mainland Regional Planning Board ("LMRPB") was established in 1948 "under provisions of the *Municipal Act* allowing for contiguous local authorities in a metropolitan area to develop a joint land-use planning capacity ...".²³ The Capital Regional Planning Board

20 "Relaxation of Controls," *Gulf Islands Prittwood*, 11 December 1969, 1.

21 Natural Resource Management Program, Simon Fraser University, *Preserve and Protect: An Institutional Analysis of the British Columbia Islands Trust*, Dr. R. Michael M'Gonigle, Project Supervisor, see bibliography for a list of all members of the study team, (Burnaby, B.C.: Natural Resources Management Program, Simon Fraser University, 1987), 17.

22 "Islanders Seek Planning - Salt Spring," *Gulf Islands Prittwood*, 17 June 1969, 1.

23 H. Peter Oberlander, and Patrick J. Smith, "Governing Metropolitan Vancouver: Regional Intergovernmental Relations in British Columbia," in *Metropolitan Governance: American/Canadian Intergovernmental Perspectives*, ed. Donald N. Rothblatt and Andrew Sancton (Berkeley: Institute of Governmental Studies Press, 1993), 334.

("CRPB"), was established in 1951 for planning for the city of Victoria and the surrounding rural areas from Sooke, west of Victoria, to the Saanich Peninsula, north of Victoria. Between the Lower Mainland area covered by the LMRPB and the metropolitan Victoria and surrounding rural areas covered by the CRPB lay the Gulf Islands where no planning authority existed; however, in 1970 the Capital Regional District took over the planning function from the CRPB and community plans began to be formulated for the islands.²⁴

The experience of the LMRPB and CRPB, as regional planning authorities, and the establishment of regional districts under Minister of Municipal Affairs Dan Campbell, provide evidence that the provincial government was amenable to regional governance initiatives to solve development problems.²⁵

The federal Ministry of State for Urban Affairs also instituted a study on the problems of the Gulf Islands--the Gulf Islands Regional Land Simulation ("GIRLS"), but the study did not lead to federal government action in the Gulf Islands as the Ministry of State for Urban Affairs was disbanded due to the provincial governments' opposition to the federal government's intrusion into municipal affairs.²⁶

24 "Islanders Seek Planning Pender Plea," *Gulf Islands Post* (V.I.), June 1969, 1.

25 Paul Tennant and David Zirnelt, "Metropolitan Government in Vancouver: The Politics of 'Gentle Imposition'," *Canadian Public Administration* 16 (1973), 124-138.

26 Information provided by H. Peter Oberlander, former Minister of the Ministry of State for Urban Affairs. For more information on the

Before the provincial Social Credit government took further action regarding the development pressures on the islands, however, a provincial election on August 30, 1972 brought the social democratic New Democratic Party ("NDP") to power under Premier David Barrett. James Lorimer was appointed as the new Minister of Municipal Affairs.

2. Formation of the Islands Trust

The provincial election in 1972 ended twenty years of Social Credit rule under Premier W.A.C. Bennett. The Bennett government had earned the reputation as an authoritarian regime labelled by Martin Robin as "executive despotism." Robin describes the working of the B.C. Legislative Assembly under W.A.C. Bennett as follows: the "political body which housed their elected representatives remained a dutiful subsidiary of an executive which behaved like a civilian junta."²⁷ The government's tax and environmental policies reflected a development ethos:

The government was similarly solicitous of the big land speculators, who were aided by the imposition on October 1, 1970, of a ten per cent yearly ceiling on property assessment for school purposes.... The government similarly capitulated in the key areas of conservation and pollution where years of agitation by environmentalists bore fruit in the emergence of an opinion less tolerant

Ministry of State for Urban Affairs, see H. Peter Oberlander and A. Fallick, *The Ministry of State for Urban Affairs: A Courageous Experiment in Public Administration* (Vancouver: University of British Columbia, Centre for Human Settlements, 1987).

27. Martin Robin, *Pillars of Profit* (Toronto: McClelland and Stewart, 1973), 281.

of the frontier rape of past decades. The Socreds adorned the books with cosmetic legislation but did little to halt the old spoliation.²⁸

By contrast, the NDP was committed to environmental reform. Premier David Barrett was quoted as having stated an election promise that he would not tolerate unrestricted development of the islands if the NDP formed the next government.²⁹

Rosemary Brown, NDP MLA, expressed the new government's environmental policy promise in the 1972 Throne Speech debate, the first for the new government:

This Government is determined to embark on a course which will see an end to the dumping of raw sewage and industrial waste into our rivers and streams, an end to the belching of foul and odorous effluent into our air, an end to the ravaging of our countryside and the usurping of our farmlands in the name of progress.³⁰

The NDP's environmental policies included what was then considered radical land reform. This was evidenced by the creation of the Agricultural Land Commission in 1973 "as a provincial agency to administer the use of all arable lands in the province."³¹ In light of Premier David Barrett's election promise against unrestricted development of the islands, the government's emphasis on environmental matters

28 Robin, 292.

29 "Development and Future Planning," editorial, *Gull Islands Driftwood*, 12 October 1972, 4.

30 Statement of Rosemary Brown, *B.C. Hansard*, 26 January 1973, 13.

31 Oberlander and Smith, 360.

in the Throne Speech, and the government's land reform policies, it is not surprising that the government decided to take action regarding the development pressures on the Gulf Islands. The government may also have been pressured by concerns which were being expressed on the islands that ministerial approval of completed community plans was being delayed.³² The reason for the delay became apparent on February 22, 1973, when the Minister of Municipal Affairs introduced a motion to the House to "authorize the Select Standing Committee on Municipal Matters to inquire into the question of the future development, including the development of community plans on the Gulf Islands."³³ The all-party committee, after touring the islands and holding well-attended public meetings, reported back to the Legislative Assembly on September 24, 1973:

... the Committee was pleased and impressed with the interest and turnout by the local people who expressed a vital concern about the future of the Islands.... the islands are of extreme importance to the Province of British Columbia, they are fragile, their location is crucial, being between the two largest cities in the Province, it is felt that people are entitled to use them and enjoy them to the capacity which they are able to serve.³⁴

32 "Planning By Laws Held Up," *Gulf Islands Pictorial*, 19 April 1973, 1.

33 Statement of James Lorimer, *B.C. Hansard*, 22 February 1973, 683.

34 *B.C. Hansard*, 24 September 1973, 255.

This quote encapsulates very well important features of the Gulf Islands that led to the creation of the Islands Trust. It is also worthy of note because these same features are as valid today as they were twenty years ago. First, the high degree of local concern for the islands. Second, the recognition of the importance of the islands beyond the local population. Third, the pressure on the islands from the densely populated urban centres of Vancouver and Victoria so close to the islands.³⁵ Fourth, the limited capacity of the islands to accommodate the demands placed upon them.

The Committee's primary recommendation was that the government "establish an 'Islands Trust' (or commission)." The government responded quickly with passage of the *Islands Trust Act* in 1974. The Minister of Municipal Affairs, James Lorimer, stressed that the Trust's role would be to assist the regional districts to prepare community plans for the islands and to coordinate Crown agencies in their dealings with the islands.³⁶

35. Nanaimo and Seattle are also large cities close to the Trust area. The rapid growth of the population of these cities exerts increasing pressure on the Trust area: "Between 1986 and 1990, Vancouver and Seattle/Tacoma were tied with the fourth highest growth rate (12%) among all metropolitan areas in United States and Canada with populations over 1 million." Province of British Columbia, *British Columbia Round Table on the Environment and Economy, Sustainability in the Georgia Basin/Puget Sound Region* (Victoria: Queen's Printer, 1992), 4. See the location of the Trust area in the Georgia Basin/Puget Sound Region: Map 4, p. 26. See also the population and population growth rates of the Trust area islands: Table 1, p. 74.

36. Statement of James Lorimer, *B.C. Hansard*, 21 May 1974, 3259.

Opposition MLAs characterized the *Islands Trust Act* as a device to erode local control. Their arguments centred on the provision that the general Trust committee was to be composed of three provincially appointed general trustees to decide matters that affected the interest of more than one island.³⁷ The three appointed general trustees would also sit as a local Trust committee with the two locally elected trustees from each of the thirteen designated islands to decide matters of interest to the individual islands. The majority representation of the three appointed general trustees on the local Trust committees was portrayed by the opposition MLAs as an example of the centralizing of authority by the provincial government.³⁸

The *Gulf Islands Driftwood* reported both positive and negative responses to the *Islands Trust Act*. One writer expressed strong support for the Islands Trust: "I am wholly in favour of this plan, or for that matter, any plan that might provide some controls for the future."³⁹ In contrast, the Chairman of the Capital Regional District Board, Jim Campbell, and Salt Spring Island Regional Director, George Heinekey, were both reported as opposed to the Islands Trust for the same reason that the opposition members had

37 Statements of Hugh Curtis, Karen Sanford, Allan Williams, David Anderson, Rosemary Brown, Bill Bennett and Scott Wallace, *B.C. Hansard* I, 21 May 1974, 3260-3271.

38 Statement of Allan Williams, *B.C. Hansard*, 21 May 1974, 3265.

39 "Wholly in favour of Trust says Scott," *Gulf Islands Driftwood*, 8 July 1974, 6.

expressed: the provision for provincial appointees was perceived as the provincial government exercising control over matters of local concern.⁴⁰

The *Islands Trust Act* passed third reading on June 4, 1974 and the Islands Trust was established with the following object stated in s. 3 of the Act:

It is the object of the trust to preserve and protect, in co-operation with municipalities and the Government of the Province, the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of the Province generally.⁴¹

This object will be analyzed in more detail in chapter IV, but three points are worthy of immediate note: first, the unique preservation mandate; second, the emphasis on co-operation with other governments; third, the provision for preservation and protection not just for the islands' residents, but also for the residents of the Province generally.

3. Alternatives to the Islands Trust

The creation of the Islands Trust in 1974 was a unique attempt to address the local governance problems of a specific fragile environment. Other existing legislative local governance options and other non-governance options were available to the British Columbia government in 1974.

40 "Islanders want no Trust here," *Gulf Islands Prittwood*, 9 May 1974, 1.

41 *Islands Trust Act*, S.B.C. 1974, c. 43, s. 3(1).

For example, calls for legislative options such as improvement districts, municipalities, and a regional district have been voiced for the islands before and since the Islands Trust was established in 1974.⁴² Other options such as an international park and a land trust similar to the United Kingdom's National Trust have also been suggested.⁴³

Other jurisdictions also provide examples of attempts to protect fragile environmental areas. For example, the Ontario government has attempted to deal with development pressures on a fragile environment in the Georgian Bay Archipelago and the Niagara Escarpment. All of these British Columbia options and other jurisdictions' examples will be discussed in more detail in the chapter IV analysis and the British Columbia legislative alternatives will be analyzed and compared with the Islands Trust in more detail in terms of the characteristics of government formulated in chapter II.

42 See "Island Municipality Feasible," *Gulf Islands Driftwood*, 8 October 1970, 1; "Extension of Islands Trust not on his books at present" says Curtis," *Gulf Islands Driftwood*, 15 February 1978, 28; "Region recommends county government," *Gulf Islands Driftwood*, 9 December 1981, 18.

43 See "National Park," editorial, *Gulf Islands Driftwood*, 29 October 1970, 4; "International Park Recommendation," *Gulf Islands Driftwood*, 11 April 1974, 5; "Anderson calls for National Trust," *Gulf Islands Driftwood*, 7 October 1971, 7.

C. The Rationale for a Study of the Islands Trust

1. Introduction

There are many rationales as to why a study of the Islands Trust may be an interesting and useful study. The first rationale discussed in the following section is the Trust's special ecological object to preserve and protect the Trust area. Then, the significance of the Islands Trust as an example of an environmentally focussed example of local government is related to regional and global initiatives. Finally, the local government literature generally, and academic writings specifically relating to the Islands Trust are canvassed to suggest why a study of the Islands Trust may be an interesting and useful study.

2. Special ecological object

The object of the Islands Trust "to preserve and protect the Trust area and its unique amenities and environment"⁴⁴ provides one rationale for why a study of the Islands Trust may be an interesting and useful exercise. The Islands Trust was established with this ecological object because of the recognition of the Gulf Islands' special environment and the threat that this environment was being spoiled by rapid development. This special environment of the Islands Trust area is an archipelago of "13 major islands and more than 450 smaller islands, many of them uninhabited."⁴⁵ The

44 *Islands Trust Act*, S.B.C. 1989, c. 68, s. 3.

45 *Islands Trust, The Policy of the Islands Trust* (Victoria: Queen's Printer, 1983), 9.

Trust area stretches from Denman Island in the northwest corner of the area, approximately 185 kilometres to Saturna Island in the southeast corner. The width of the southern portion of the Strait of Georgia encompassing the Islands Trust area varies with an average width of 38 kilometres. The region is approximately 5,178 square kilometres, 87% of which is water.⁴⁶

The islands have problems associated with settlement similar to the urban context, but where communications, transportation, and resource limitations are complicated by the geography of an archipelago. For example, supplies of potable water are limited and sewage disposal is made difficult by the often rocky landscape. A landscape analysis conducted in 1980 determined that an increasing population would lead to a deterioration of water quality. This analysis found that deep wells provide the best quality water, but that "this source is also of too limited a supply to support a large population.... Sewage disposal presents another problem."⁴⁷

The demographic and socio-economic profile of the Islands Trust area is also very different from an urban context:

46 Islands Trust, *Islands Trust Annual Report 1990-1991* (Victoria: Queen's Printer, 1991), 6.

47 Canada, Environment Canada, Canadian Forestry Service, *Gulf Islands of British Columbia. A Landscape Analysis* (Ottawa: Department of Supply and Services, 1980), 36.

Communities within the Trust Area are all still predominantly rural in character and contrast markedly with surrounding urban areas.... Shared recognition of the environmental and social uniqueness of each island generates the community spirit which is one of the most treasured aspects of the island life-style.⁴⁸

It is the island environment, the physical separation from the urbanized areas of the mainland and Vancouver Island that fosters this sense of community:

For an island has its own psychology, its own social forms, as delicately balanced as any ecosystem in the plant or animal world. Island life can only exist among pockets of people living in semi-seclusion, cultivating their little eccentricities and creating community out of their own needs as they arise.⁴⁹

The islands are a special environment, but this is not to deny that other areas of British Columbia and Canada are not also worthy of protection or amenable to a local institutional structure such as the Islands Trust. Therefore, the Islands Trust, established with a unique environmental object, may provide a useful study for application in other local areas, or, for a broader application. In a broader context, the concerns expressed over twenty years ago regarding the threat of rapid development on the Gulf Islands are being discussed on a

48 Islands Trust, *Draft Islands Trust Policy Statement* (Victoria: Queen's Printer, 1993), 16.

49 Irene Howard, *Bowen Island, 1872-1972* (Bowen Island, B.C.: Bowen Island Historians, 1973), 17.

broader regional and global scale; therefore, a study of the Islands Trust may be of significance in relation to provincial initiatives such as the British Columbia Round Table on the Environment and the Economy, and the Commission on Resources and Environment. Similarly, the experience of the Islands Trust may be useful in relation to a global initiative such as the United Nations Conference on Environment and Development.

3. Regional initiatives: the British Columbia Round Table on the Environment and Economy, and the Commission on Resources and Environment

The British Columbia Round Table on the Environment and Economy ("Round Table") was established in 1990 by the British Columbia provincial government, but was disbanded in 1994, reportedly due to budget cuts. While the Round Table was operating, however, its mandate included advising the provincial government on management of the Georgia Basin.⁵⁰ The Gulf Islands lie in the centre of the area described by the Round Table as the Georgia Basin/Puget Sound Region (see Map 4, p. 26). The Round Table's report regarding population growth and the rate of urban development expressed the following concerns:

Rapid population growth and patterns of settlement (ie. low-density urban sprawl) are major threats to the quality of life and sustainability of the

⁵⁰ Province of British Columbia, British Columbia Round Table on the Environment and the Economy, Joy Leach (chair), *The Georgia Basin Initiative: Creating a Sustainable Future*. (Victoria, B.C.: Queen's Printer, 1993), covering memo.

Georgia Basin. Action must be taken to control the form and rate of urban development, to minimize its negative effects, and to plan within the principles and objectives of sustainability for the basin as a whole.⁵¹

The concerns expressed by the report of the Round Table are very similar to the concerns expressed regarding the Gulf Islands prior to the establishment of the Islands Trust in 1974. Therefore, the experience of the Islands Trust in its attempt to deal with the problems associated with development may provide guidance for other forums that are instituted to deal with similar problems.

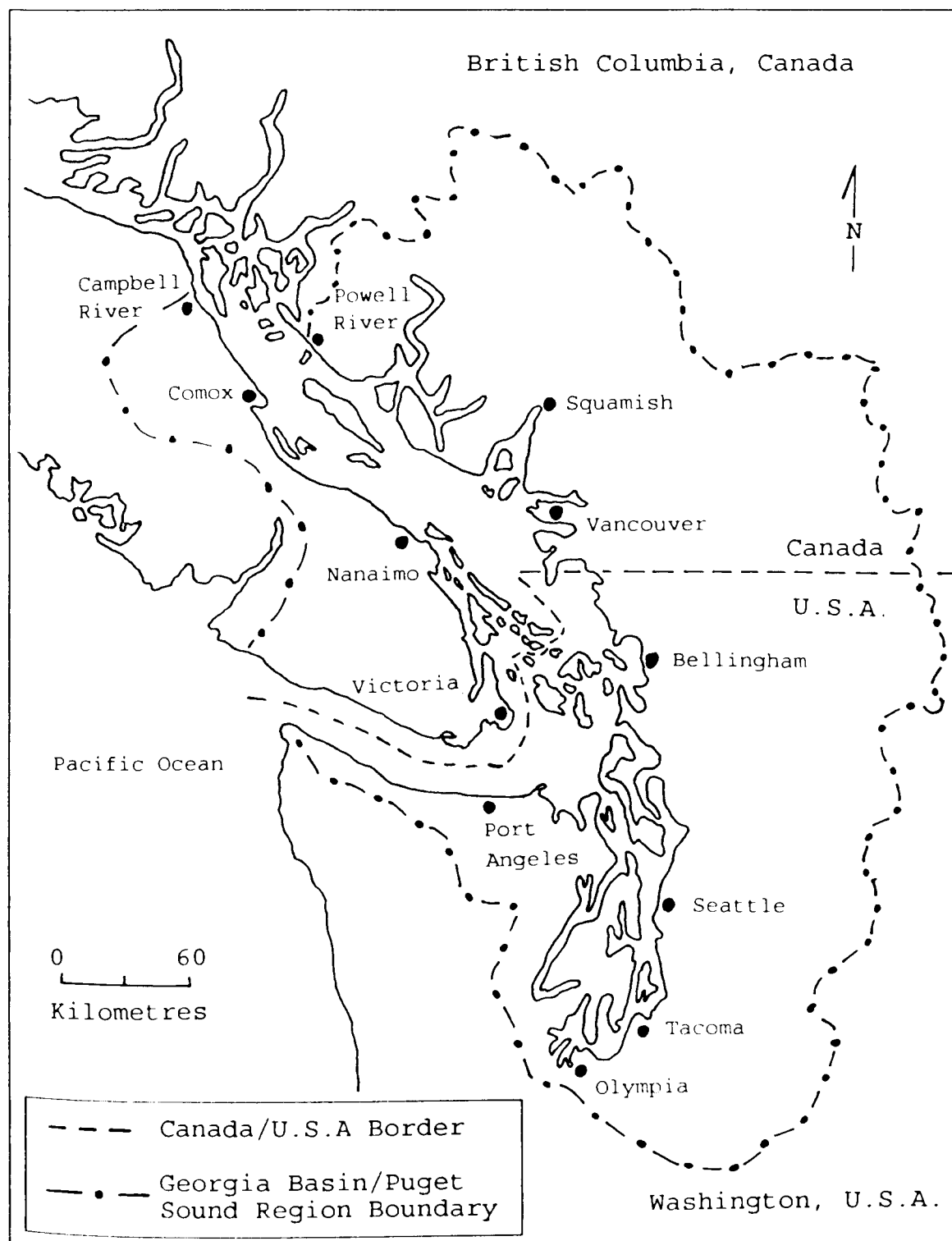
Although the Round Table has been disbanded, another regional initiative in British Columbia, the Commission on Resources and Environment ("CORE"), was established in 1992 with a mandate including the instruction to develop "a British Columbia wide strategy for land use and related resource and environmental management."⁵² CORE's "primary task is the creation of a province-wide strategy that ensures sustainability in land use", with sustainability being a balance between three interdependent components: economic, social and environmental sustainability.⁵³ The Vancouver Island Land Use Plan is CORE's recommendation to the provincial government for a *regional* level of land use

⁵¹ *Ibid.*, 32-33.

⁵² *Commissioner on Resources and Environment Act*, S.B.C. 1992, c. 64, s. 4.

⁵³ Province of British Columbia, Commission on Resources and Environment, *Vancouver Island Land Use Plan*, vol. 1 (Victoria: Queen's Printer, 1994), 30.

Map 4. The Georgia Basin/Puget Sound Region



Adapted from: British Columbia Round Table on the Environment and the Economy, *Georgia Basin Initiative: Creating a Sustainable Future* (Victoria: Queen's Printer, 1993), 2.

planning for Vancouver Island. A regional plan, in CORE's view, is one of five levels of planning on a continuum from general to specific and from strategic to operational: provincial, regional, subregional, local, and site-specific. The Vancouver Island Land Use Plan is a regional plan meant to develop a "broad allocation of land uses, setting resource management direction, including objectives and priorities for the regional land base."⁵⁴ The Islands Trust area was excluded from CORE's Vancouver Island Regional Planning Process because of the recognition that the Islands Trust Area was already a special management area under the *Islands Trust Act*. The Trust's planning initiatives, in the CORE planning parlance, incorporate the regional, subregional, local, and site-specific geographical scales in the Trust's policy statement and the islands' official community plans.

The significance of this discussion of CORE and the Islands Trust in relation to the rationale for this study of the Islands Trust is that the Islands Trust may provide an important example of an established local institution that has been attempting to exercise sustainable governance as a special regional environmental agency for planning in a fragile environment.

⁵⁴ *Ibid.*, 27.

4. Global initiatives: the Bruntland Report and the United Nations Conference on Environment and Development - The Rio Summit, 1992

The United Nations World Commission on Environment and Development was given the mandate in 1983 to propose strategies for achieving sustainable development on a global scale. The Commission's 1987 report, *Our Common Future*, known as the Bruntland Report, recognized the important role of local democracy and public participation for effective environmental decision-making:

This is best secured by decentralizing the management of resources upon which local communities depend, and giving these communities an effective say over the use of these resources. It will also require promoting citizens' initiatives, empowering people's organizations, and strengthening local democracy.⁵⁵

The Bruntland Report called for an international conference to be convened to follow-up and to continue the work of the Commission. That international conference was convened in Rio de Janeiro in 1992. The United Nations Conference on Environment and Development ("Rio Summit") achieved a global plan for sustainable development--Agenda 21--including the sustainable development of small islands:

Small island developing States, and *islands supporting small communities*, are a special case both for environment and development. They are ecologically fragile and vulnerable. Their small size, limited resources, geographic dispersion and isolation from markets, place them at a

⁵⁵ World Commission on Environment and Development, *Our Common Future* (Oxford: Oxford University Press, 1987), 63.

disadvantage economically and prevent economies of scale.⁵⁶ [Emphasis added.]

The activities stated in Agenda 21 as necessary to achieve the objectives of sustainable development of island communities include the following:

Review the existing institutional arrangements and identify and undertake appropriate institutional reforms essential to the effective implementation of sustainable development plans, including intersectoral coordination and community participation in the planning process....⁵⁷

Therefore, a study of an institutional arrangement such as the Islands Trust, with its object to preserve and protect the Trust area, and its emphasis on community participation, may be a timely example of what the Bruntland Report and the Rio Summit intended in considering ideas for sustainable development at a local level.

5. Local government literature

The traditional local government literature focusses primarily on municipal forms of government in the urban context: "The study of urban and local politics and government in Canada has always been oriented towards the municipalities."⁵⁸ For example, Crawford, Rowat, Feldman, Higgins, and Tindal and Tindal focus primarily on municipal

⁵⁶ Joyce Quarric, ed., *Earth Summit 1992* (London: The Regency Press Corporation, 1992), 153.

⁵⁷ Quarric, 155.

⁵⁸ Warren Magnusson, "The Local State in Canada: Theoretical Perspectives," *Canadian Public Administration* 28 (1985), 476.

forms of government as service providers.⁵⁹ Kernaghan and Siegel state that the frequently expressed rationale for local government is that local government promotes the values of access and service.⁶⁰ Access or responsiveness is the ability of citizens to participate in the governing process through direct contact with elected officials. This closer relationship between the elected and the electorate than is usually possible at the provincial or federal government levels encourages and enables citizens to be involved in the governing process, and encourages and enables local government officials to be responsive to local concerns.

Service refers to the efficient and effective provision of the particular package of services that the local agency is empowered to provide.

The Islands Trust may fit this conception of local administration in terms of access and service, but the Islands Trust area, as noted above, is a unique geographical and social milieu very different from the urban context.

59 See Kenneth G. Crawford, *Canadian Municipal Government* (Toronto: University of Toronto Press, 1954); D.C. Rowat, *The Canadian Municipal System: Essays on the Improvement of Local Government* (Toronto: McClelland and Stewart, 1969); Lionel D. Feldman, ed., *Politics and Government of Urban Canada: Selected Readings*, 4th ed. (Toronto: Methuen, 1981); Donald J.H. Higgins, *Local and Urban Politics in Canada* (Toronto: Gage Educational Publishing Co., 1986); J.R. Tindal and J.K. Tindal, *Local Government in Canada*, 3rd ed. (Toronto: McGraw-Hill Ryerson, 1990).

60 Kenneth Kernaghan and David Siegel, "Structures and Functions of Local Government Administration," in their *Public Administration in Canada* (Toronto: Methuen, 1987), 587.

The difference between the urban and the rural, encompassing more than simply density of population, is recognized in the urban-oriented local government literature. For example, in *Local and Urban Politics in Canada*, Higgins differentiates "city" from "countryside" for the purpose of using the notion of "city" as a focus for the analysis of a locality from a variety of perspectives:

The notion of "countryside" conveys something qualitatively different from "city," and the differences are not found in law. They are found in the nature of social organization and interaction, in economic life and functions, in the nature or magnitude of politically relevant problems, and in the possibilities and mechanisms for attempting to resolve or mitigate those problems.⁶¹

Despite the difference between urban municipalities and the Islands Trust, they share some similar problems and pressures such as policy-making regarding transportation and land use planning. Therefore, the traditional urban oriented local government literature is useful for this thesis by inspiring urban/rural comparative questions such as the following: Has the geographic and social milieu of the Islands Trust area been a significant influence in terms of the development of the structure of government in the islands? If this milieu has been significant, why and how has it been significant? How has this geographic and social milieu and the structure of government in the Trust area

⁶¹ Donald J.H. Higgins, *Local and Urban Politics in Canada* (Toronto: Gage Educational Publishing Co., 1986), 2.

affected the way that problems common to both the Trust area and urban areas have been addressed by the Islands Trust?

The traditional urban-oriented local government literature may also be useful for this thesis by suggesting analytical tools for this study's analysis of the Islands Trust. For example, Higgins distinguishes two perspectives of local government. The first is a perspective of local government as "nothing more than administrative agencies of other levels of government" with an emphasis on efficiency without concern for "political controversies".⁶² Kernaghan and Siegel argue that it is impossible to separate political and administrative concerns, that the administration of what may be thought of as non-political programs such as the provision of roads, schools, and recreation facilities involve very real political decisions.⁶³ Kernaghan and Siegel make a valid point, but in this thesis the administrative agency perspective of local government serves, in similar fashion to Higgins' use of the term, as a theoretical benchmark for one pole of Higgins' local government continuum between administrative agency and a liberal-democratic perspective of local government.⁶⁴

Higgins distinguishes the liberal-democratic perspective of local governments from the administrative

62 Higgins, 15.

63 Kernaghan and Siegel, 597.

64 Higgins, 70.

agency in describing the former as "full-fledged governments possessing sovereignty to make whatever decisions, policies and regulations are desired locally and which are not subject to ratification or alteration by any other level of government."⁶⁵ As with the administrative agency perspective, no local government fulfills this ideal type of liberal-democratic perspective of government possessing sovereignty, but the ideal exists on the theoretical continuum as the opposite pole from the administrative agency perspective. Thus, one of the central questions to be addressed in this thesis is whether the Islands Trust is closer to the administrative agency ideal or whether it approximates the liberal-democratic local government perspective. And, how has the Trust changed over time in this respect?

Therefore, although the Islands Trust exists in a different milieu from that studied by the traditional urban centred local government literature, the tools of analysis used by the more traditional approach may also prove useful for this study. This local government literature will be assessed in more detail below in the literature survey in chapter II to develop a theoretical framework to analyze the Islands Trust in terms of characteristics of government.

⁶⁵ Higgins, 16.

6. Islands Trust literature

a. Generally

The existing Islands Trust literature describes the Trust in different ways, for example: "a special purpose regional government,"⁶⁶ "a planning body,"⁶⁷ "a unique single-purpose government."⁶⁸ Thus, while the Islands Trust has been described as both a government and an agency, a specific analysis of the Islands Trust in terms of characteristics of government has not been attempted in any depth.

In 1989, the *Islands Trust Act* underwent a comprehensive revision. The new Act came into force in 1990. All of the Islands Trust literature discussed below relates to the Islands Trust before 1989. Therefore, this study provides an analysis of important changes to the Islands Trust that have occurred under the new *Islands Trust Act*, but that have not been analyzed in the academic literature. These changes are discussed in detail in chapter IV.

The intention of the following overview of recent Islands Trust literature is to discuss the research already accomplished on the Islands Trust and to glean unanswered questions that may be relevant to the present study.

⁶⁶ Patrick J. Smith, "Regional government in British Columbia," *Planning and Administration* 13 (1986), 9.

⁶⁷ Michael McGonigle, "Sustainability and local government: The case of the British Columbia Islands Trust," *Canadian Public Administration* (1989), 533.

⁶⁸ Bish, 61.

b. Islands Trust theses

Julie Glover's 1974 master's thesis, "The Island Trust Concept," made recommendations for a model bill for the Gulf Islands.⁶⁹ Glover's terms of reference were the observations and recommendations of the British Columbia Legislative Assembly's Committee on Municipal Matters which studied the islands in 1973 and recommended that the government establish an Islands Trust. Glover analyzed five pieces of legislation, including two that are included in the analysis of the present study, below: *The Niagara Escarpment Planning and Development Act, 1973*, and the *Nantucket Sound Islands Trust Bill, 1973*. For the purpose of the present study Glover's analysis is useful for its identification of other jurisdictions' attempts to control development in fragile environments. Glover's conclusions and recommendations concerning a model bill for the Gulf Islands are of less relevance to this thesis because the analysis here is of the Islands Trust as an existing institution from 1974 to the present.

A second master's thesis, titled "The Islands Trust: An Institutional Experiment in the Management of Scarce Natural and Social Resources," was written by Laura Porcher in 1980.⁷⁰ Porcher analyzed the performance of the Islands

⁶⁹ J.M. Glover, "The Island Trust Concept," M.S. thesis, School of Community & Regional Planning, University of British Columbia, 1974.

⁷⁰ L.K. Porcher, "The Islands Trust: An Institutional Experiment in the Management of Scarce Natural and Social Resources," M.S. thesis, Resource Management Sciences, University of British Columbia, 1980.

Trust prior to 1980 in terms of the intent of the *Islands Trust Act* to provide more local control and to coordinate and control land development. Porcher concluded that although development in the islands was more orderly since the Islands Trust was instituted, the Islands Trust was limited in its power to fulfill its mandate. The lack of cooperation of other government agencies with the Islands Trust and the Trust's limited authority meant that environmental problems persisted, problems over which the Islands Trust had minimal control.

Porcher's thesis is useful for the purpose of the present study in its assessment of the Trust's authority to influence policies relating to the object and the conclusions regarding the lack of authority and ability to coordinate other government agencies in the Trust area. Thus, Porcher's thesis provides a useful starting point for the present study to compare conclusions regarding the operation of the Islands Trust in the 1970s, and to continue the analysis in the 1980s and 1990s.

c. Regional governance in British Columbia

In "Regional Governance in British Columbia", Patrick Smith describes the establishment of the Islands Trust as "an associated agency of the provincial Ministry of Municipal Affairs ... to oversee certain--particularly land use control--aspects of the southern Gulf Island groupings."⁷¹

⁷¹ Smith, 9.

Smith uses the example of the Islands Trust to illustrate his view of the provincial government's policy of centralization of authority during the 1980s. For example, in 1983 the provincial government rescinded all regional plans and removed the power of regional planning from the Islands Trust and the regional districts. This example and others are discussed in more detail in chapter IV.

Smith's conclusion regarding the Islands Trust is that "the necessity of such a regional structure remains evident" due to the potential for damage to the islands' ecology from further development.⁷²

Therefore, the questions that arise for the present study out of Smith's work are the following: How did the early 1980s attempts at centralization by the provincial government affect the Islands Trust? Does the Islands Trust demonstrate the capacity to regionally govern the Trust area?

d. To preserve and protect: an institutional analysis of the British Columbia Islands Trust

The Natural Resources Management Program at Simon Fraser University completed an institutional study of the Islands Trust in 1987.⁷³ The purpose of the study was "to examine

⁷² Smith, 14-15.

⁷³ Natural Resource Management Program, Simon Fraser University, *To Preserve and Protect: An Institutional Analysis of the British Columbia Islands Trust*, Dr. R. Michael M'Gonigle, Project Supervisor, see Bibliography for a list of all members of the study team, (Burnaby, B.C.: Natural Resources Management Program, Simon Fraser University, 1987).

the Islands Trust as a form of local government and to identify its strengths and weaknesses, principally through an assessment of its performance on important Gulf Island issues."⁷⁴

In terms of local government, the study provided a brief review of the theory and role of local government, and an overview of the powers and mandate of the Islands Trust.

The major component of the study was a survey of island residents concerning the identification of important issues and the performance of the Islands Trust in relation to those issues.⁷⁵ Island residents and Islands Trust trustees were asked what they considered to be the Trust's strengths and weaknesses. The survey identified one strength as the consideration of the Islands Trust as a local government. In considering the Islands Trust as a local government, residents believed that they had more contact with the Islands Trust than with other government agencies. The democratic election of the trustees was perceived by the residents to provide more opportunities to be involved in local government. The Islands Trust was also perceived to provide a focus for identification, discussion, and resolution of issues at the local level. The mandate to

⁷⁴ Ibid., p. 1.

⁷⁵ Ibid., p. 1.

preserve and protect was seen as providing a common goal to protect the islands.⁷⁶

The weaknesses identified by the survey included the perception of a lack of authority of the Trust because ultimate authority for land-use decisions lay with other provincial agencies. The survey respondents considered the Islands Trust to be politically unstable because it was at the mercy of the provincial government. A related weakness was that the Islands Trust was seen to be compromised by pressure from the provincial government and its agencies. The survey found that residents thought that too much of the Trust's effort was directed at individual subdivisions, rather than on broader natural resource management and long range planning.⁷⁷

The recommendations of the study were based on the views of the survey respondents in their support for the Islands Trust and their belief that the Islands Trust should be strengthened in terms of authority and financing to overcome the perceived weaknesses, to fulfill the existing functions of the Islands Trust and to carry out recommended expanded responsibilities.⁷⁸

Questions for this study arising from the Simon Fraser University study include the following: If the perception of

⁷⁶ *Ibid.*, 11-12.

⁷⁷ *Ibid.*, 16-17.

⁷⁸ *Ibid.*, 32-33.

the Islands Trust by island residents was that the Trust was in some ways successful in fulfilling its mandate, but in other ways frustrated by other government agencies, is this because the Islands Trust was successful in governing the islands despite weaknesses in formal government characteristics? Does the *Islands Trust Act*, 1989 change the Islands Trust in the ways that the study proposed, for example, in terms of financing, authority, and autonomy, and the ability to coordinate other government agencies? How has the governance of the islands changed as a result of the revised *Islands Trust Act*, 1989?

The project supervisor of the Simon Fraser University study was Dr. Michael M'Gonigle. M'Gonigle subsequently published an article based on the study: "Sustainability and local government: The case of the British Columbia Islands Trust".⁷⁹ This article is the subject of the following section.

e. Sustainability and local government: The case of the British Columbia Islands Trust

M'Gonigle analyses the Islands Trust, as "one of Canada's few examples of ecological administration", in terms of its institutional capabilities and public legitimacy to attempt to draw practical and theoretical lessons for public administration. He concludes that the Islands Trust "points

⁷⁹ M'Gonigle, *ibid.*, p. 144.

to an alternative decentralist paradigm to that dominant in traditional administrative theory."⁸⁰

For the purpose of this study, M'Gonigle's article is useful in its brief assessment of the scope of the regulatory authority of the Islands Trust and the conclusion that "the Islands Trust seems to be a weak, underdeveloped administrative body. But it is not."⁸¹ M'Gonigle provides two reasons for this view: the Trust's "preservation institutional ideology, and the democratic planning process." With regard to the preservation ideology, M'Gonigle states:

Preservationist/development issues outweigh all more specific concerns. Thus, despite the limited range of the Trust's authority, it is not akin to a specialized agency, but to a general purpose one. Despite the lack of formal regulatory authority, it is not in disrepute. On the contrary, the Trust is understood to be more than an administrative or management agency, more like a form of government with a very important role in the self-constitution of the island communities.⁸²

This view of the Islands Trust as more like a form of government, but with a limited range of authority, is what the present study intends to analyze in more depth. What is the Trust's authority and how has it changed over the history of the Islands Trust? Is the Islands Trust limited in terms of other formal characteristics of government? If

⁸⁰ M'Gonigle, 343.

⁸¹ M'Gonigle, 344.

⁸² M'Gonigle, 348.

the Islands Trust lacks strength in formal characteristics of government, does it nevertheless provide governance for the Trust area? And, if it does provide governance, how does it do so?

7. Conclusion

The rationale for the present study of the Islands Trust begins with the special ecological object of the Trust and the Trust's practical example of an environmentally focussed local administration when regional and global forums have been created to attempt to deal with the challenge of protecting the environment from threats of urbanization and increasing industrial development.

The traditional local government literature, with its focus on municipal government, may provide useful tools for the analysis of the Islands Trust. The Islands Trust faces some similar development and land use problems and pressures as urban municipal governments; however, the geographic and social milieu of the Gulf Islands and the mandate of the Islands Trust to preserve and protect the islands may result in quite different responses to these problems. Therefore, as a result of the similarities and differences between urban local government and the Islands Trust, a study of the Islands Trust may also provide lessons for local administration in Canada generally.

Finally, although recent literature on the Islands Trust has touched on, or viewed from a different perspective

the thesis of the present study as to whether the Islands Trust can be considered a form of government, this question has not been analyzed in detail and the fundamental changes to the *Islands Trust Act*, 1989, have not been analyzed in the academic literature.

The following chapter surveys the local government literature to develop an analytical framework to analyze the Islands Trust in terms of characteristics of government.

II. LITERATURE SURVEY AND THEORETICAL QUESTIONS

A. Introduction

The central question of this thesis is whether the Islands Trust can be considered a form of government according to formal characteristics of government such as representation, revenue-raising, authority, autonomy, and capacity to coordinate. If the Trust cannot be considered a form of government according to characteristics of formal government, or if it is lacking in this regard, nevertheless, does the Islands Trust provide governance for the Trust area? That is, does the Islands Trust exercise important governing functions for the Trust area despite weaknesses in terms of formal characteristics of government?

The following section investigates formal characteristics of government by examining the local government literature to develop a framework of analysis for the chapter IV assessment of whether the Islands Trust can be considered a form of government or not.

B. Characteristics of Government

Local government theorists provide analytical techniques to assess the extent to which a local governing institution can be considered a form of government or not. Oberlander and Smith distinguish between "governance" and "government" in assessing policy-making and intergovernmental relations in the context of metropolitan Vancouver.¹ The term *governance*

¹ Oberlander and Smith, 329.

describes the ability of governing bodies to influence public policy-making despite weaknesses in formal structures of government. In Oberlander's and Smith's analysis, the Greater Vancouver Regional District ("GVRD") plays "an important--even central--role in the governance of the metropolitan Vancouver region" despite the weakness of the GVRD in terms of formal characteristics of regional government such as representation, revenue-raising, autonomy, authority, and the capacity to coordinate.² These five characteristics of government are the starting point for this study's development of a framework for the analysis of the Islands Trust. The substance of the framework will be developed with Oberlander's and Smith's characteristics, other writers' conceptions of characteristics of government,³ and this author's ideas. The purpose is to develop a framework for analysis of characteristics of government to assess whether the Islands Trust can be considered a form of government or not.

2 Oberlander and Smith, 367.

3 Royston Greenwood, and J.D. Stewart, "The Institutional and Organizational Capabilities of Local Government," *Public Administration* 64 (1986), 35-50; Gordon L. Clark, "A Theory of Local Autonomy," *Annals of the Association of American Geographers* 74(2) (1984), 195-208; Donald J.H. Higgins, *Local and Urban Politics in Canada* (Toronto: Gage Educational Publishing Co., 1986); G. Jones and J.D. Stewart, "The Future of Local Governments," *Regional Studies* 19 No. 2 (1985), 165-173.

1. Representation

a. Introduction

Representation can be described as the means by which representatives are given the power to act or speak on behalf of their constituents and the manner in which the representatives are held accountable to their constituents.

The first aspect of representation is therefore the means by which the decision is made as to who will represent the interests of the electorate. In order to make this choice, factors such as the following define the characteristic of representation: What are the territorial dimensions of the constituency? Who may run for office? Are representatives appointed or elected? Who is eligible to vote?

The second aspect of representation is how the representatives are held accountable once they have been elected. The parameters of accountability can be determined with questions such as the following: Are the representatives appointed or elected? For what length of time do the representatives hold office? How do elected representatives exercise their power and make decisions? By majority vote? By weighted vote? How are decisions made? Are meetings open to the public? Are members of the public given the opportunity to voice their opinions at public meetings?

b. Territorial dimension

With respect to the territorial dimensions of the constituency, John Stuart Mill, in *Considerations on Representative Government*, regards a community of local interests as "the only just and applicable one":

The very object of having a local representation, is in order that those who have any interest in common, which they do not share with the general body of their countrymen, may manage that joint interest by themselves: and the purpose is contradicted, if the distribution of the local representation follows any other rule than the grouping of those joint interests.⁴

In the case of the Islands Trust, the *Islands Trust Act* defines the local community of interests as the residents of the Trust area; however, it also recognizes the importance of the Gulf Islands to the residents of the province generally. Each of the individual Gulf Islands represent a community. There are also local communities on individual islands. Each of these island communities, however, have interests in common with the other island communities. One of those interests, the object of the Islands Trust to preserve and protect the Trust area, resulted in the delineation of the Trust area to encompass those islands that were subject to the most pressure from the nearby urban centres of Victoria, Vancouver, Nanaimo, and Seattle. The broader community of interests, the residents of the

⁴ John Stuart Mill, *Considerations on Representative Government* (1861; Chicago: Henry Regnery Co., 1962), 290.

province generally, was included in the *Islands Trust Act* as a recognition of the importance of the Gulf Islands to the residents of British Columbia as a whole.

Questions concerning representation from the foregoing discussion include the following: How has the broader community of interests, the residents of the province generally, been represented in the Islands Trust? Within the Trust area itself, are the local communities and the broader regional community represented in the Islands Trust? With the disparity in island populations, has the provision in the *Islands Trust Act* for an equal number of representatives from each designated island worked well for the island communities in the Trust area? Has this changed over the history of the Islands Trust?

c. Election or appointment

Greenwood and Stewart argue for an elected local institution on the basis of the importance of an independent authority accountable to the electorate. Election is a more desirable method of selection of representatives, they note, because it promotes involvement, interest and activity in local decisions by the politicians and the electorate:

The electoral base is at the heart of local government. Of all the distinctive characteristics of local government it is the most critical. It provides legitimacy for authoritative decision making at the local level and is thus the basis of local choice and of the right to raise taxation. It provides the

legitimizing base for the diffusion of power and diversity of response.⁵

The analysis of the method of selection of trustees in the Islands Trust will consider questions concerning the different types of representatives in the Islands Trust and the way they are selected, the frequency of elections, the number of representatives and their constituencies, and who may run and who may vote.

d. Accessibility and accountability

Accessibility to the political process for members of the public is an important component of the *accountability* of political leaders to the electorate. Accountability is the method by which the political leadership of the community is held responsible, through the governing and electoral process, for the decisions they make. The ability of the public to be aware of, and to participate in the political process beyond merely voting at election time provides for the increased accountability of government. Hill, in *Democratic Theory and Local Government*, stresses the variety of ways of participating and the personal nature of

⁵ Greenwood and Stewart, 35. Lord Durham would agree, his 1939 *Report on the Affairs of British North America* decried the lack of municipal institutions in Lower Canada, stressed the importance of local self-government, and called for the introduction of elected autonomous municipalities. See G.M. Craig, ed., *Lord Durham's Report* (Toronto: McClelland and Stewart, 1963), 60.

participation in local government.⁶ The limited geographical jurisdiction in which local government operates may enhance the likelihood of members of the public having direct contact with their local representatives and being directly involved in the local government forum. How often are elections held? Are meetings open? Do the meetings follow democratic procedures to enable participation and consideration of the views of the public? Is the public aware of what issues will be addressed (the agenda), how the decisions will be made (the rules of order), what decisions have been made and how leaders have voted (votes taken and recorded)? Thus, in the case of the Islands Trust, are the Islands Trust representatives and the Islands Trust meetings accessible to island residents? Does the geography of the islands, or the nature of the island communities affect the likelihood of island residents participating in the Islands Trust?

2. Revenue-raising

Revenue-raising is the ability of the government to raise funds by taxing or charging for services to pay for its administrative costs and for the services it provides. The power to raise revenues from local sources to finance local decisions is an important component of the accountability

6 Dilys M. Hill, *Democratic Theory and Local Government* (London: G. Allen & Unwin, 1974), 21; see also Patrick Smith, "Local Government: First Order or Third Level?", in Michael Howlett and David Laycock, eds., *The Puzzles of Power: An Introduction to Political Science* (Toronto: Copp, Clark, Longman, 1994), 485-492.

and autonomy of a local authority. Greenwood and Stewart stress the accountability function of the power to tax: "The taxation decision forces the elected authority to balance the benefits of expenditure against the costs of taxation, and thus sharpens the line of accountability."⁷ Thus, the accountability of the local government authority is enhanced in two ways: first, there is a closer connection between taxing decisions by the local government representatives who make the decisions and those who pay the tax; secondly, there is a closer connection between the decision to tax and the local focus of the benefits of the resulting expenditure.

Jones and Stewart, writing in the wake of the reorganization of local government in England and Wales in 1974 and the abolishment of the Greater London Council in 1986,⁸ suggest principles for future local government reform in England. On financing, they also stress the accountability function. They propose that local government should have more responsibility to tax directly: "a system of finance is required which imposes taxes on local electors for the greater part of the expenditure deriving from local choices." In this way local accountability is strengthened

7 Greenwood and Stewart, 42.

8 T. Travers et al., *The Government of London* (London: J. Rowntree, 1991).

because financial responsibility for local decisions rests with local electors.⁹

Higgins notes that the financial self-reliance to impose tax or borrow to pay for decisions made locally is an important component of the autonomy or discretion of self-government.¹⁰ The local government, with the ability to raise revenue, does not have to rely on a senior level of government to provide funds for its administrative costs and services that it provides.

Therefore, the questions for an analysis of the Islands Trust in respect of revenue-raising include the following: Does the Islands Trust have any ability to raise funds through taxing, charging for services, borrowing, or accepting donations? Has the financing of the Islands Trust operations changed since the inception of the Trust in 1974? What effect has the Islands Trust's methods of financing Trust operations had in terms of the accountability and autonomy of the Islands Trust?

⁹ Jones and Stewart, 171-172.

¹⁰ Higgins, 69.

3. Authority

Oberlander and Smith describe authority as the ability "to have policies carried out, and the legal means to initiate or enforce policies and relevant laws."¹¹ Victor Jones makes this same distinction by referring to *authority* and *power*: a legal *authority* to act must be distinguished from *power* as the ability of the body to act.¹²

Higgins' formulation of local self-government requires the granting of independent decision-making authority to the local authority with "legal jurisdiction over at least several major aspects of public policy".¹³

For the present study, authority as a characteristic of government will be considered as consisting of three components: a defined sphere of responsibilities in which the institution has the ability to make policies and laws, the legal and practical ability to put those policies and laws in place, and the power to ensure that those policies and laws are upheld. The questions relating to authority for this study include the following: In terms of formal

11 H. Peter Oberlander and Patrick J. Smith, "Governing Regionally or Regional Governing: Conflict or Disinterest in Metropolitan Vancouver," Paper for the Metropolitan Regions Research Group Conference, North American Federalism Project, University of California, Berkeley, November, 1989, 92.

12 Victor Jones, "Beavers and Cats: Federal-Local Relations in the United States and Canada," in Hilda Symonds and H. Peter Oberlander, eds., *Meech Lake: From Centre to Periphery - The Impact of the 1987 Constitutional Accord on Canadian Settlement: A Speculation* (Vancouver: Centre for Human Settlements, University of British Columbia, 1988), 90.

13 Higgins, 69.

authority, what is the defined sphere of responsibilities of the Islands Trust? What resources and legislative powers does the Islands Trust have to enable it to make policies and laws, to put these policies and laws into practice, and to ensure that these policies and laws are enforced?

In terms of governance, is the practical authority of the Islands Trust different from the formal authority provided by the Trust's legislated responsibilities? If the Islands Trust appears to have more or less authority in practice than its formal responsibilities suggest, to what influences can this difference be attributed?

4. Autonomy

In "A Theory of Local Autonomy",¹⁴ Clark "identifies two primary principles of local autonomy: the power of initiation and the power of immunity."¹⁵ The extent of the power of *initiation* depends on the rights of the local government with respect to other agencies. Clark provides an example that is of particular significance to the Islands Trust: "if local governments have the powers to regulate and legislate with respect to land use and zoning, then they are also able to initiate plans and designs for the formal spatial configuration of local economic activities."¹⁶ Thus, local government requires some degree of power of

14 Clark, 195-208.

15 Clark, 198.

16 Clark, 198.

initiation to have any autonomous control over its given sphere of influence. How the initiation powers are granted is an important component of the autonomy of local government. If a higher level of government has the authority to grant initiation powers, then that power is subject to that authority and so autonomy is lessened.

Clark's second principle of autonomy is the power of *immunity* which he describes as "essentially the power of localities to act without fear of the oversight authority of higher tiers of the state."¹⁷ Thus, local government is able to act within its given sphere of authority with a limited capacity for other government agencies to interfere with the local government's decisions and actions.

When speaking of autonomy in relation to local government it is useful to recall that this discussion is of an ideal type. In reality, local governments' lack of autonomy is stated well in Judge Dillon's oft-quoted rule:

Municipal corporations owe their origin to, and derive their power and rights wholly from the legislature.... They are, so to phrase it, the mere tenants at will of the legislature.¹⁸

Clark recognizes the limitations on the autonomy of local governments by identifying four ideal types of autonomy. Type 2, with initiative and no immunity, is what M'Gonigle

¹⁷ Clark, 198.

¹⁸ *City of Clinton v. Cedar Rapids and Missouri River R.R. Co.* (1868), 24 Iowa 455, 475, as quoted in Jones, 90.

suggests the Islands Trust most closely resembles.¹⁹ Clark describes this type as "decentralized liberalism" in which "local governments in this model decide their own agendas, functions, and actions ...; lack of immunity means that local actions are closely scrutinized and reviewed, perhaps even negated."²⁰ To apply Clark's analysis of autonomy to the Islands Trust, therefore, with regard to initiation, how is the Trust's authority granted? What degree of initiation does the Islands Trust have to make decisions without consulting other agencies? With respect to immunity, to what extent does the Islands Trust have power to act freely from the oversight of other levels of government?

Higgins questions, in terms of autonomy, whether local government in Canada can be considered "government."²¹ He distinguishes between two types of local government. The first type are administrative agencies following policies of a central authority in which the local agency has minimal discretion and ultimate control resides with the senior agency.²² The second type is "local self-government" that "implies devolution or distribution of significant decision-making power to localities" over matters of local interest. Higgins conceives of these two types of local government,

19 M'Gonigle, 533.

20 Clark, 201.

21 Higgins, 68.

22 Higgins, 68.

the administrative agency and local self-government, as opposite poles of a continuum with a range of possibilities between the two extremes.²³

The characteristics of autonomy of the second type, local self-government, include the following:

- the absence of control by anyone outside the locality, ratification or veto or change to local decisions;
- the right to hire and fire local officials without outside intervention;
- the right to organize the local administrative and legislative structures and processes in any way;²⁴

Therefore, the questions for this thesis arising out of Higgins' and others' analysis, in terms of formal characteristics of government, include the following: How does the Islands Trust compare with respect to the three examples of autonomy quoted above? Where does the Islands Trust lie on Higgins' continuum between the extremes of administrative agency and local self-government? Has the Trust's position moved one way or another along the continuum over the twenty years since it was established in 1974?

The autonomy of local governments in Canada is limited because local government does not have an independent constitutional status. The constitutional nature of local

²³ Higgins, 70.

²⁴ Higgins, 69.

government is as a subordinate of provincial government. The provincial governments' constitutional power over local government is derived from the *Constitution Act, 1867*, s. 92: municipal institutions in the province, s. 92(8); local works and undertakings, s. 92(10); property and civil rights, s. 92(13); generally all matters of a merely local or private nature in the province, s. 92(16).²⁵ Therefore, while the provincial governments wield direct control over local government, other levels of government also have the ability to impinge on local governments' autonomy. In British Columbia the regional districts have a significant impact on local government. A regional district's authority to provide specified services to an area depends on the individual district, but the services provided may include the following: building inspections, recreational services, community health services, refuse disposal, sewage disposal, transit, and regional parks.

Therefore, does the Islands Trust have any autonomy to make decisions independently of these other levels of government? Are the decisions of the Islands Trust subject to the approval or concurrence of other government agencies?

In terms of the governance of the Trust area, is the autonomy of the Islands Trust in practice different from the formal autonomy of the Trust as evidenced by the *Islands Trust Act* and the Trust's constitutional status as a local

²⁵ *Constitution Act, 1867* (U.K.), 30 & 31 Vict., c. 3 (formerly *British North America Act, 1867*).

government established by the provincial government? If the practical autonomy of the Trust is different than its legislative and constitutional status suggest, why is that so?

5. Capacity to coordinate

A local authority's capacity to coordinate other government agencies and non-governmental entities reflects the idea that a local administration can have an effective influence in the local community in ways other than the direct provision of services.

Jones and Stewart articulate the idea of a capacity to coordinate by envisioning the local authority as "the government of a local community" with "rights of inquiry into, and of consultation with other public agencies in their area."²⁶ The purpose of the capacity to coordinate is to serve the local community by providing for, directly or indirectly, what the community needs to the degree that the local community decides it needs it.

The capacity to coordinate characteristic of government is relevant to a study of the Islands Trust because of the many different government agencies of the provincial government, the federal government and the regional districts, whose activities affect the Trust area. The capacity to coordinate characteristic also recognizes the contribution that non-governmental agencies make in a

²⁶ Jones and Stewart, 171.

community, independently of government. A local authority may then act in a useful role as a focus for the coordination of governmental and non-governmental agencies in the local area.

Therefore, the questions for this study relating to the Trust's capacity to coordinate other agencies in the Trust area include the following: Does the Islands Trust have any formal power to coordinate other government agencies in the Trust area? In terms of governance, is the Trust's ability to influence other agencies different in practice than its formal powers suggest? If the Trust's ability is different than what its formal powers suggest, why is that so?

C. Conclusion

The preceding analysis of characteristics of government formulates a framework for the analysis of the Islands Trust to determine whether the Islands Trust can be considered a local government. Beginning with Oberlander's and Smith's five characteristics of government--representation, revenue raising, authority, autonomy, and capacity to coordinate and fleshing out those concepts with other authors' conceptions of characteristics of government and this writer's ideas, the following framework will be used in the chapter IV analysis to analyze the Islands Trust.

Representation is the means by which representatives are chosen to represent the constituency and how they are

held accountable once they have been elected. The analysis of the characteristic of representation centres on questions such as the following: What territorial community of interests is represented in each constituency and how do the constituencies compare in geographical size and population? Are the representatives elected or appointed? How are decisions made? Are there opportunities for public participation?

Revenue-raising is the ability of an authority to raise funds to pay for its administrative costs and the services it provides. The ability of the local authority to independently raise funds is related to accountability as there is a close relationship between the revenue-raising decision-maker, the taxpayer, and the focus of the benefits derived from the tax or charge. The questions for analysis include the following: Does the Islands Trust have the ability to independently raise funds? Has that changed over the Trust's twenty year history? What are the implications of the revenue-raising ability of the Trust on the autonomy and accountability of the Trust?

Authority is the sphere of responsibilities that the local body is entitled to influence with policies and laws, the legal and practical ability of the local body to implement its policies and laws, and the power to enforce those policies and laws. What areas does the Trust have authority over and how has that changed over time?

Autonomy is the ability of a local authority to make decisions and to act independently of other levels of government. Therefore, how is the Islands Trust's authority granted? Can the Islands Trust make decisions without consulting with other agencies? Are the decisions and actions of the Islands Trust subject to the review or approval of other government agencies?

Capacity to coordinate is the ability of an authority to coordinate other government and non-governmental agencies whose activities impact the authority's geographical area. Does the Islands Trust have an ability to coordinate other agencies?

This framework of five characteristics of government will be used in chapter IV to analyze the Islands Trust to determine whether the Islands Trust is a form of government or not. Prior to the chapter IV analysis is chapter "III. Methodology", which describes the research and analytical methods that will be used in the chapter IV analysis.

III. METHODOLOGY

A. Research

1. Bibliographic research

The method of researching this thesis involved bibliographic research, personal interviews, and attendance at Islands Trust public meetings.

The bibliographic research included a survey of local government literature generally, and research specifically focussed on the Islands Trust. The review of the local government literature focussed on writings to develop the analytical framework of characteristics of government. The Islands Trust academic literature was reviewed to assist in the background section of this study and to identify significant events in the history of the Islands Trust to apply in the analysis in chapter IV.

The libraries at the Islands Trust office, the GVRD, and on the islands were useful sources of information. Research of a more general nature on the topic of the Gulf Islands provided insights into the history and social fabric of the island communities.

Included in the Islands Trust literature search was the review of local newspapers. Many newspapers are published locally on the Gulf Islands, including the following: the *Gulf Islands Guardian*; Salt Spring Island's *Gulf Islands Driftwood*; Bowen Island's *Undercurrent* and the *Bowen Breeze*; the *Lasqueti Island Grapevine*; Mayne Island's *Mayneliner*; the southern islands' *Islands Tides*; Denman Island's *Island*

Life; Gabriola Island's *Flying Shingle* and the *Gabriola Sounder*; and the *Liberator*. Two of these local newspapers--the *Gulf Islands Driftwood* and the *Undercurrent*--are used as the primary newspaper references in this thesis. The *Gulf Islands Driftwood* and the *Undercurrent* are published weekly on Salt Spring Island and Bowen Island, respectively. They focus on events occurring on the two islands, but they also provide information concerning the Trust area as a whole. The research of these two newspapers covered the *Gulf Islands Driftwood* from 1969 to 1993 and the *Undercurrent* from 1975 to 1993. The *Vancouver Sun*, the *Province*, and the *Georgia Strait* published in Vancouver, and Victoria's *Times-Colonist*, are also referred to in this thesis.

The review of local and regional newspapers was useful research for a number of reasons. First, local newspapers provide a historical record of events concerning the Islands Trust. Second, local newspapers are used as a conduit for information from elected representatives to their constituents. The newspapers often print documents that the Island Trust trustees feel are of importance to island residents. Third, the usually spirited and often articulate and well-informed discussion in letters to the editor provides some indication of public reaction to local issues.

The Islands Trust research also included a survey of the British Columbia Hansard¹ from 1973 to the present. The

¹ Province of British Columbia, *Debates of the Legislative Assembly* (Victoria: Queen's Printer, 1973-1994).

Debates of the Legislative Assembly concerning the original *Islands Trust Act* and the many amendments since then provide a useful source of political debate and rhetoric concerning the legislation and issues relating to the Islands Trust and the province generally.

2. Interviews

Personal and telephone interviews were conducted with present and former Islands Trust trustees and an employee of the Ministry of Municipal Affairs, Recreation and Housing. Islands Trust trustees were interviewed on the following islands: Bowen, Denman, Hornby, Lasqueti, Salt Spring and Saturna. The trustees were asked about the extent of their involvement with the Islands Trust, their view of how the Islands Trust could be characterized as an institution, the issues facing their individual island and the Trust area as a whole, and their view of significant events in the history of the Islands Trust with regard to the characteristics of government formulated in chapter II.

Less formal interviews were conducted with island and non-island residents in such "community settings" as local island pubs and on the ferries plying the waters between the islands.

B. Analysis

The analysis of the Islands Trust in terms of characteristics of government in chapter IV is based on the analytical framework developed from the literature survey

and development of theoretical questions in chapter II. Chapter IV reviews and analyzes selected significant legislative developments in the history of the Islands Trust in relation to formal characteristics of government. The purpose of this method is to examine how the significant legislative changes to the Islands Trust in the twenty year history of the Islands Trust have affected the institution of the Islands Trust in terms of formal characteristics of government. The analysis of the Islands Trust is intended to determine whether the Islands Trust can be considered a form of government based on formal characteristics of government such as representation, revenue raising, authority, autonomy, and capacity to coordinate. Whether or not the Islands Trust displays these characteristics of government, a second area of inquiry is to assess the practice of the Islands Trust and whether the governance of the islands by the Islands Trust reflects either less or more the formal characteristics of government determined in the first area of inquiry. This second area of analysis investigates the role of the Islands Trust in events occurring on the islands during the last twenty years. This part of the analysis discusses the general working of the Islands Trust in its day to day activities, and also highlights specific events that are mentioned in some detail because they either involved the Islands Trust or involved issues that affected the preservation and protection object of the Islands Trust. These specific events also had to be

of sufficient interest or controversy at the time to generate discussion or debate that is recorded in government documents, judicial decisions, newspapers, and trustees' memories. The purpose of this analysis is to attempt to determine the Trust's influence on these events in relation to the object of the Islands Trust to preserve and protect, to the Trust's formal characteristics of government and to the governance of the islands by the Islands Trust. Therefore, was the influence of the Islands Trust on the islands generally, and on these events specifically, different than what might be expected in relation to the Trust's formal powers of government? What are the implications of this analysis for the effectiveness of the Islands Trust in the governance of the islands?

Some of the events that are analyzed spanned a number of years, for example, the Ganges sewer debate was a controversial issue on Salt Spring Island for over twenty years. Therefore, the specific events are analyzed in the chronological order of analysis of the following chapter at a time when a formal resolution of the event occurred--a decision or action of the Islands Trust, the provincial government, or the judiciary. The events that are considered below include the following: Bennett Bay marina, Mayne Island; Seaview Land Estates, Denman Island; Gambier Island mining; Ganges sewer, Salt Spring Island; Snug Cove marina, Bowen Island; Galiano Island forestry; and Saturna Island park.

The significant legislative developments in the Islands Trust history analyzed below are as follows: the *Islands Trust Act, 1974*, which established the Islands Trust; the *Islands Trust Amendment Act, 1977*, which transferred land use regulation and planning from the regional districts to the Islands Trust; the *Municipal Amendment Act, 1983*, which rescinded regional plans and took away the power to regionally plan from the Islands Trust and the regional districts; the legislative changes in 1985 making subdivision proposals no longer subject to conformity with community plans; the proclamation of the Trust Fund provisions of the *Islands Trust Act* in 1987; and the *Islands Trust Act, 1989*, in which the Islands Trust underwent a major revision.

IV. ANALYSIS

A. 1974 - 1976: Islands Trust established

The Islands Trust was established by the *Islands Trust Act* in 1974 by the NDP government under Premier David Barrett.¹ The Act was passed in response to the perception by the provincial government that the concerns of the Gulf Islands' residents were being neglected by the provincial and regional district authorities governing the islands. The government also recognized the potential for the ruin of the islands by the fast pace of development on the islands.²

With regard to **representation**, the original *Islands Trust Act* provided for the appointment and election of two types of trustees to administer the Islands Trust: three appointed general trustees and twenty-six elected local trustees.

The three general trustees were "appointed by the Lieutenant Governor in Council to hold office for a term of two years", with the possibility of reappointment for a further term or terms.³ One general trustee was designated as chairman of the Trust, and a second general trustee was designated as vice-chairman. These three general trustees

¹ See Appendix 2 for the text of the *Islands Trust Act*, S.B.C. 1974, c. 43.

² See the background discussion above at pp. 14-19; see also the British Columbia Legislative Assembly debates concerning the *Islands Trust Act*: B.C. Hansard, 21 May 1974, 3258-3275; 28 May 1974, 3458-3467; 4 June 1974, 3719-3720.

³ *Islands Trust Act*, S.B.C. 1974, c. 43, s. 2(1).

were appointed to make decisions, approvals and recommendations as a committee under the Act for "general affairs", defined in the Act as "matters relating to the object of the Trust and affecting ... more than one designated island",⁴ or islands in the Trust area other than designated islands.

Two local trustees were elected from each of the thirteen designated islands: Bowen, Denman, Gabriola, Galiano, Gambier, Hornby, Lasqueti, Mayne, North Pender, Salt Spring, Saturna, South Pender, Thetis. The two local trustees sat with the three appointed general trustees on each island as a local Trust committee to make decisions, approvals and recommendations for "local affairs", defined as "matters relating to the object of the Trust and affecting only the designated island."⁵ Under s. 5, any doubt concerning whether a matter related to general affairs or local affairs was decided by the chairman of the general trustees. Under s. 11, the Lieutenant Governor in Council could make regulations regarding what issues would be considered local or general, but the regulations indicate that this power was never used.

This dual method of selecting the Islands Trust trustees was an attempt by the provincial government to provide for the representation of the two types of

⁴ *Islands Trust Act*, S.B.C. 1974, c. 43, s. 1.

⁵ *Islands Trust Act*, S.B.C. 1974, c. 43, s. 1.

constituencies stated in the object of the Act in s. 3: "to preserve and protect ... for the benefit of the residents of the Trust area and for the Province generally." This object referred to "residents of the Trust area." This wording implies a regional interest, but the election of two trustees for each local Trust committee and the appointment of the three general trustees by the provincial government suggested that the local trustees would represent the local Trust committee area's interests and the provincial appointees would consider the provincial interest. The Islands Trust legislation did not expressly mention a regional interest, but the general trustees, with their representation on each of the local Trust committees, provided a regional perspective by their familiarity with the practice of all of the local Trust committees. A different regional perspective in the Trust area was provided by the regional districts, but this regional perspective was fragmented as the Trust area was divided into seven different regional districts (see Map 3, p. 8).

The provision for majority control of the local Trust committees by the general trustees demonstrated that the provincial government was treading cautiously with this new form of local control as the general trustees--appointees of the provincial government--held the balance of power.

Local trustees were elected to a fixed term of two years. Under the first draft of the *Islands Trust Act*, the general trustees were appointed at the pleasure of the

Lieutenant Governor in Council. This provision of the Act, the appointment of the general trustees who held the voting majority in the local committees over the locally elected trustees, was the most contentious aspect of the new legislation. The *Gulf Islands Driftwood* reported criticisms expressed at a public meeting: "Various proposals suggested that the bill would be more palatable if the trustees were island people and elected to their office or appointed for a specific term."⁶ The government responded to the criticisms by amending the legislation to provide for a two year term for general trustees.⁷ The government's first general trustee appointments in 1974 also tempered some of the criticism as the appointees were perceived as being sensitive to island issues and representative of the interests of both permanent residents and part-time residents: the first Chairperson of the Islands Trust, Hilary Brown, was a long-time resident of Hornby Island; Vice-Chairperson Marc Holmes was a resident of Salt Spring Island and had served as Regional Director for Salt Spring Island on the Capital Regional District Board; and Vice-Chairperson David Brousson resided on Bowen Island on weekends.⁸ The *Gulf Islands Driftwood* also praised the

6 "Islanders Want No Trust Here," *Gulf Islands Driftwood*, 9 May 1974, 1.

7 "Trust is here to stay with modifications," *Gulf Islands Driftwood*, 23 May 1974, 13.

8 "Marc Holmes named to Islands Trust," *Gulf Islands Driftwood*, 11 September 1974, 1.

apparent lack of overt political considerations in the appointments:

Many residents of the islands had been fearful that the Trust would consist of strict party-line politicians, eager and anxious to carry out the government's instructions. This possibility has been routed by the appointments.⁹

The provision in the initial *Islands Trust Act* for two elected local trustees for each designated island regardless of the island's population (see Table 1, p. 74) raised questions of an imbalance in the representative ideal of equal representation by population. However, such questions were not considered a serious problem in the Trust area in 1974 for two reasons. First, the Trust area is an archipelago of over 450 islands. Although relatively few of the islands are inhabited, governing the Trust area as a region is complicated by the necessity of having to rely on intermittent ferries and small airplanes for transportation from island to island. The ability of trustees to attend committee meetings and to effectively provide public access to meetings, and for the Trust to provide services, is made difficult by a geographically dispersed constituency. Therefore, the provision in the *Islands Trust Act*, 1974, for two elected local trustees for each designated island regardless of the island's population, could be justified

⁹ "The Islands Trust," editorial, *Gulf Islands Driftwood*, 11 September 1974, 4.

Table 1. Population Growth of the Designated Islands of the Islands Trust Area, 1966-1991

	1966	1976	% Change 1966-1976	1981	% Change 1976-1981	1986	% Change 1981-1986	1991	% Change 1986-1991
Bowen	218	590	(170.6%)	1,125	(90.7%)	1,447	(28.6%)	2,060	(42.4%)
Derman	-	378		598	(58.2%)	760	(27.1%)	890	(17.1%)
Gabriola	407	1,185	(191.2%)	1,627	(37.3%)	2,066	(27.0%)	2,575	(24.6%)
Galiano	344	525	(52.6%)	669	(27.4%)	775	(15.8%)	950	(22.6%)
Gambier	-	-		-		93		185	(98.9%)
Hornby	-	420		686	(63.3%)	800	(16.6%)	915	(14.4%)
Lasqueti	104	260	(150.0%)	299	(15.0%)	300	(0.3%)	325	(8.3%)
Mayne	278	495	(78.1%)	560	(13.1%)	620	(10.7%)	740	(19.4%)
North & South									
Pender	330	805	(143.9%)	1,029	(27.8%)	1,149	(11.7%)	1,630	(41.9%)
Salt									
Spring	2,238	4,410	(97.1%)	5,443	(23.4%)	6,164	(13.2%)	7,915	(28.4%)
Saturna	-	185		229	(23.8%)	245	(7.0%)	265	(8.2%)
Thetis	109	173	(58.7%)	217	(25.4%)	235	(8.3%)	235	(0.0%)
Totals	4,028	9,426	(134.0%)	12,482	(32.4%)	14,654	(17.4%)	18,685	(27.5%)
British Columbia	1,873,674	2,467,000	(31.7%)	2,744,000	(11.2%)	2,905,900	(5.9%)	3,273,000	(12.6%)

Sources:

1966-1986 population figures for the Trust area islands:

Islands Trust, *The Policy of the Islands Trust* (Victoria: Queen's Printer, 1990), 9, from Statistics Canada census information.

1991 population figures for the Trust area islands:

Islands Trust, *1991 Census Information for the Islands Trust Area* (Victoria: Queen's Printer, 1993), 2-3, from Statistics Canada 1991 Census of Canada.

Population figures for British Columbia:

Canada, Ministry of Industry, Science and Technology, Statistics Canada, *Report on the Demographic Situation in Canada 1993* (Ottawa: Ministry of Industry, Science and Technology, 1994).

by the unique geography of the Trust area compared to more geographically contiguous jurisdictions.

The second reason why the election of two local trustees for each designated island regardless of population was not a serious representational problem in 1974 is that the group of twenty-six locally elected trustees did not formally operate as a regional body; rather, the three members of the general Trust committee dealt with matters of a general nature and the local Trust committees dealt with local issues on each of the designated islands. Thus, the apparent representational imbalance of Salt Spring Island, with two local trustees for a population, in 1976, comprising 46.8% of the Trust area's total population, compared to Lasqueti Island, also with two local trustees, but with only 2.8% of the population of the Trust area, was not a problem of representation because the twenty-six local trustees as a group did not formally operate as a Trust area regional body. A regional perspective was provided by the three general trustees serving on the local Trust committees. This allowed the general trustees to advise the local Trust committees on how other local Trust committees were resolving similar issues.

In practice, only two general trustees were usually present at local Trust committee meeting because two general trustees and one local trustee constituted a quorum. The general trustees did not overrule the local trustees, but would side with the local trustees if the local trustees

were in agreement on a particular issue. It was only when the local trustees were not in agreement with each other, which often signalled a split in the community regarding a particular issue, that the general trustees would be required to make the final decision. The general trustees would then attempt to resolve the contentious issue with reference to the Trust object to preserve and protect the Trust area.¹⁰ This practice enhanced local autonomy, but also allowed a role for regional governance when the local representatives were split on an issue.

The representation question concerning the election of two local trustees for each major island regardless of population has changed with subsequent amendments to the *Islands Trust Act*. The 1989 revision of the *Islands Trust Act* formalized the Trust council as a regional authority composed of the twenty-six local trustees with responsibility for the general policies and financial management of the Islands Trust. Thus, the disparity in population between the islands now raises questions of disproportionate representation with respect to issues of financing and decision-making. These issues will be discussed in more detail when the 1989 revision is analyzed, below.

The regional districts were granted participatory status in the Islands Trust. Under s. 4(4) of the *Islands*

¹⁰ Nick Gilbert, former Islands Trust chairman, personal interview, Salt Spring Island, 16 August 1993.

Trust Act, 1974, the area director of the regional district board was entitled to attend Islands Trust meetings, but not to vote. The relations of the Island Trust and the seven regional districts varied, but the regional district directors for the islands were not often involved in Islands Trust meetings. The Islands Trust trustees more often interacted with the regional district representatives at the regional district offices because the approval of the Islands Trust was needed before a regional district could pass a community plan, regional plan, or zoning bylaw regulating land within the Trust area.¹¹

With respect to **revenue-raising**, the Islands Trust had no authority under the initial *Islands Trust Act* to raise funds for its own use. All funds for the operation of the Islands Trust were paid out of the consolidated revenue fund of the provincial government.

Therefore, the reliance of the Islands Trust on the provincial government for operating funds indicated a lack of accountability and autonomy under the original *Islands Trust Act*.

With respect to **authority**, the relevant Trust committee having jurisdiction, whether the general Trust committee or a local Trust committee, was to address the object of the Trust in the following ways under s. 3(2):

¹¹ *Islands Trust Act*, S.B.C. 1974, c. 43, s. 6(1).

- (a) make recommendations ... for the preservation and protection of the trust area and its unique amenities and environment;
- (b) make recommendations ... respecting the acquisition, use, and disposition by the Crown ... of land situated within the trust area;
- (c) co-ordinate and assist in the determination, implementation, and carrying out of municipal and Provincial Government policies for the preservation and protection of the trust area and its unique amenities and environment.
- (d) ... locate and identify archaeological and historical sites within the trust area;
- (e) hear and decide upon any matter relating to the general affairs or local affairs, as the case may be, that is required, under this Act, to be heard and decided upon by it;
- (f) prescribe rules and regulations respecting meetings and hearings; and
- (g) carry out such other duties as the Lieutenant-Governor in Council may from time to time direct.¹²

Thus, in relation to the object of the Islands Trust, the authority of the Trust was limited to recommending, coordinating, assisting, and identifying to the provincial government the ways in which the object could be given meaning; however, the Islands Trust was not given the authority to implement and enforce policies necessary to achieve that object.

More substantive authority relating to land use in the Trust area was granted to the Islands Trust under s. 6 of the *Islands Trust Act*. The Trust was given a power of veto over a community plan, regional plan, or bylaw regulating the use or subdivision of land within the Trust area.¹³

This authority was also limited because the Islands Trust

¹² *Islands Trust Act*, S.B.C. 1974, c. 43, s. 3(2).

¹³ *Islands Trust Act*, S.B.C. 1974, c. 43, s. 6(1).

had no independent authority to develop community plans, or any enforcement authority. The Trust had a veto, but this was weakened by the provision for appeal to the minister in s. 8. An unproclaimed provision of s. 6 required the Trust's approval of a subdivision application before it could be accepted by the registrar under the *Land Registry Act*.¹⁴ This provision remained unproclaimed until the revision of the *Islands Trust Act* in 1989, under which the Islands Trust was given the power to designate a person as the approving officer for land within the Trust area.¹⁵

Finally, the provincial government retained the power to appoint a manager of the Trust, but the manager was to be responsible to the general trustees for the administration of the Trust and the general trustees were given the power to appoint employees.¹⁶

With respect to **autonomy**, the Trust's existence as a body established under its own legislation separate from the *Municipal Act* demonstrated a degree of independence. The Trust established an office separate from the Ministry of Municipal Affairs and had the power to hire and direct the activities of its employees except the manager who was appointed by the provincial government and responsible to the general trustees. The Trust's financial dependence on

14 *Islands Trust Act*, S.B.C. 1974, c. 43, s. 6(3).

15 *Islands Trust Act*, S.B.C. 1989, c. 68, s. 30.

16 *Islands Trust Act*, S.B.C. 1974, c. 43, s. 9.

the provincial government was a significant limitation on the power of the Islands Trust to make independent decisions. Other provisions of the *Islands Trust Act* relating to the functions of the Trust provided further evidence of this lack of autonomy. The Trust's veto power over bylaws regulating the use or subdivision of land within the Trust area was limited by the fact that the bylaws also needed the approval of the Lieutenant Governor in Council and any decision of a Trust committee could be appealed to the minister under s. 8. This appeal mechanism ensured that the Islands Trust had very little real autonomy to have its decisions carried out and enforced if the provincial government did not agree with the decisions of the Islands Trust. Thus, the Islands Trust lacked immunity from oversight by the provincial government. This appeal provision rarely resulted in the minister overruling the Islands Trust, but in the opinion of former Islands Trust Chairperson, Nick Gilbert, one of the Trust's weaknesses was this appeal to the minister, for the following reasons:

Regardless of the party in power the minister has always heard complaints about the Islands Trust because he or she has been perceived as being the appeal person, and quite rightly so because the minister, being a political creature, does respond to some of the issues where normally local governments would be left to resolve their own difficulties. With the Trust there has always been that potential attraction for ministerial intervention and that has not worked well.¹⁷

¹⁷ Nick Gilbert, former Islands Trust chairman, personal interview, Salt Spring Island, 16 August 1993.

Therefore, the Islands Trust had little formal legislative autonomy to make independent decisions even within its limited scope of authority.

Minister of Municipal Affairs James Lorimer referred specifically to the Island Trust's **capacity to coordinate** during second reading of the *Islands Trust Act* in 1974:

The trust will assist, where possible, the process of the community plans.... It will also coordinate the activities of the different departments of government and the Crown corporations as they deal with the islands. 18

The actual ability of the Trust to coordinate other public agencies in the Trust area was very limited in the *Islands Trust Act*. Under s. 3(2)(c), the Trust was authorized to "co-ordinate and assist in the determination, implementation, and carrying out of municipal [including regional district] and provincial government policies for the preservation and protection of the Trust area ...". However, the Islands Trust was granted no power in this respect, the role of the Islands Trust was merely to recommend to other public agencies the views of the Trust. This was a very important aspect of the governing of the islands because of the impact of the activities of different government agencies on the social, economic and physical environment of the islands.

18 Statement of James Lorimer, *B.C. Hansard*, 21 May 1974, 3259.

Some of the provincial agencies whose activities have an important impact on land use in the Trust area include those agencies responsible for forestry, the environment, Crown lands, ferries, highways, and agriculture.¹⁹

The Ministry of Forests has responsibility for forestry practices under the *Forest Act*²⁰ on Crown land or private land classified as "managed forest land" for taxation purposes of the *Assessment Act*.²¹ The forestry practices on these lands are therefore not subject to the control of the local Trust committees, but forestry issues are important to the Trust's object to preserve and protect because of the impact of forestry practices on watersheds, recreation, wildlife, and scenery.

The activities of the Ministry of Environment, Lands and Parks also affect the Trust area in important areas. The environmental policy-making of this ministry include environmental assessment and protection, waste practices, pesticide use, water management, and fisheries and wildlife protection. The Lands Services Division makes decisions regarding Crown land sales and leases and the Parks Division deals with provincial parks.

19 These agencies' 1994 titles are used here, but in 1974 the relevant ministry titles were as follows: Ministry of Lands, Forests, and Water Resources; Ministry of Recreation and Conservation; Ministry of Highways; Ministry of Agriculture.

20 R.S.B.C. 1979, c. 140.

21 R.S.B.C. 1979, c. 21.

The policies of the British Columbia Ferry Corporation, a Crown corporation, have a substantial impact on the Trust area due to the corporation's control over ferry routes, scheduling, load capacity, and distribution of traffic transported to the islands (foot passengers, automobiles, bicycles).

The Ministry of Transportation and Highways constructs new roads and maintains existing roads in the Trust area. The provincial road standards set by the ministry have often been a point of contention between the Islands Trust and the ministry because the provincial road standards are considered by many on the islands to be less appropriate to a rural island lane than a suburban municipal thoroughfare.²² This ministry also controls subdivision approvals in the Trust area because the approving officer is a ministry employee.

The jurisdiction of the Ministry of Agriculture, Fisheries and Food includes responsibility for the Agricultural Land Commission and for the regulation of aquaculture, two areas that impact the object of the Islands Trust to preserve and protect the environment of the Trust area.

The seven regional districts that include portions of the Trust area within their boundaries are also important actors in their provision of a wide range of services for

²² "Islands don't need 80 foot Highways says Commission," *Undercurrent*, 4 July 1980, 30.

unincorporated areas including recreational facilities, and refuse and sewage disposal.²³

The federal government also plays an important role in the Trust area. Indian reserve lands on the islands are not subject to the jurisdiction of the Islands Trust. Federal government agencies involved in areas such as fisheries, and navigation and shipping also have an impact in the Trust area.

The original *Islands Trust Act* included provisions for consultation, but the provincial agencies were generally ignorant of the Trust and its object to preserve and protect. There was nothing in these agencies' mandates to require them to take into account the recommendations of the Islands Trust. The former Chairperson of the Islands Trust, Nick Gilbert, expressed his perception of the coordination of the provincial agencies, or lack thereof, as follows:

The provincial government is broken into a series of agencies or branches that have a lot of autonomy but do not necessarily relate to one another, the Ministry of Highways being an example that is often used. It has a lot of power, but it does not coordinate very effectively with other agencies and never has. In my opinion that has been the tendency with the government ministries generally, that each one is trying to fulfill its own task but in isolation to the others and when the Islands Trust was dropped into the picture it was just one more anomaly in an already confused political system.²⁴

23 Province of British Columbia, *Statistics Relating to Regional and Municipal Governments in British Columbia, 1990* (Victoria: Queen's Printer, 1991), 54.

24 Nick Gilbert, former Islands Trust chairman, personal interview, Salt Spring Island, 16 August 1993.

Hugh Curtis, opposition MLA representing the southern Gulf Islands, addressed this point in the B.C. Legislature shortly after the Islands Trust had been established. Curtis criticized the government for not providing the Trust with the authority to ensure agencies "will consult and listen before action is taken which may well be detrimental to the islands":

Concern is already developing in the islands within the trust area that the trust has not yet come to grips with the frustration which has been in position in the islands for a good number of years. They ask the question: How is the trust to blend in with other jurisdictions? How is it to work with regional districts, with the provincial government, with Crown corporations, or is it yet another pigeonhole into which Gulf Islands problems can be poked?²⁵

Therefore, although the *Islands Trust Act* provided for a coordinative role for the Islands Trust, the Trust had very little authority to enforce that role. The only substantive power in terms of a capacity to coordinate other agencies was the veto power over certain land use decisions, but the decisions of the Trust in the use of this power were always subject to an appeal to the minister.

The foregoing analysis of the *Islands Trust Act*, 1974, in terms of characteristics of government, demonstrates that the establishment of the Islands Trust in 1974 was a step taken with hesitation by the provincial government. The

25 Statement of Hugh Curtis, *B.C. Hansard*, 21 April 1975, 1537.

Trust's unique object to preserve and protect the Trust area was not supported with the powers or authority necessary to initiate and enforce policies to effectively address that object. The Islands Trust in 1974 demonstrated very little of the formal characteristics of government. Its representative character, although the *Islands Trust Act* provided for democratically, locally elected trustees, was weakened by the dominance of provincial appointees. In terms of the Trust's revenue-raising ability, the Trust was dependent on the provincial government for financial resources. In terms of authority, the Islands Trust had intriguing jurisdictional potential in the Trust's object to preserve and protect the Trust area and its unique amenities and environment, but this jurisdiction was limited in the implementation and enforcement aspects of authority because of the Trust's restricted abilities as a primarily consultative and recommendatory body. The Trust's autonomy was extremely limited in that what little power it had to make decisions was subject to an appeal to the minister. Finally, its capacity to coordinate other agencies was primarily consultative in nature, but it did have the power to veto certain land use decisions affecting the Trust area, always subject, however, to an appeal to the minister.

Despite the Trust's weakness in terms of formal characteristics of government, however, what was the Islands Trust actually doing in practice?

The Minister of Municipal Affairs, James Lorimer, had expressed during his introduction of the *Islands Trust Act* to the B.C. Legislature in 1974 that the Islands Trust would assist in the development of community plans and coordinate the activities of the government agencies in the islands.²⁶ The newly appointed Vice-Chairman of the Islands Trust, Marc Holmes, expressed his view of what the Islands Trust would actually be doing in a 1974 interview with the *Gulf Islands Driftwood*. Holmes explained that it was his personal view that "the purpose of the Trust is to assist the provincial government and the seven regional districts concerned in the control and co-ordination of development of the islands ...".²⁷

Two years later, at the end of the general trustees' first two year term, the trustees reported on what the Trust had accomplished in its first two years in operation, as follows: the Trust continued with the preparation of community plans that had been started on the major islands prior to the Trust being established; supported water and landscape analyses by provincial and federal government agencies in an effort to develop a data base on land use and development issues; assisted the regional districts in the preparation of plans, bylaws and bylaw amendments; completed an Islands Trust policy statement for the purpose of

26 Statement of James Lorimer, *B.C. Hansard*, 21 May 1974, 3259.

27 "Marc Holmes named to Islands Trust," *Gulf Islands Driftwood*, 11 September 1974, 1.

outlining the objectives and policies of the Trust to provide guidelines for the exercise of the Trust's jurisdiction; and joined with the Nature Conservancy of Canada to identify special areas of value and an inventory of significant areas was compiled. The Islands Trust was also involved in the preparation of studies and the presentation of briefs to government inquiries on issues such as taxation and assessment, strata titles, forestry, agricultural resources, and landscape analyses.²⁸

Therefore, the nature of these activities that the Islands Trust was undertaking in its early years reflected the consultative and recommendatory elements of the implementing legislation and the weak nature of the Trust's authority, autonomy and capacity to coordinate. The broad scope of the activities undertaken by the Trust, however, demonstrated how the environmental object of the Islands Trust to preserve and protect the Trust area enabled the Trust, in M'Gonigle's words, to develop its own "organizational ideology":

As a product of their legislative purpose and day-to-day functions, bureaucratic institutions come to develop their own organizational ideology.... The legislative purpose, or mandate, given to a new agency is critical in shaping that institution's organizational ideology.

The "preserve and protect" mandate of the Islands Trust represents an organizational

²⁸ "Swan song of trustees is report to the Islands," *Gulf Islands Driftwood*, 8 September 1976, 6.

ideology which has provided the institution with its greatest strength.²⁹

This preserve and protect mandate, unusual in a local decision-making body, and representing such a broad and undefined environmental philosophy, allowed the Trust to establish its own agenda and to develop policies to promote that philosophy. Therefore, the Islands Trust had authority to initiate policies, but the Trust's weakness in its ability to establish and enforce policies reflected a lack of authority to implement policies.

In terms of governance, the Islands Trust was located in its own office separate from the Ministry of Municipal Affairs, but the Trust's radical mandate was tempered by the provincial government's hesitancy in providing the powers of independence necessary to effectively promote that mandate. The Islands Trust was a new body and was slowly developing tools to define its role in the islands. Thus, in supporting water and landscape analyses, identifying special areas of value, preparing and presenting studies, developing community plans with the regional districts and drafting an Islands Trust policy statement, the Islands Trust in its first few years of existence was laying the groundwork for what many hoped would be future substantive progress in promoting the Trust's preserve and protect mandate.

The following section briefly departs from the chronological order of analysis of significant events in the

29. McGonigle, 532.

history of the Islands Trust to note that local governance and non-governance alternatives to the Islands Trust existed in 1974, and in some cases were suggested for the Gulf Islands, when the Islands Trust was established.

B. Alternatives to the Islands Trust

The alternatives to the Islands Trust discussed in this section include a 1973 international park proposal for the Gulf Islands and two Ontario examples of another provincial government's attempts to protect a fragile environment--the Georgian Archipelago and the Niagara Escarpment. An American example--Nantucket Sound--is also discussed. A comparative analysis of the Islands Trust with these other jurisdictions' responses to development pressures on a fragile environment is beyond the scope of this paper, but these examples are noted to demonstrate that even though the Islands Trust may have been unique in the form in which it attempted to address the threats of development on a fragile environment, the problems that the Islands Trust attempted to resolve were not unique and have been faced by other jurisdictions.³⁰ After these alternatives are briefly described, four British Columbia legislative governance alternatives to the Islands Trust--improvement district, local community commission, municipality, and regional

30 In addition to the examples noted here, see also Nova Scotia's *Special Places Protection Act*, R.S.N.S. 1989, c. 438, and Ian C. Whan Tong, "A special policy for special places? An evaluation of the Nova Scotia Special Places Protection Act," *Canadian Public Administration* 35 (1991), 549-557.

district--are analyzed and compared with the Islands Trust in terms of characteristics of government.

1. International park

The proposal for an international park for the Gulf Islands was the conclusion of a process that began when the International Joint Commission established the International Point Roberts Board on November 30, 1971, to undertake investigations regarding the problems caused by the geographical isolation of Point Roberts from the United States mainland. Point Roberts is a small American peninsula south of Vancouver, British Columbia, which can only be reached by land from the mainland United States by travelling through Canadian territory. The Point Roberts Board expanded its mandate during its investigation. This is evidenced by the Board's final recommendation that an international park be established encompassing not only Point Roberts, but also the Canadian Gulf Islands south of Gabriola Island and the American San Juan Islands north of Whidbey Island.³¹ The international park plan was not pursued any further as the Canadian federal government was reported to have requested that the International Joint Commission not continue with the park recommendation in

³¹ International Point Roberts Board, *Report to the International Joint Commission on Solutions to the Problems Facing the Residents of Point Roberts* (Ottawa; Washington: International Joint Commission, 1973), 3.

light of the British Columbia government's nascent Islands Trust.³²

2. Other jurisdictions

a. The Georgian Bay Archipelago

The Georgian Bay Archipelago and the Niagara Escarpment provide two Ontario examples of local administrative structures being established to attempt to protect a fragile environment. In the case of the Georgian Bay Archipelago, the governance of the area became a controversial issue in 1972 for two reasons: first, the nearby town of Parry Sound sought to annex the area; second, "the problem of development control in the islands and along the shore continued to menace the character of the area ...".³³ These two problems were similar to the governance and development problems on the Gulf Islands that led to the establishment of the Islands Trust. The initial reaction of the Ontario government to these problems was also similar to the action of the British Columbia government in instituting a ten-acre freeze on lot size over subdivisions in the Gulf Islands. In the Ontario case, the Minister of Natural Resources issued a restricted area order to be administered under

32 "Ottawa delays park bid," *Gulf Islands Driftwood*, 26 June 1974, 1; "Park project is shelved for good," *Gulf Islands Driftwood*, 9 October 1974, 1.

33 John Wilson, "The Georgian Bay Archipelago Election: A Preliminary Report," Paper prepared for presentation at the annual meeting of the Canadian Political Science Association, Montreal, June, 1980, 8.

guidelines prepared by the Ministry of Natural Resources.

The order had the following effect:

In the absence of any other kind of control the restricted area order brought for the first time some authority to bear on the delicate issues of environmental protection and preservation but - and with hindsight this seems more important - it also identified the area as having unique problems of its own and therefore set it apart from other areas in the District.³⁴

Local community groups and the provincial government commissioned studies³⁵ of local government options for the area and one of the studies noted "the unique environmental and planning problems which distinguished it from the rest of the District ...".³⁶

Political manoeuvring by the opposition parties against the minority government in the Ontario Legislature resulted in the area being initially incorporated as two townships instead of the government's proposal for a single township. Therefore, the townships of Georgian Bay North Archipelago and Georgian Bay South Archipelago were incorporated in 1979.³⁷ However, the Georgian Bay Association ("GBA"), a

³⁴ Wilson, 8 9.

³⁵ Sans Souci and Copperhead Association, *Georgian Bay Archipelago: Decision for the Future*, April, 1975; Province of Ontario, Ministry of Treasury, Economics and Intergovernmental Affairs, *District of Parry Sound Local Government Study, Final Report and Recommendations* (Toronto: Queen's Printer, 1976); Georgian Bay Association, *The Archipelago Municipality: Towards Effective Local Government in the Georgian Bay Archipelago*, April, 1977.

³⁶ Wilson, 47.

³⁷ *The District of Parry Sound Local Government Act*, S.O. 1979, c. 61, ss. 2 12.

federation of cottagers and ratepayers associations, was committed to the amalgamation of the two townships and amalgamation became the central issue in the first election for the area. Wilson's paper analysed this election and noted the interesting electioneering strategy of the GBA to charter a train to transport seasonal residents of the Georgian Bay area from Toronto to the polling stations in Georgian Bay in an attempt to elect the GBA's slate of candidates in the November, 1979, election. The GBA achieved a majority of the positions on the two councils. The permanent residents' expressed concern that they were literally being railroaded into amalgamation, but the two townships were amalgamated into one municipality--the Corporation of the Township of the Archipelago--soon after the election.³⁸

A comprehensive comparison of the governance of the Georgian Bay Archipelago with the Gulf Islands is beyond the scope of this thesis; however, this brief discussion of the establishment of a local governing body in the Georgian Bay Archipelago provides an example of the Ontario provincial government's attempt to protect a fragile island environment in the face of similar problems to that faced by the Gulf Islands in the 1960s.

³⁸ Wilson, 47.

b. The Niagara Escarpment

A second Ontario example of the provincial government's response to development pressures on a fragile environment involved the Niagara Escarpment. The problem identified by the government "was the spread of urban-like development throughout the rich farmlands of the Niagara Peninsula ...".³⁹ Included in this development was the proliferation of pits and quarries along the escarpment. The government's first response was *The Niagara Escarpment Protection Act, 1970*,⁴⁰ a simple piece of legislation that regulated the operation of mines in a protected zone encompassing the Niagara Escarpment area, but that also provided for environmental protection of a fragile area. Under this Act the Minister of Mines and Northern Affairs was provided with the discretion to refuse to issue a permit for a mine if the "operation of the mine would be against the interest of the public in preserving the character of the formation that includes the Niagara Escarpment and the availability of its natural attributes for enjoyment by the public."⁴¹

A year later, *The Pits and Quarries Control Act, 1971*, repealed *The Niagara Escarpment Protection Act, 1970*. The 1971 legislation was more detailed concerning the operation

39 J.M. Glover, "The Island Trust Concept," M.Sc. thesis, School of Community and Regional Planning, University of British Columbia, Vancouver, B.C., 1974, 96.

40 S.O. 1970, c. 31.

41 *The Niagara Escarpment Protection Act*, S.O. 1970, c. 31, s. 5.

of a permitted pit or quarry and specified more clearly the grounds for refusing to issue a licence to operate a pit or quarry, but the interests that the minister was required to take into account in considering an application included "the preservation of the character of the environment" and "the availability of a natural environment for the enjoyment of the public".⁴²

In 1973, *The Niagara Escarpment Planning and Development Act*⁴³ was enacted with the following purpose:

... to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment.⁴⁴

The Niagara Escarpment Commission established by the *Act* was appointed by the provincial government with eight of the seventeen members appointed from a list submitted by each of the eight county and regional councils whose jurisdictions included part of the Niagara Escarpment area, and nine members appointed as representative of the public at large. The commission was appointed to prepare a Niagara Escarpment plan. The objectives of the plan included the following: to protect unique ecological and historical areas, to provide for outdoor recreation, to protect water supplies and to

42 *The Pits and Quarries Control Act*, S.O. 1971, c. 96, s. 6.

43 S.O. 1973, c. 52 (now R.S.O. 1990, c. N.2).

44 *The Niagara Escarpment Planning and Development Act*, S.O. 1973, c. 52, s. 2.

ensure that development was compatible with the purpose of the Act.

Therefore, in similar fashion to the reaction of the British Columbia government in the Gulf Islands and the Ontario government in the Georgian Bay Archipelago, the Ontario government's first response to the problems of development in the fragile environment of the Niagara Escarpment was to enact legislation restricting the activity identified as the problem. Later initiatives in the British Columbia and the two Ontario examples provided a more comprehensive response to the problem of development in a fragile environment.

In Ontario this progression has been taken a step further with the 1993 report of the Commission on Planning and Development Reform in Ontario ("Sewell Commission"), titled *New Planning for Ontario*. The Sewell Commission was appointed in 1991 to recommend changes to the *Planning Act* and provincial planning policies. Included in the Sewell Commission's mandate was the direction to focus on protecting the natural environment. The general recommendations of the Sewell Commission's report included the following:

The Planning Act be amended to state that the purposes of the Act are to guide land-use change in a manner that: ... protects and conserves the natural environment and conserves and manages

natural resources for the benefit of present and future generations ...⁴⁵

The Ontario government has recently introduced legislation to the Ontario Legislature that includes some of the recommendations of the Sewell Commission into Ontario's planning legislation. Therefore, Ontario has made a significant move from the recognition and protection of specific areas of fragile environment such as the Georgian Bay Archipelago and the Niagara Escarpment, to a recognition of the need for land use planning to incorporate environmental considerations to protect the natural environment generally.

c. Nantucket Sound

An American example of another jurisdiction's response to development in a fragile environment was the case of the *Nantucket Sound Islands Trust Bill*. This legislation, although passed in the United States Senate in 1975, died on the order paper in the House of Representatives.⁴⁶ The *Bill* was a specific piece of federal legislation as part of a larger initiative to provide federal funding to support a conservation program run by local officials for fragile island environments of the United States. This American

45 Province of Ontario, Commission on Planning and Development Reform in Ontario, *New Planning for Ontario: Final Report of the Commission on Planning and Development Reform in Ontario* (Toronto: Queen's Printer, 1993), 134.

46 United States of America, *Congressional Record--Senate*, 8 December 1975, 39019-39020.

example was also mentioned in the British Columbia Legislative Assembly during debate on the original *Islands Trust Act* in 1974.⁴⁷ The mandate of the Nantucket Sound Islands Trust was "to preserve and conserve". The legislation envisioned a commission on each of the three main islands in Nantucket Sound composed of appointed and elected representatives. Only in the case of one island, Martha's Vineyard, was there to be majority representation on the commission by elected members from the resident population. The purpose of the legislation was to prepare land use control plans for three specified categories of lands: lands to remain free of development, lands limited to existing development intensity, and land to be controlled by the towns with the commission's input. Local opposition to the legislation may have contributed to the death of the *Nantucket Sound Islands Trust Bill*. The long history of local governance in the New England "town hall" tradition, described by one of its adherents as "one of the purest forms of democracy",⁴⁸ may have made the Nantucket Sound Islands Trust seem less a form of local control over land use planning and more a senior government intrusion into

47 Statement of Hugh Curtis, *B.C. Hansard*, 21 May 1974, 3261. On this idea of policy learning see Dale H. Poel, "The Diffusion of Legislation Among the Canadian Provinces: A Statistical Analysis," *Canadian Journal of Political Science* 9 (1976), 603-626.

48 Thomas A. Durawa, Chairman of the Board of Selectmen, Town of Edgartown, Martha's Vineyard, Massachusetts, *Town of Edgartown 1990 Annual Reports* (Edgartown, Mass.: Martha's Vineyard Printing Co., 1991), 17.

local affairs. Land use planning on the island of Martha's Vineyard is now controlled in the Town of Edgartown by the town's Planning Board. The town's Conservation Commission enforces state and local wetlands protection legislation. The Martha's Vineyard Land Bank Commission collects a 2% surcharge on most real estate transfers to purchase open space for conservation and public recreation.⁴⁹

The following section describes four British Columbia forms of governance--improvement district, local community commission, municipality, regional district. Reference is made to the present provisions of the *Municipal Act*, but all of these bodies except the local community commission existed in essentially the same form in 1974 when the Islands Trust was formed. Therefore, the purpose of the following section is to describe three governance alternatives to the Islands Trust in 1974--improvement district, municipality, and regional district--and to compare these alternatives and a local community commission to the Islands Trust as it was established in the *Islands Trust Act, 1974*.

3. British Columbia legislative alternatives

a. Improvement district

An improvement district is "a small, almost independent, unit of local government governed by its own locally elected

49 Town of Edgartown, Martha's Vineyard, State of Massachusetts, *Town of Edgartown 1990 Annual Reports* (Edgartown, Mass.: Martha's Vineyard Printing Co., 1991), 108-116.

trustees."⁵⁰ Improvement districts are usually incorporated to undertake a specific purpose such as waterworks, fire protection or street lighting. The same powers that were granted to the Islands Trust in 1974 could have been granted to an improvement district because the *Municipal Act* provides that an improvement district may be incorporated with a wide allowance of objects and powers. How does an improvement district compare to the *Islands Trust Act, 1974*, in terms of characteristics of government?

On *representation*, the powers of an improvement district are exercised by trustees elected by the owners of land in the improvement district.⁵¹ In 1974, the *Islands Trust Act* provided for the two local trustees for each of the thirteen designated islands to be elected. The three general trustees were appointed by the provincial government. Therefore, in terms of representation the provincial government retained more control over the Islands Trust through the appointed trustees than a democratically elected improvement district.

With respect to *revenue-raising*, an improvement district has power to fix tolls and other charges, and to levy "taxes to raise the funds deemed necessary to meet the obligations of the improvement district and to carry out its

50 Province of British Columbia, Ministry of Municipal Affairs, Recreation and Housing, *Salt Spring Island Local Government Options Study* (Victoria: Queen's Printer, 1992), 8.

51 *Municipal Act*, R.S.B.C. 1979, c. 290, s. 828.

objects."⁵² The improvement district also has the power to borrow money. In 1974 the Islands Trust had no power to raise revenue, the Trust was dependent on the provincial government for all of its operating funds.

The *authority* of an improvement district is provided by letters patent. An improvement district has all powers necessary to carry out its object,⁵³ including the right to acquire, hold and dispose of land and other property.⁵⁴ The powers of an improvement district include expropriation if necessary to carry out its objects.⁵⁵ In 1974 the Islands Trust was much more limited in its powers. The Trust was primarily a consultative body to the provincial government with the exception of its veto power over regional district community plans and bylaws regulating land use within the Trust area.

Despite the seemingly broad power granted to an improvement district, the *autonomy* of an improvement district is restricted by the minister's ultimate control, as clearly stated in s. 822: "The administration and control of improvement districts whenever incorporated ... is in the minister." Further limiting the autonomy of an improvement district is the provision that the bylaws of improvement

52 *Municipal Act*, s. 834.

53 *Municipal Act*, s. 824.

54 *Municipal Act*, s. 827.

55 *Municipal Act*, s. 851.

districts must be registered with an inspector who has the power to "register or refuse to register it or take any other action he considers is in the interest of the improvement district or the province."⁵⁶ The autonomy of the Islands Trust was similarly restricted by the ultimate ministerial oversight and the possible appeal to the minister.

On *capacity to coordinate*, an improvement district does not have any legislative powers for influence over other government agencies. Similarly, the Islands Trust was limited in its influence over other government agencies, except for the veto power noted above.

Therefore, the representative character, revenue-raising ability, and authority of an improvement district was potentially stronger in terms of formal characteristics of government than the Islands Trust as evidenced by the *Islands Trust Act of 1974*.

b. Local community commission

The opportunity for regional districts to establish local community commissions was first provided for in the *Municipal Amendment Act, 1977*.⁵⁷ Therefore, a local community commission cannot be considered as an alternative to the Islands Trust in 1974, but is briefly noted here as

⁵⁶ *Municipal Act*, s. 831.

⁵⁷ S.B.C. 1977, c. 57, s. 21 (now *Municipal Act*, R.S.B.C. 1979, c. 290, s. 817).

another example of a British Columbia form of local governance.

Under the *Municipal Act*, s. 817, a regional district board may establish a local community commission by bylaw which must receive the assent of the electors within the proposed local community. The bylaw delegates to the commission powers respecting services for an area within the community and sets the terms, conditions and restrictions of the commission's activities. The commission is composed of four elected resident commissioners and the regional director of the electoral area in which the local community is situated.

Therefore, the local community commission, although a directly elected body of a local community, is very much a creature of a regional district. Recall that one of the reasons that the Islands Trust was established was to try to alleviate the problems of regional district governance on the islands. Therefore, if local community commissions had existed in 1974, local community commissions would have likely been considered to be too closely related to the regional districts to provide an alternative to the Islands Trust because local community commissions established under the seven regional districts involved in the Trust area could not have provided a regional focus for the islands as the Islands Trust did.

More recently, another reason why the local community commission has not been seen as a viable alternative for the

Islands Trust is because the local community commission was not designed for the type of communities that the Gulf Islands represent. A recent Ministry of Municipal Affairs local governance study of Bowen Island made this point well:

The local community was designed to provide self-governance for hamlets or small, spatially discrete, concentrated and high density rural communities. Bowen Island with its low density, dispersed, multi-focus settlement pattern is, in fact, the very antithesis [sic] of the local community.⁵⁸

Therefore, the local community commission, as a local governing body established by a regional district, is unlikely to be considered as an effective alternative to the Islands Trust.

c. Municipality

Municipal incorporation is the most well-developed form of local government in British Columbia. Under the *Municipal Act*, s. 20, a municipality is incorporated as either a village, town, city or district municipality depending on the population density of the area to be incorporated. In British Columbia there are 39 cities, 49 districts, 14 towns, and 47 villages.⁵⁹ On the Gulf Islands, in 1974, a municipal structure could have been established for

58 Province of British Columbia, Ministry of Municipal Affairs, Policy and Research Branch, *Local Governance Structures on Bowen Island* (Victoria: Queen's Printer, 1986), 14.

59 *Statistics Relating to Regional and Municipal Government in British Columbia*, 1990, 2.

individual islands or for the area as a whole, but the Gulf Islands were sparsely settled. As Bish notes, municipalities "are the major form of local government for densely settled areas."⁶⁰ (Emphasis added.)

With regard to characteristics of government, a municipality displays strong formal characteristics of government with taxation and borrowing authority and responsibility for a wide range of services. The revenue-raising ability, authority, and autonomy of a municipality go far beyond what the *Islands Trust Act* established in 1974.

The low population density of most of the islands, the rural rather than urban or suburban character of the islands, and the difficulties inherent in financing and providing municipal services to such a large, fragmented area such as an archipelago means that municipal incorporation on each individual island or for the area as a whole was unlikely to be considered an effective form of governance for the islands in 1974.⁶¹

60 Bish, 15.

61 Municipal incorporation has been considered on Salt Spring Island and Bowen Island. See the discussion below in section "G.3. Salt Spring Island restructure study," and section "E.5. Bowen Island local government restructure studies." Also, the *Islands Trust Act*, 1989, contained provisions for municipalities in the Islands Trust area to be represented on the Islands Trust council, but as of August, 1994 no municipalities have been established in the Islands Trust area.

d. Regional district

The regional district system in British Columbia was created in 1965 "to provide a federated approach to local control over problems transcending municipal boundaries in either a metropolitan or non-metropolitan trading area."⁶² The regional district system was intended to enable residents of non-incorporated areas to provide public services more economically and efficiently than the non-incorporated areas could accomplish independently. The previous three alternatives mentioned--improvement district, local community commission and municipality--may all exist within the area of a regional district.

With regard to *representation*, a regional district board is composed of appointed directors from the municipalities in the region, and elected directors from the non-incorporated areas. Each regional district director's vote is weighted according to the proportion of the region's population that the director's area represents.

On *revenue-raising*, a regional district has the power to recover costs indirectly by requisition from municipal councils or the provincial government for local electoral areas. A regional district may also impose fees and charges to recover costs.⁶³

⁶² *Statistics Relating to Regional and Municipal Government in British Columbia*, 1990, 1.

⁶³ *Municipal Act*, ss. 804-810.1.

With regard to *authority*, a regional district may provide services such as sewage, water, waste, parks, recreation and community facilities, library, fire services, street lighting, animal control, pollution control, building inspection, emergency preparation programs, and other services under specified statutes.⁶⁴ A regional district also has powers over land use regulation in unincorporated areas of the region.⁶⁵ A regional district is granted the necessary powers to perform its duties, including corporate powers of acquisition, disposition and expropriation of property.⁶⁶ A regional district board may also appoint officers and employees.⁶⁷

On *autonomy*, a regional district, like the Islands Trust, is a creature of provincial government legislation and the senior government may at any time take away powers conferred on a regional district. An example discussed in more detail below is the case of the provincial government's rescinding of all regional plans and removal of the power of regional planning from the regional districts and the Islands Trust in 1983.⁶⁸

64 *Municipal Act*, ss. 788-790.

65 *Municipal Act*, Part 29.

66 *Municipal Act*, s. 786.

67 *Municipal Act*, s. 771.

68 See the discussion below in section "D.1. Regional planning."

Both regional districts and municipalities are subject to "inspection" by an inspector of municipalities where a complaint has been received concerning the regional district or municipality, or if the inspector considers it expedient.⁶⁹ The Lieutenant Governor in Council may then make a binding order after receiving the inspector's report. Therefore, although the process of appeal is more formal than the Islands Trust appeal directly to the minister, ultimately, the regional districts and the Islands Trust are subject to the control of the provincial government.

The regional districts' ability in terms of the *capacity to coordinate* is restricted to entering into agreements with local governments to provide a service.⁷⁰ Disputes between regional districts and municipalities are to be resolved by the minister.⁷¹

Therefore, a regional district may not have been formed in the Gulf Islands in 1974 because a regional district demonstrates more strongly characteristics of government than the Islands Trust established by the *Islands Trust Act, 1974*.⁷²

69 *Municipal Act*, ss. 745, 820.

70 *Municipal Act*, 816.1.

71 *Municipal Act*, 774.

72 See Oberlander and Smith (1993) for their conclusion that the Greater Vancouver Regional District, although not a full-fledged regional government, demonstrates a capacity for effective regional governance.

The preceding discussion shows that British Columbia legislative alternatives to the Islands Trust such as the improvement district, the local community commission, the municipality, and the regional district, display formal characteristics of government such as revenue-raising, authority, and autonomy more strongly than what the *Islands Trust Act* demonstrated in 1974. The focus of the *Islands Trust Act* on recommending policies for the preservation and protection of the Trust area was also a different mandate from what these other legislative local governance options focus on, that is, the provision of services.

Finally, the distribution of the islands among seven regional districts and the administrative and transportation problems in governing a geographically dispersed area such as the Gulf Islands made these legislative alternatives a less appropriate response to the governance and development problems on the islands in 1974 than the Islands Trust with its representative structure incorporating local, regional and provincial interests, its authority in recommending policies to preserve and protect the area, and in its limited capacity to coordinate other government agencies by reviewing the regional districts' land use regulation in the Trust area.

The first amendment to the Islands Trust after its formation in 1974 was the *Islands Trust Amendment Act, 1975*. This amendment contained a provision, s. 2, which purported to establish the Islands Trust fund to hold money given to

the Islands Trust by gift, will or government grant. However, it was not until 1987 that this section of the *Islands Trust Act* was proclaimed. The significance of the Trust fund will be discussed in more detail below where its 1987 proclamation fits into the chronological order of this analysis, but one reason why the Trust fund was not proclaimed until 1987 is that a Trust fund operating as a true property trust⁷³ might have entrenched the Islands Trust to a greater degree than the provincial government was willing to accept during the early years of the Islands Trust's existence.

The *Islands Trust Amendment Act, 1975* was the last amendment to the *Islands Trust Act* by the NDP government in the 1970s. After one term in office, the NDP was defeated in a provincial general election in December, 1975. The Social Credit party regained power, but during the NDP interregnum the leadership of the Social Credit party had passed from W.A.C. Bennett to his son, Bill Bennett.

C. 1977 - 1981: Islands Trust Gains Land Use Regulation Powers

1. The *Islands Trust Amendment Act, 1977*

The *Islands Trust Amendment Act, 1977* transferred to the Islands Trust from the regional districts the powers of land-use regulation and planning bylaws.⁷⁴

⁷³ See the discussion below in section "E.2. Trust fund," regarding trust concepts.

⁷⁴ *Islands Trust Amendment Act, 1977*, S.B.C. 1977, c. 51, s. 8.

A second provision of this Act changed the method of selection of the general trustees from provincial appointment to the election of a chairman and two vice-chairmen by the twenty-six local trustees from amongst themselves.⁷⁵

A third amendment was the addition of a clause to enable the Islands Trust to assist in protecting areas of special importance due to their scenic value, recreational potential, natural or scientific interest, or delicate ecological characteristics by the adoption of special protective zoning and subdivision bylaws.⁷⁶

A fourth change was to allow the Islands Trust to raise part of its own funds by imposing a property tax levy of up to 1.5 mills.⁷⁷

A fifth amendment allowed the Islands Trust to accept, hold and dispose of land. This provision was a land-holding corollary to the Islands Trust fund set up under the *Islands Trust Amendment Act, 1975*, but this land-holding power, like the Trust fund, was not proclaimed until 1987. The Trust fund is discussed in more detail below in section "E. 1986 - 1989: Trust Fund Proclaimed, Restructure Studies."

Finally, the power of the regional district boards in the Islands Trust area was restricted in that a regional

⁷⁵ *Islands Trust Amendment Act, 1977*, s. 2.

⁷⁶ *Islands Trust Amendment Act, 1977*, s. 12(7).

⁷⁷ *Islands Trust Amendment Act, 1977*, s. 19(2).

district board could not adopt a bylaw, undertake work or issue a permit respecting the Trust area contrary to the bylaws of the Islands Trust.⁷⁸

The Minister of Municipal Affairs, Hugh Curtis, MLA for Saanich and the southern Gulf Islands, stated the purpose of these amendments as being to "simplify planning and regulatory procedures and bring those procedures closer to people and communities served by the Islands Trust":

... the existing process of developing and administering land-use and planning controls within the Islands Trust area has proven to be slow, unwieldy and often remote for the people affected by those controls or regulations....

Mr. Speaker, the existing three-level system empowers regional districts to adopt land-use regulation and planning bylaws, subject to approval by the trust and by the province. The new proposed two-level system will permit the trust or its committees to adopt bylaws subject to provincial approval, and so this obviously speedier method will impose no sacrifices of local or provincial interests.⁷⁹

A year later, in 1978, Curtis was reported as stating that the changes in the *Islands Trust Amendment Act, 1977*, which transferred land use regulation powers from the regional districts to the Islands Trust, were made to the Trust because the existing state of affairs provided too much duplication of responsibilities between the regional districts and the Islands Trust. The alternatives were to return to a pre-Islands Trust form of governance, or to give

⁷⁸ *Islands Trust Amendment Act, 1977*, s. 14.

⁷⁹ Statement of Hugh Curtis, *B.C. Hansard*, 11 March 1977, 1826.

the Islands Trust more responsibility. A central administration of the islands such as an islands regional district was rejected because of the lack of a convenient administrative centre and the problem of communications among the islands.⁸⁰

The amendments also addressed long-running criticisms of the original *Islands Trust Act* that the three provincially appointed general trustees effectively controlled decisions made by the local Trust committees for each of the thirteen designated islands. When the amendments were first introduced to the Legislature on February 25, 1977, as *Bill 25*, there was no provision for the election of the general trustees.⁸¹ An editorial in the *Victoria Times* criticized the government on this point, noting that one of the Social Credit party's campaign promises in 1975 had been "to decentralize control and give local councils responsibility for their home turf, a pledge that hasn't been totally honoured ...".⁸² The government was criticized in the Legislature for the same reason, that the transfer of land use planning from the indirectly elected regional district representative to the Islands Trust with the three general trustees appointed by the

80 "Extension of Islands Trust not on his books at present says Curtis," *Gulf Islands Driftwood*, 15 February 1978, 28.

81 Statement of Charles Barber, *B.C. Hansard*, 11 March 1977, 1830.

82 "Islands Trust Powder," editorial, *Victoria Times*, 28 February 1977, 4.

provincial government was seen as a centralization of power in the provincial government.⁸³

When *Bill 25* was finally brought forward in August, the Minister noted that the amendments to *Bill 25*, including the provision for the indirect election of the general trustees, had come about as a result of the provincial government listening to individual islanders,⁸⁴ not to the regional district representatives. Some regional district representatives had continued to criticize the Islands Trust for their perception of the Islands Trust as an institution of overlapping jurisdiction and duplication of authority.⁸⁵ The chairmen of the regional districts were quoted as being of mixed opinions to the transfer of planning to the Islands Trust. The Chairman of the Powell River Regional District, Harold Lennox, feared that the provincial government might eventually take over planning completely from the regional districts. The Chairman of the Greater Vancouver Regional District, Jack Campbell, was in favour of the transfer of land use regulation and planning to the Islands Trust. He also expressed his wish that the Islands Trust would take more of the GVRD's duties because the GVRD spent so much of

83 Statement of Charles Barber, *B.C. Hansard*, 11 March 1977, 1831.

84 "Islands Trust to elect all members under Bill 25," *Gulf Islands Driftwood*, 31 August 1977, 1.

85 Statement of Hugh Curtis, *B.C. Hansard*, 31 August 1977, 5173.

its time discussing its three electoral districts, including Bowen Island.⁸⁶

In terms of the characteristics of government, the changes in *representation* as a result of the 1977 amendments were important because the three general trustees were no longer to be appointed by the provincial government, but elected by the twenty-six local trustees from among themselves. The representative character of the Islands Trust was strengthened by this provision that all of the trustees were to be elected representatives of the islands. There was no longer any direct provincial control over any of the trustees. This significant amendment, therefore, made the Islands Trust a more independent and locally accountable body.

In respect of *revenue-raising*, the new s. 19(2) allowed the Islands Trust to levy a property tax of up to 1.5 mills. This amendment provided the Islands Trust with more financial independence and accountability. An accurate financial comparison with other local governments is difficult because until 1990 the cost of the operation of the Islands Trust was subsumed in the financial accounts of the Ministry of Municipal Affairs. Carol Martin, former Chairperson of the Islands Trust, recalls that most of the

⁸⁶ "Reaction angry, approving to Islands Trust planning takeover," *The Vancouver Sun*, 28 February 1977, 8. See also the discussion below in section "E.5. Bowen Island local government restructure studies," and "G.5. The Greater Vancouver Regional District and Bowen Island," regarding the GVRD's attitude to electoral areas, and the amalgamation of two of the GVRD's electoral areas including Bowen Island.

cost of the Islands Trust's operations was covered by provincial grants and the property tax levy made up a small percentage of the Trust's revenue.⁸⁷

The *authority* of the Trust was increased in the 1977 amendments to the *Islands Trust Act* with the transfer from the regional districts to the Islands Trust of the functions of planning, zoning and subdivision approval. Although the Minister had characterized the change as a way to improve the planning and land use regulation process in the Islands Trust area, the increased powers of the Trust were far more than merely procedurally significant; these powers were of substantive significance in terms of the object of the Islands Trust to preserve and protect the Trust area. For this reason, the powers of the Islands Trust in planning, zoning and subdivision approval are briefly described here, with reference to the present provisions of the *Municipal*

87 After the 1989 revision of the *Islands Trust Act* the Islands Trust became responsible for raising a much greater percentage of the operational costs of the Islands Trust from the property tax levy. The 1990-91 figures for the Islands Trust indicate that 30% of the total cost of the Islands Trust operations was covered by provincial grants and 63% was covered by the property tax levy. A rough comparison with regional districts and municipalities is available by comparing the 1988 figures provided in Robert Bish's *Local Government in British Columbia*, as follows: regional districts were financed by 4% provincial grant, 16% property tax, 68% requisitions from municipalities, the balance provided from sales and unspecified "other". The municipality figures are 7% provincial grant, 54% property tax, and the balance provided by other taxes, sales, and unspecified "other". See Bish, 126-127. See also the discussion below in section "G.1. Generally," regarding the decreasing proportion of the Islands Trust's revenue that was covered by provincial government grants in the period 1990-1994.

Act, and to the 1977 provisions where they differ in a significant way.⁸⁸

The 1977 amendments to the *Islands Trust Act* transferred to the Trust the power of a municipality under the *Municipal Act*, Part 21, Divisions (1) official community plan; (2) advisory planning commission; (3) zoning; and (4) subdivision of land.⁸⁹ The Trust was also granted the authority of a regional district with respect to regional planning under the *Municipal Act*.⁹⁰

Under the *Municipal Act* in 1977, *community plans* were described simply as an expression of policy for the uses of land. The present provisions of the *Municipal Act* relating to official community plans describe a community plan more specifically as "a general statement of the broad objectives and policies of the local government respecting the form and character of existing and proposed land use and servicing requirements in the area covered by the plan."⁹¹ The local Trust committees of the Islands Trust, with the powers of a

88 *Municipal Act*, R.S.B.C. 1960; subsequently R.S.B.C. 1979, ss. 709-714; now under the 1987 consolidation of the *Municipal Act*, ss. 944-949. The following references to the *Municipal Act* refer to the 1987 consolidation.

89 These provisions of the *Municipal Act* were subsequently repealed in 1985 and amended provisions relating to these subjects are now found in Part 29 of the *Municipal Act*.

90 Regional plans were eliminated in 1983 under *Bill 9*, the *Municipal Amendment Act, 1983*. *Bill 9* and the effect of this legislation on the Islands Trust is discussed in more detail below in section "D.1. Regional planning."

91 *Municipal Act*, s. 945(1).

municipal council, can by bylaw designate a community plan as the official community plan if a public hearing is held as directed by the *Municipal Act*. An official community plan does not commit the local Trust committee to undertake any particular project,⁹² but the effect of an official community plan is that a local Trust committee can not enact a provision or undertake a work contrary to the official community plan.

An *advisory planning commission* is a local organization which may be adopted by bylaw of a local Trust committee. The purpose of the advisory planning commission is to advise the local Trust committee on matters referred to it by the local trust committee with respect to land use, a community plan, or a proposed bylaw.

A *board of variance* is established by a local Trust committee and comprised of three persons to serve as an appeal board on the application of some local bylaws. One member is appointed by a local Trust committee, one member is appointed by the Minister of Municipal Affairs, and one member is appointed by the other two members of the board of variance.⁹³

Zoning is the process by which a local Trust committee, by bylaw, divides the local Trust committee area, including

92 See the discussion below on this point in section "G.6. The Saturna Island park controversy: local autonomy and community planning."

93 Islands Trust, *Islands Trust Annual Report 1992-1993* (Victoria: Queen's Printer, 1993), 7.

the surface of water to a distance of 1000 feet from shore, into zones to regulate the use of the land, buildings, and water.⁹⁴

A *subdivision bylaw* specifies the requirements, standards, and procedure that a subdivision application must follow before the subdivision of land will be approved.⁹⁵ Zoning and subdivision bylaws are therefore the specific instruments by which the more general policies of the official community plan are implemented. A *rural land use bylaw* may be used to combine the official community plan, zoning, and subdivision bylaws into one document in the case of unincorporated areas where a more complex land use designation and regulation system of three separate documents is not required.⁹⁶

The *regional plan* provisions of the *Municipal Act* existing in 1977 described the purpose of a regional plan as "a general scheme without detail for the projected uses of land within the regional district ...".⁹⁷ The Islands Trust was granted all the power of a regional district under the 1977 amendments to the *Islands Trust Act*, and the general Trust committee had the jurisdiction to exercise that power

94 *Municipal Act*, ss. 963-973.

95 *Municipal Act*, ss. 989-996.

96 For example, see: Lasqueti Island Trust Committee, *Lasqueti Island Rural Land Use Bylaw, 1986* (Victoria: Queen's Printer, 1986).

97 *Municipal Act*, R.S.B.C. 1979, s. 807, subsequently repealed by the *Municipal Amendment Act, 1983*, S.B.C. 1983, c. 22, s. 4.

to develop a regional plan for the Trust area as a whole; however, the regional planning provisions of the *Municipal Act* were repealed in 1983 and all regional plans were rescinded.⁹⁸

Therefore, the 1977 amendments to the *Islands Trust Act*, which granted land use regulatory power to the Islands Trust, were a significant increase in authority for the Islands Trust. A constraint on this power was that the relevant Trust committee could not adopt a community plan, regional plan or bylaw regulating land until the plan or bylaw was approved by the minister. By contrast, a municipality could adopt a community plan by bylaw without the necessity of submitting it to the minister,⁹⁹ and municipalities and regional districts could regulate zoning without the approval of the minister.¹⁰⁰

A second change relating to authority under the 1977 amendments to the *Islands Trust Act* was the new power of the Islands Trust to adopt protective zoning for areas designated in a regional plan for their importance in terms of their scenic value, recreational potential, natural or scientific interest, or delicate ecological

98 See the discussion below in section "D.1. Regional Planning," regarding the rescinding of regional plans. See also the discussion below in section "F.3. The revised Island Trust--local self-government?" regarding the Trust policy statement provisions of the *Islands Trust Act*, 1989, and regional planning.

99 *Municipal Act*, s. 947.

100 *Municipal Act*, s. 963.

characteristics.¹⁰¹ This was an important addition to the Trust to help in attempting to fulfill its object to preserve and protect the Trust area.

The *autonomy* of the Islands Trust was strengthened by the 1977 amendments. The election of the general trustees by the local trustees from amongst themselves reduced the control of the provincial government over the Islands Trust. The new provision for the Islands Trust to raise revenue for itself provided for more autonomy and increased the accountability of the Trust to the islands' taxpayers. As with all local government in British Columbia, however, the Islands Trust was still subject to the caprice of the provincial government.

In terms of the *capacity to coordinate*, the 1977 amendments to the *Islands Trust Act* included the restriction on the regional district boards that they not adopt a bylaw, undertake work, or issue a permit respecting the Trust area if it was contrary to the bylaws of the Islands Trust.¹⁰² The regional districts were generally opposed to these measures and regional directors were outspoken in their criticism of *Bill 25*.¹⁰³

101 *Islands Trust Amendment Act, 1977*, s. 12

102 *Islands Trust Amendment Act, 1977*, S.B.C. 1977, c. 51, s. 14.

103 Recall the discussion of this point at p. 115, above, and see "Heinekey sees move as slap in islands face," *Gulf Islands Driftwood*, 2 March 1977, 5; "Campbell protests change in zoning and planning under Curtis's ruling," *Gulf Islands Driftwood*, 2 March 1977, 13.

One of the first exercises of the Islands Trust's new powers under the 1977 amendments was the Salt Spring Island Trust committee's release of its *Advisory Planning Commission Bylaw*. This *Bylaw* allowed for appointments to the commission from local island community groups. The *Bylaw* also provided for more public input into applications for zoning, and opened meetings of the advisory planning commission to the public.¹⁰⁴ Therefore, the Salt Spring Island Trust committee's early establishment of an advisory planning commission was an example of how the Islands Trust moved quickly in using the new powers granted to it to establish measures to promote public participation and local autonomy.

The Islands Trust was also involved in activities such as finalizing community plans, making recommendations on foreshore rights applications, and discussing individual island's issues.¹⁰⁵

The Islands Trust continued to object to the Ministry of Transportation and Highways imposing provincial road standards on the islands that the Islands Trust considered inappropriate to the rural character of the islands, but the

104 "New Islands Trust policy," editorial, *Gulf Islands Driftwood*, 25 January 1978, 4.

105 "Pender Island forum on Islands Trust," *Gulf Islands Driftwood*, 8 October 1980, 16.

Islands Trust was having little success in establishing an islands' road standard.¹⁰⁶

The official community plans being finalized on the islands reflected the environmental object of the Islands Trust to preserve and protect the Trust area. For example, the Denman Island official community plan of 1978, stated the primary goal of the plan as follows:

In its prime concern to preserve the rural environment of Denman Island, the Plan embraces the basic elements of the Islands Trust policy, which are:

- (a) Recognition that the islands are a resource of national importance but of finite size
- (b) Provision of as varied recreational opportunity and experiences as the islands are able to offer
- (c) Retention of the native flora and fauna, and both unique and typical island scenery
- (d) Establishment of a pattern of land use which will allow needed and reasonable development but which will at the same time preserve land from alienation so that future generations will have the opportunity to make their own choices and decisions.
- (e) Development of the island only in ways which are in sympathy with the landscape
- (f) Recognition that the islands are first of all an existing community of people, and the welfare of those people, and those who join them and come after them, must always be a primary concern.¹⁰⁷

106 "Highways ministry stands firm on 80 ft. highways," *Gulf Islands Driftwood*, 27 August 1980, 28; "Islands Trust and ministry at odds over 80-foot road widths," *Gulf Islands Driftwood*, 18 February 1981, 32.

107 Islands Trust, Denman Island Trust Committee, *Official Community Plan, Denman Island, being Schedule "A" to the "Official Community Plan (Denman Island) By-law 1978"* (Victoria: Queen's Printer, 1978), 2-3.

The emphasis of the Denman Island plan on the protection and preservation of the environment was also found in the Gabriola Island community plan with its emphasis on the preservation of a rural atmosphere and the importance of conservation of the island's fragile environment and special natural and archaeological areas.¹⁰⁸ By comparison, the official regional plan of the Regional District of Comox-Strathcona included a more service-oriented philosophy, for example, "to provide a full range of appropriate community utility services", and "to encourage a range of transportation and communication facilities ...".¹⁰⁹ The emphasis of the regional district plan was not on protection of the environment as in the islands' community plans, but instead reflected the more service-oriented role of the regional district.

Thus, the 1977 amendments to the *Islands Trust Act* provided a significant change to the Islands Trust in terms of representation, revenue-raising and authority. The transfer of planning, zoning and subdivision powers from the regional districts simplified the land use regulation process on the islands because the regional districts were no longer involved in the bylaw development process. This

108 Islands Trust, Gabriola Island Trust Committee, *Gabriola Island Community Plan* (Victoria: Queen's Printer, 1978), 2.

109 Regional District of Comox-Strathcona, Planning Department, *Regional District of Comox-Strathcona Official Regional Plan* (Comox, B.C.: Queen's Printer, 1977), 1.

strengthening of the Islands Trust in terms of formal characteristics of government was a positive step for the Islands Trust, but the Trust was still vulnerable to the overriding authority of the provincial government and the effects of actions taken by the provincial government and provincial agencies in the Islands Trust area.

In spite of this vulnerability, the Islands Trust was successful in challenging the actions of provincial agencies in two cases described in the following section: the Bennett Bay marina on Mayne Island; and Seaview Land Estates on Denman Island.

2. Judicial support for the Islands Trust: Bennett Bay, Mayne Island; Seaview Land Estates, Denman Island

The Bennett Bay marina, Mayne Island, dispute concerned the attempt by the owner of the Mayne Inn, Weldon Pinchin, to develop a marina in the bay adjacent to his property. The Lands Management Branch of the Ministry of Lands, Parks and Housing had been considering Pinchin's application for a foreshore lease since 1976, but the Capital Regional District, with its powers of zoning in the southern Gulf Islands at that time, indicated that the water area was not zoned for such a development and that rezoning would be required for a marina.¹¹⁰

110 This background discussion concerning Bennett Bay marina is from Laura Porcher, *The Islands Trust: An Institutional Experiment in the Management of Scarce Natural and Social Resources*, M.Sc. thesis, Resource Management Sciences, University of British Columbia, Vancouver, B.C., 1980, 123-160.

In 1977 the *Islands Trust Act* was amended, as described above, to transfer the land use regulation functions of the regional districts to the Islands Trust. In 1978 these amendments came into effect and the Islands Trust considered Pinchin's rezoning application, held a public hearing, and eventually rejected the rezoning application. Pinchin amended his application to the Land Management Branch for a foreshore lease to allow construction of a dock for "private" boat moorage purposes. In early 1979 the Islands Trust informed the Land Management Branch that it was the Trust's view that a private dock associated with a hotel was not within the permitted uses under the zoning at that time. Shortly after the Minister of Lands, Parks and Housing, James Chabot, personally visited Bennett Bay, the Lands Management Branch issued a foreshore lease to Pinchin. Pinchin commenced construction of the dock and the Islands Trust filed for an injunction to stop the work pending a judicial determination as to whether the dock was commercial or private. The Supreme Court of B.C. issued an interim injunction ordering the work to stop, but when the case was heard in 1980 the Court decided in favour of Pinchin.¹¹¹ The B.C. Court of Appeal over-ruled the lower Court's finding against the Islands Trust in 1981.¹¹² The Court of Appeal dealt strictly with the question of whether the dock

111 (1980), 22 B.C.L.R. 152 (S.C.)

112 *Islands Trust v. Pinchin Holdings Ltd., Dolphin Pile Driving Ltd., Pinchin and Gibson* (1981), 32 B.C.L.R. 209 (C.A.)

fit within the zoning and decided that it did not because "a dock serving a commercial enterprise situated on a contiguous lot is part of the commercial enterprise" and its use by guests of the hotel is not a private use.¹¹³

This case illustrated the problems of the Islands Trust in its attempts to coordinate the activities of provincial agencies in the Trust area and how the autonomy of the Islands Trust can be threatened by political interference. In this case, however, the Court of Appeal upheld the Trust's interpretation of the zoning bylaw and the Trust was able to legally enforce its land use regulation powers against political interference.

A second Court of Appeal decision in 1981 also curtailed a provincial agency's attempt to circumvent a local government bylaw in the Islands Trust area. In *Seaview Land Estates Ltd. v. South*,¹¹⁴ the issue was whether the Ministry of Transportation and Highways approving officer had the authority under the *Land Title Act*¹¹⁵ to approve a subdivision which did not comply with valid local government bylaws. A land owner applied for subdivision approval for a subdivision on Denman Island consisting of five-acre building lots, but a subdivision bylaw fixed the minimum size of building lots at ten acres. The Court of

113 *Ibid.*, 216.

114 (1981), 28 B.C.L.R. 288 (C.A.)

115 R.S.B.C. 1979, c. 219.

Appeal decided that the approving officer did not have the discretion to approve a subdivision plan contrary to the public interest as expressed in the bylaw.

Therefore, the *Seaview Land Estates* case upheld the autonomy of local government to adopt and enforce bylaws that were not subject to the discretion of a provincial agency official, in this case the Ministry of Transportation and Highways approving officer. This decision was important for the Islands Trust because the approving officer had an important role in terms of the Islands Trust's object to preserve and protect the Trust area. The status of the approving officer as an official of a provincial agency distanced the subdivision approval process from the Islands Trust and the only formal authority the Trust had with respect to subdivision approvals was the subdivision bylaw. The subdivision bylaw specifies requirements for proposed subdivisions such as average lot sizes, minimum lot sizes, sewage disposal, water supply, and highway access to the property, all important influences on the organization and scale of development on the islands and the impact of development on the environment of the islands. The *Seaview Land Estates* case, in deciding that approving officers do not have a discretion to approve subdivisions that did not comply with subdivision bylaws, was an important case in supporting the autonomy of local government generally, and specifically the Islands Trust with its object to preserve and protect the Trust area.

Therefore, the early years of the Trust's history from 1974 to 1981 was a time in which the Trust evolved from a primarily recommendatory body with a strong provincial presence of appointed general trustees to a more authoritative institution with land use regulation powers and a more representative character with elected general trustees.

During the period that the Bennett Bay and Seaview Land Estate cases were ongoing, a political event that was to have important ramifications for the Islands Trust occurred in December, 1978, when Bill Vander Zalm was appointed as Minister of Municipal Affairs.

3. Bill Vander Zalm appointed Minister of Municipal Affairs

Bill Vander Zalm's predecessor in the Municipal Affairs portfolio, Hugh Curtis, was knowledgeable about the Gulf Islands because his constituency encompassed Saanich and the southern Gulf Islands and, prior to holding provincial office, Curtis had been Chairman of the Capital Regional District. A *Gulf Islands Driftwood* editorial praised Curtis for his support of the Trust's object to preserve and protect the Trust area; however, the editorial expressed uncertainty concerning the new minister's intentions with regard to the islands:

What will be the thinking of Municipal Affairs Minister Bill Vander Zalm? ... There are few residents of the islands who may be forgiven for the suspicion that the new minister is less likely

to pause over matters of aesthetics when the demands of the province are possibly more rewarding.

The welfare of the islands rests in Mr. Vander Zalm's hands. And some islanders wonder.¹¹⁶

This editorial musing was likely less a perceptive foreshadowing than a reaction to Bill Vander Zalm's previous performance in a Cabinet position. As Minister of Human Resources, Vander Zalm had attained the status, in one writer's appraisal, of being "the most hated man in British Columbia"¹¹⁷ due to his controversial statements and policies concerning welfare recipients. Vander Zalm's move from the Ministry of Human Resources to the Ministry of Municipal Affairs may have been an attempt by the government to mitigate the controversy surrounding Vander Zalm in expectation of the forthcoming provincial general election in 1979. The strategy was successful as Vander Zalm was re-elected in his Surrey riding and the Social Credit party under Bill Bennett attained a majority for a second consecutive term. The islanders' apprehensions about Vander Zalm were not without substance, however, as the events in the following section prove.

116 "To preserve and protect," editorial, *Gulf Islands Driftwood*, 13 December 1978, 4.

117 Alan Twigg, *Vander Zalm: from immigrant to premier* (Vancouver: Harbour Publishing, 1986), 82.

D. 1982 - 1985: External and Internal Tensions, the Challenge to Regional and Community Planning

1. Regional planning

The *Islands Trust Amendment Act, 1977*, discussed above, transferred to the Islands Trust from the regional districts the authority to prepare a regional plan. Since taking on that new authority the Islands Trust had been drafting a regional plan for the Trust area. The purpose of the regional plan and its relationship to the islands' community plans was stated by the Islands Trust, as follows:

In brief, the Plan was viewed as being a general statement of goals and policies, sufficient in scope to provide an integrating context for local planning, capable of dealing with factors common to two or more islands, yet clearly establishing the ways in which both local and provincial interests could be defined and protected. It was recognized that whereas conventional planning instruments were probably adequate at the local level, a regional planning approach would be needed to protect both the local and broader public interest in the Trust Area as a whole.¹¹⁸

The thirteen local Trust committees in the Islands Trust area had each adopted an official community plan in the period 1974 to 1978.¹¹⁹ By 1982 the Islands Trust's regional plan was nearing completion. Before the Islands Trust's plan was completed, however, the provincial government moved second reading of *Bill 72, the Land Use Act, 1982*. The purpose of *Bill 72*, as described by Minister

¹¹⁸ Islands Trust, *The Policy of the Islands Trust* (Victoria: Queen's Printer, 1983), 6-7.

¹¹⁹ Porcher, 179.

of Municipal Affairs, Bill Vander Zalm, was "to spell out more clearly the responsibilities of government in the planning process, to provide one-stop shopping, to eliminate duplication."¹²⁰ Although the Islands Trust and the regional districts had expected that *Bill 72* intended to turn regional planning into central planning by the provincial government, Vander Zalm created a furore when he moved second reading of the *Bill*, including s. 190 which proposed abolishment of the Islands Trust. Vander Zalm, referring to the Islands Trust, stated the following:

They were given a mandate, a job to do, and they've done this well. We do have the plans and the subdivision procedures. We have the zoning bylaws in place.... We don't need another level of government, particularly at a time when this government is very concerned about the amount and cost of government. Anything that can be done to reduce the amount and cost of government will, I'm sure, be supported by people everywhere in British Columbia.¹²¹

Public reaction to the proposed *Land Use Act* and abolishment of the Islands Trust was vociferous.¹²² Swainson suggests that the death of *Bill 72* on the order paper when the Legislature adjourned on July 29, 1982, was a result of a combination of a lack of Cabinet support due to local government opposition to the *Bill* and opposition from

120 Statement of Bill Vander Zalm, *B.C. Hansard*, 27 July 1982, 9050.

121 Statement of Bill Vander Zalm, *B.C. Hansard*, 27 July 1982, 9051.

122 "Islanders rally to save Trust," *Gulf Islands Driftwood*, 4 August 1982, 1.

government departments and crown corporations.¹²³ Vander Zalm called his Cabinet colleagues "gutless",¹²⁴ but he was soon after appointed as Minister of Education in a Cabinet shuffle in August, 1982.¹²⁵ The new Minister of Municipal Affairs was Jack Heinrich. Vander Zalm spent a short and controversial stint as Minister of Education before he resigned on April 1, 1983 to take a sabbatical from politics. To jump ahead briefly in this chronological analysis, Vander Zalm's political resurrection occurred in dramatic fashion three years later when Premier Bill Bennett resigned and Vander Zalm won the leadership of the Social Credit party (or "Socreds") in July, 1986. Vander Zalm attained the Premier's chair after the Socreds won the October, 1986, provincial general election. In the first session of his government, Vander Zalm's Minister of Municipal Affairs, Rita Johnston, announced a review of the Islands Trust. This review is discussed in more detail below in section "E. 1986-1989: Trust Fund Proclaimed, Restructure Studies."

This brief jump forward in the chronology is meant to draw the reader's attention to the parallels--coincidental or otherwise--between Bill Vander Zalm's political fortunes

123 J. Terence Morley et al., *The Reins of Power: Governing British Columbia* (Vancouver: Douglas and McIntyre, 1983), 263.

124 Robert Sarti, "Vander Zalm hits 'gutless' Cabinet members," *The Vancouver Sun*, 30 July 1982, A13.

125 Ros Oberlyn, "Bennett shuffles cabinet," *The Vancouver Sun*, 10 August 1982, A1.

and the provincial government's attention to the Islands Trust. It also demonstrates that the changes to the Islands Trust in the 1980s, and as will be evidenced below, in the 1990s, was not the result of new actors in the provincial Legislature, but clearly old actors in new roles and familiar, from their experience, with local government and the Islands Trust.

To return to the chronological analysis, Vander Zalm resigned on April 1, 1983. His departure occurred one month before the provincial general election on May 5, 1983, in which the Social Credit party under the leadership of Bill Bennett was elected for a third consecutive term. Bill Ritchie replaced Jack Heinrich as Minister of Municipal Affairs on May 26, 1983.

The 1983 Throne Speech emphasized the government's resolve to address the recession of the early 1980s with a plan to downsize government through a "restraint program" to "encourage private-sector confidence--by eliminating regulatory road blocks, allowing greater scope for the free play of market forces ...".¹²⁶ This restraint program began with the introduction of a package of legislation to achieve these goals and a restructuring of government that centralized control in the Premier's Office.¹²⁷ The most

126 Speech from the Throne, *B.C. Hansard*, 23 June 1983, 3.

127 Warren Magnusson et al., *The New Reality: The Politics of Restraint in British Columbia* (Vancouver: New Star Books, 1984), 91, and Appendix A, "The Restraint Package," 281-285.

significant piece of legislation for the purpose of this study was *Bill 9, the Municipal Amendment Act, 1983*.¹²⁸ *Bill 9* cancelled all regional plans and removed the power of regional planning from the regional districts. The *Miscellaneous Statutes Amendment Act, 1983*¹²⁹ provided the consequential amendments to remove the regional planning function from the Islands Trust. The consequential amendments also removed the power of the Trust to adopt special zoning to protect special areas due to their scenic value, recreational potential, natural or scientific interest, or delicate ecological characteristics. This provision of the *Islands Trust Act*¹³⁰ had been added to the Act when the powers of land use regulation had been transferred from the regional districts to the Islands Trust in 1977. This special zoning power was removed when regional plans were eliminated because the special areas had to be specified in the regional plan before protective zoning could be adopted. Therefore, the provincial government likely viewed the special zoning power as too closely related to regional planning.

One important factor in the provincial government's action to eliminate regional planning was that the GVRD had been opposed to a proposal to exclude a certain area of

128 *Municipal Amendment Act, 1983*, S.B.C. 1983, c. 22.

129 S.B.C. 1983, c. 20, ss. 28 and 29.

130 R.S.B.C. 1979, c. 208, s. 8(6).

Delta farmland--the Spetifore lands--from the Agricultural Land Reserve for the construction of a housing development. The provincial government was in support of the development. This dispute between the GVRD and the provincial government was one factor in the provincial government's decision to cancel all regional planning with *Bill 9*.¹³¹

The removal of regional planning adversely affected the Islands Trust in terms of authority, the capacity to coordinate, autonomy and representation. In terms of *authority*, the Islands Trust retained the powers of community planning and zoning on each island, but the Trust lost the power of regional planning.

The loss of the power of regional planning was also a major blow to the *autonomy* and accountability of the Islands Trust. Any regional planning by the provincial government would hinder local governments' ability to plan locally as the local planning embodied in the official community plans would need to be consistent with a provincially developed regional plan.

The action of the provincial government in decreasing the formal powers of the Islands Trust by revoking the power of regional planning, demonstrated the ability of the provincial government to change local government at its will; however, the Islands Trust adopted the policies that had been developed as the basis for the regional plan in a

131 Oberlander and Smith (1993), 363.

document--*The Policy of the Islands Trust*. The Islands Trust's intention was to use these policies to guide the Trust in community planning and to express the Islands Trust's opinion to other agencies whose responsibility covered subjects referred to in the policy document.¹³² The recognition by the Islands Trust of the limitations of the formal authority of the policy document with respect to other agencies was expressed as follows: "these policy statements are expressions of Trust opinion and are not necessarily binding on those who share the core responsibility".¹³³ The Islands Trust's adoption of the former regional plan as a policy guide for the Trust area demonstrated one way in which the Islands Trust attempted to provide governance in the Trust area to address its object to preserve and protect the Trust area, despite the limitation on the Trust's formal authority to enforce these policies, and the limits on the Trust's capacity to coordinate other government agencies in the Trust area.

Other attempts by the Islands Trust to address its object were constrained by these limitations. Three of these efforts are discussed in the following three sections: Gambier Island mining, the Musgrave Landing subdivision, and the Ganges sewer.

132 Islands Trust, *The Policy of the Islands Trust* (Victoria: Queen's Printer, 1983), 4.

133 *Ibid.*

2. Gambier Island mining: resource issues and community planning

From 1979 to 1984 the Islands Trust had registered its opposition to a mining company's proposal to develop an open pit copper mine on Gambier Island.¹³⁴ In spite of the Trust's opposition, however, the ultimate authority to grant or deny the right to engage in mining activities lay with the provincial government.

In 1984, the Gambier Island Preservation Society's action to compel the Trust to obtain a judicial determination of the legality or illegality of the proposed mine was heard in the Supreme Court of B.C.¹³⁵ The weakness of the Islands Trust in the power to regulate resource development was highlighted in this case:

If the project proceeds it will fundamentally transgress the community plan prepared by the trust and no doubt the by-laws enacted by the trust to limit or prohibit industrial activities on the island. But the development of the industrial facilities necessary to the production of the minerals will be, and will have to be, under the control of the province. The mining company could not proceed to establish facilities in breach of existing by-laws without provincial authority.... The fundamental difficulty is that the policies implicit in the respective enactments under which the mining company on the one hand [*Mineral Act*, R.S.B.C. 1979, c. 259] and the trust on the other [*Islands Trust Act*, R.S.B.C. 1979, c. 208] derive their rights are diametrically opposed.¹³⁶

134 "Islands Trust clashes over Gambier project," *Gulf Islands Driftwood*, 14 November 1979, 8.

135 *Gambier Island Preservation Society et al. v. Islands Trust* (1984), 54 B.C.L.R. 93.

136 *Ibid.*, 95.

The mining company had not broken any bylaws in its preliminary work. The judge decided that the Islands Trust trustees had made "very concerted efforts to influence the government to put an end" to the proposed mining operation and so had discharged their duty.¹³⁷

Despite the lack of formal authority of the Trust, however, the efforts of the Islands Trust and the Gambier Island Preservation Society to prevent mining activities on the island led to the provincial government imposing a mineral reserve on Gambier Island in 1985 to deny any further mineral claims and the mining proposals were dropped.¹³⁸ Thus, the Islands Trust was able to focus attention and apply pressure in a situation contrary to the object of the Islands Trust. Two other examples, however-- Ganges sewer and Musgrave Landing--show more clearly the limitations of the Islands Trust in its authority to address the Trust's object to preserve and protect the Trust area.

3. Ganges sewer: infrastructure, taxes and development

The long history of the Ganges, Salt Spring Island sewer dispute began, according to a summary of the history of the sewer issue in the *Gulf Islands Driftwood*, in 1962 when health inspectors found many inoperative septic tank systems

137 *Ibid.*, 96.

138 Mary Brimacombe, "Gambier Island," in *Islands in Trust*, ed. Arthur Sweet (Lantzville, B.C.: Oolichan Books, 1988), 125.

in the Ganges area. Over the following nineteen years numerous reports and studies were conducted to consider proposals and the financial implications of sewage disposal for Ganges. The Capital Regional District was supportive of an ocean outfall sewage system, but the local community was split on whether to proceed with the ocean outfall or with a land-based septic or coal filter system. Concerns were expressed on the island that the decision to build a sewage system was a powerful planning tool that would encourage dense development and that an ocean outfall system would be costly, require large amounts of water and would pollute the shallow water of Ganges Harbour.¹³⁹ The residents opposed to the sewer system called for a referendum. The Capital Regional District and the provincial government attempted to force the sewage system on the community, but private citizens' applications to the courts to halt the sewer in 1981 resulted in a declaration by the B.C. Supreme Court that the supplementary letters patent issued pursuant to an order of the director of pollution control to build the sewer system was *ultra vires*. The provincial government then passed the *Miscellaneous Statutes Amendment Act (No. 2), 1981*,¹⁴⁰ which included s. 68, powerful in its wording, to validate the sewer project:

139 "The Ganges sewer (March 1962-?)," *Gulf Islands Driftwood*, 26 August 1981, 2.

140 S.B.C. 1981, c. 21.

Notwithstanding

(a) a decision of a court to the contrary, made before or after the coming into force of this section, or
 (b) the provisions of the *Municipal Act* ...
 the Supplementary Letters patent of the Capital Regional District ... shall be deemed not to be invalid¹⁴¹

This override of the court and the *Municipal Act* provoked acrimonious debate in the Legislature and NDP leader Robert Skelly was ejected for refusing to withdraw his unparliamentary remarks concerning the motives of the Minister of Municipal Affairs for introducing the legislation.¹⁴²

In August, 1981, as construction of the ocean outfall system began pursuant to the validating Act, demonstrations against the sewer project continued and sewer pipe on the contractor's barge was burned in an act of arson. Construction of the sewer system was eventually completed and the system began operating.¹⁴³

The Ganges sewage debate, and a similar, but less protracted sewage controversy in Snug Cove, Bowen Island,¹⁴⁴ highlighted the limitations of the Islands Trust in terms of an important issue impacting on land use and land

141 *Miscellaneous Statutes Amendment Act (No. 2)*, 1981, S.B.C. 1981, c. 21, s. 68.

142 *B.C. Hansard*, 30 June 1981, 6529, and the debate generally, 6522-6531.

143 "The Ganges sewer (March 1962-?)," *Gulf Islands Driftwood*, 26 August 1981, 2.

144 See the discussion of this controversy below in section "E.4. Snug Cove marina, Bowen Island."

development policies. Sewage disposal services are the responsibility of the regional districts. The Salt Spring Island sewer debate also provides another example of the provincial government overriding the local community to impose a solution with limited regard for democratic local input.

4. Community planning and subdivisions

The provincial government dealt a serious blow to the effectiveness of community planning in 1984 by amending the strata title regulations and subdivision provisions of the *Condominium Act*¹⁴⁵ and the *Land Title Act*,¹⁴⁶ respectively. Until 1984 the approving officer was required to consider the contents of the particular official community plan before granting approval of a strata plan. This authority of the approving officer to judge a subdivision application with regard to the official community plan gave the approving officer a great deal of discretion because the official community plan is "a general statement of the broad objectives and policies of the local government respecting the form and character of existing and proposed land use and servicing requirements in the area covered by the plan."¹⁴⁷ Despite the incongruity of this situation where a provincial

145 *Condominium Act*, R.S.B.C. 1979, c. 61, *Bare Land Strata Regulations*, B.C. Reg. 75/78.

146 *Land Title Act*, R.S.B.C. 1979, c. 219.

147 *Municipal Act*, R.S.B.C. 1979, c. 290, s. 945.

Ministry of Transportation and Highways official interpreted a local community's policy statement concerning an important aspect of the development of a local community, even this tenuous connection between subdivisions and community planning was severed in May, 1984, when the *Bare Land Strata Regulations* were amended to delete the regulation requiring a bare land strata plan to comply with an official community plan.¹⁴⁸ Thus, an approving officer was required only to ensure that the strata plan conform to the zoning bylaws and development permits--compliance with the official community plan was no longer required.

The following year, in 1985, the provisions of the *Land Title Act*¹⁴⁹ relating to subdivision approvals were amended by the *Municipal Amendment Act, 1985*,¹⁵⁰ to remove the requirement that approving officers consider community plans when examining subdivision proposals under the *Land Title Act*. These changes brought consistency to the strata plan and subdivision approval processes under the *Condominium Act* and *Land Title Act*, respectively.

The initial amendments to the *Bare Land Strata Regulations* in 1984 came about after the decision of the B.C. Court of Appeal in a dispute on Cortes Island, twenty-five miles north of the Islands Trust area. In this Cortes

148 *Condominium Act*, B.C. Reg. 137/84.

149 *Land Title Act*, R.S.B.C. 1979, c. 219, s. 87(c).

150 *Municipal Amendment Act*, S.B.C. 1985, c. 79, s. 14.

Island case, the Court of Appeal, on May 25, 1984, upheld the then existing requirement that the approving officer must consider the official settlement plan when considering whether to approve a bare land strata plan.¹⁵¹ The reason why the provincial government made these amendments became apparent from Minister of Municipal Affairs Bill Ritchie's comments in an address to the Islands Trust in November, 1984. Although Ritchie was reported to have expressed his support for the Islands Trust, he also made clear his views on planning, as follows:

He also told the islands planning body that the islands merit no special consideration in terms of community planning and that they are no more significant to the province of British Columbia than is the community of Terrace.

The minister also explained that no planning decision will be acceptable in the islands if it reduces the value of any property.

Planning, he explained, centres simply on whether a parcel of land shall be used for residential or commercial purposes.¹⁵²

In terms of characteristics of government, the provincial government's action in amending the *Condominium Act* and the *Land Title Act* to remove the provision that a strata plan or subdivision must comply with community plans decreased the authority and autonomy of the Islands Trust.

151 *Ellingsen v. Raven Lumber Ltd.*, (B.C.C.A.), Unreported decision, Vancouver Registry #CA 001059, 25 May 1984.

152 "Trust here to stay, Ritchie tells council," *Gulf Islands Driftwood*, 5 December 1984, 1.

It also hampered the Islands Trust in its capacity to coordinate government agencies in the Trust area.

In terms of *authority*, the amendments to the *Bare Land Strata Regulations* and *Land Title Act* reduced the ability of the Islands Trust to influence the subdivision approval process through the necessity of subdivisions having to comply with the general policies of the community plans. The local Trust committees still had the initiation authority to prepare and formalize community plans, and to regulate subdivisions through subdivision and zoning bylaws, but the removal of the requirement that subdivisions comply with the community plans reduced the ability of the Trust to enforce the broad policy objectives of the community plans.

In terms of *autonomy*, the changes to the subdivision approval process illustrated again the lack of independence that the Islands Trust had to control processes which impacted on the environment of the Islands Trust area. The provincial government could change the Trust's authority at will, and the control of subdivision approvals in the Ministry of Transportation and Highways approving officer was an important development control mechanism. The approving officer's decision was not simply a question of whether a subdivision would or would not proceed, but included the question that if the development was to

proceed, on what terms and to what guidelines was a developer to adhere?¹⁵³

In terms of *capacity to coordinate*, the subdivision approval authority resting in the hands of a Ministry of Transportation and Highways official who was not required to take into consideration the community plans meant that the Islands Trust was not directly involved in the interpretation of its bylaws in relation to subdivisions.

Musgrave Landing is a small bay on the south-west shore of Salt Spring Island. In 1983 the owner of a 480 acre parcel of land at Musgrave Landing applied for a bare land strata development pursuant to the *Condominium Act*¹⁵⁴ and the *Bare Land Strata Regulations*.¹⁵⁵ The proposed development was for twenty-three foreshore lots of an average size of three-quarters of an acre with one large lot comprising the remainder of the parcel.¹⁵⁶ The Islands Trust and the approving authority, the Ministry of Transportation and Highways, both disapproved of the proposed development. The development complied with the

153 Therefore, it is surprising that the Islands Trust has not appointed an Islands Trust staff member as the approving officer for the Trust area after having been granted that authority under the *Islands Trust Act*, 1989. This point is also discussed below in section "G.6. The Saturna Island park controversy: local autonomy and community planning."

154 R.S.B.C. 1979, c. 61.

155 B.C. Reg. 75/78.

156 "Take stand against approval process, urges Gilbert," *Gulf Islands Driftwood*, 12 October 1983, 1.

zoning bylaws, but it did not conform to the "spirit" of the Salt Spring Island community plan. The Islands Trust was opposed to the high density of lots along the shoreline and to residential development on land zoned as upland and forest. In addition, the Nature Conservancy of Canada had identified the ecological importance of the area because it was one of the few areas where the rare phantom orchid grew.

The Islands Trust later became concerned with the way that the application was handled by the approving agency for subdivisions--the Ministry of Transportation and Highways. The ministry had initially disapproved of the development, but the land owner made a re-application with a modified proposal for water access only to the property, thereby addressing the approving officer's concerns regarding the cost of improving the road access which at that time was suitable only for four-wheel drive vehicles. The Ministry of Transportation and Highways granted a preliminary layout approval without consulting with the Islands Trust on the modified proposal.¹⁵⁷ At the same time the Ministry of Transportation and Highways was upgrading the Musgrave Road to permit easier access to the area.¹⁵⁸ This override of the Islands Trust's objections to the development by the approving officer was an example of the difficulty that the

157 "Gulf Islands and road work," *Times-Colonist*, 13 March 1984, A-4.

158 Moira Farrow, "Roadwork labelled aid to developer," *The Sun*, 16 March 1984, C9.

Islands Trust had in coordinating other agencies' actions in the Trust area.¹⁵⁹

The Musgrave Landing dispute and the amendments to the subdivision approval process described above provide an interesting example of the interplay in the government/governance dimension of the Trust area: first, the Islands Trust had the formal authority to develop community plans with the application of those plans carried out by the approving officer under the former requirement that strata plans and subdivision plans were required to comply with an official community plan. Second, the B.C. Court of Appeal decision in the Cortes Island case upheld the validity of the subdivision regulations in a clear case of infringement of a community plan. Third, after the provincial government amended the subdivision approval process, the Islands Trust unsuccessfully attempted to enforce the "spirit" of the community plan in the Musgrave Landing dispute. Fourth, despite the Trust's lack of formal authority, the Islands Trust attempted to use the findings of a non-governmental organization, the National Conservancy of Canada, to preserve and protect a special ecological feature of the Trust area--the phantom orchid's threatened

159 See also *Mackaroff v. Kellog*, (B.C.S.C.), Unreported decision, Vancouver Registry A843032, Victoria Registry 842092, 8 March 1985, in which a judicial challenge of the approving officer's preliminary approval by neighbouring land owners at Musgrave Landing was decided under the amended regulations not requiring the approving officer to consider the official community plan. Therefore, the Court dismissed the case on the ground that the approving officer had acted correctly.

habitat. Therefore, the Musgrave Landing dispute provides an example of attempts by the Islands Trust to use "the multiple cracks of the organization"¹⁶⁰ to address the Trust's object to preserve and protect the Trust area, but the provincial government used its ultimate authority to override the Islands Trust.

5. Islands Trust staff transferred to the Ministry of Municipal Affairs

Bill 30, The Islands Trust Amendment Act, 1985, transferred the Islands Trust employees to the Ministry of Municipal Affairs, gave the power of appointment of Trust employees to the minister, and deemed the existing Islands Trust staff to be employees of the Ministry of Municipal Affairs.

The move to Municipal Affairs was accompanied by a staff reduction. The Trust manager was fired and two staff jobs were eliminated, leaving five Islands Trust employees: three planners, a draftsman and two secretaries.¹⁶¹

For the amount of type that the legislation comprised, three sentences, *Bill 30* attracted a great deal of attention

160 For a discussion of the intergovernmental/constitutional dimensions and distinctions of Canadian and American local governments see Victor Jones, "Beavers and Cats: Federal-Local Relations in the United States and Canada," in Hilda Symonds and H. Peter Oberlander, eds., *Meech Lake: From Centre To Periphery - The Impact of the 1987 Constitutional Accord on Canadian Settlements: A Speculation* (Vancouver: The University of British Columbia, Centre for Human Settlements, 1988), 80-126; and Patrick Smith, "Local-Federal Government Relations: Canadian Perspectives, American Comparisons - A View Through a Kaleidoscope," same volume, 127-140.

161 "Chairman sees bright side to Islands Trust changes," *Gulf Islands Driftwood*, 17 July 1985, 1.

in the Legislature--over sixty-two pages of *B.C. Hansard* debate.¹⁶² Minister of Municipal Affairs Bill Ritchie introduced the *Bill* by characterizing it as a housekeeping measure. Ritchie downplayed media reports of fears that it was his intention to remove the Islands Trust and he expressed his support for the Islands Trust in "the value of the work carried out by the Islands Trust" and its "very important role".¹⁶³ NDP Municipal Affairs critic, Robin Blencoe, called the move a centralization of authority over the Islands Trust and an erosion of local government's responsibility in land use issues.¹⁶⁴

The Islands Trust trustees were uncertain as to why the minister had tabled the legislation.¹⁶⁵ The trustees were sensitive and perhaps suspicious of the government's motives because the amendment came only three years after Vander Zalm's attempt to abolish the Islands Trust in 1982. Ritchie, in an interview with the *Gulf Islands Driftwood*, was reported to have explained the purpose for the move as being "to increase the efficiency of the Trust. The elimination of jobs was necessary to avoid duplication

162 *B.C. Hansard*, 9 April 1985, 5540-5553; 11 April 1985, 5555-5556, 5570-91; 16 April 1985, 5637-5648, 5652-5656; 24 May 1985, 6289-6296.

163 Statement of Bill Ritchie, *B.C. Hansard*, 9 April 1985, 5540-5541.

164 Statement of Robin Blencoe, *B.C. Hansard*, 9 April 1985, 5545.

165 "Trust puzzled and indignant over Bill 30," *Gulf Islands Driftwood*, 3 April 1985, 1-2.

...".¹⁶⁶ In referring to efficiency, the minister was reportedly alluding to the bylaw approval process in which he considered the development of bylaws by the Islands Trust and the review of bylaws by ministry staff as an unnecessary duplication. With the Islands Trust's staff in the ministry, ministry staff would be involved in the process of the creation of bylaws and so avoid the duplication.

In the opinion of Melinda Auerbach,¹⁶⁷ the trustees initially feared that the staff transfer would have a negative effect on the Islands Trust, but after the change she felt that there was little negative impact. One of the positive aspects of the move to the ministry was that the Islands Trust had less costly access to legal counsel and the Trust could take advantage of the ministry's administrative resources. Auerbach also noted that one negative impact was that the Trust lost some of its sense of identity as a result of moving out of its independent address and moving into the ministry offices. Another negative impact of the change was the demoralization of the remaining employees due to fears of further cutbacks from the government's lingering restraint programme. An increase in the backlog of development requests added to the Islands Trust employees' sense of frustration.¹⁶⁸

166 "Chairman sees bright side to Islands Trust changes," *Gulf Islands Driftwood*, 17 July 1985, 1.

167 Melinda Auerbach, Lasqueti Island trustee and executive committee vice chairperson, personal interview, Lasqueti Island, 9 August 1993.

168 *Ibid.*

In terms of characteristics of government, the reduction in staff and the move to the Ministry of Municipal Affairs decreased the autonomy of the Islands Trust because the Islands Trust lost the independence to control staffing levels. The loss of three staff members and the loss of the ability to determine staffing levels also decreased the authority of the Trust.

When the amendment was first proposed it was feared that the Trust staff might be assigned to other duties in the ministry and in this way the government would indirectly phase out the Islands Trust and accomplish what former Minister of Municipal of Affairs Bill Vander Zalm had attempted to do in 1982 with *Bill 72*.¹⁶⁹ Therefore, the Trust's already limited ability to develop policies, and then to implement and enforce them, was weakened and further threatened by the minister's powers. In hindsight, Ritchie did not renege on his words of support for the Islands Trust and the Trust's authority was in some ways enhanced by the easier access to the legal and administrative resources of the Ministry of Municipal Affairs.

Another positive aspect of the move was that the staff of the Islands Trust developed a closer working relationship with other staff of the Ministry of Municipal Affairs. The greater ease of communication within the provincial government network allowed the Islands Trust to more

169 Statement of Barbara Wallace, *B.C. Hansard*, 11 April 1985, 5556.

efficiently reach out to other ministries to attempt to explain and receive feedback regarding the Islands Trust and its efforts to fulfill its mandate to preserve and protect. One of the Trust's difficulties in terms of the capacity to coordinate other agencies in the Islands Trust area was that the provincial ministries were either ignorant of the Islands Trust and its object to preserve and protect the Islands Trust area, or they appeared to ignore the Islands Trust in its attempts to coordinate government activities in the Trust area.¹⁷⁰ One example of the Islands Trust's efforts to improve the coordination of government activities in the Trust area was the production of four position papers to recommend an approach for the Islands Trust in dealing with important land use and development issues on the islands.¹⁷¹ The first position paper, "The Object of the Islands Trust: Renewing the Consensus," attempted to educate other provincial ministries about the Islands Trust. Other ministries were included in the review of the interpretation of the Trust object to assist the Islands Trust to develop a framework for the Islands Trust to carry out its

170 Nick Gilbert, former Islands Trust chairman, telephone interview, 4 August 1994.

171 Islands Trust, *The Object of the Islands Trust: Renewing the Consensus, Islands Trust Position Paper No. 1* (Victoria: Queen's Printer, 1986); *The Regulation of Home Occupations in the Islands Trust Area, Islands Trust Position Paper No. 2* (Victoria: Queen's Printer, 1986); *The Regulation of Bed and Breakfast Businesses in the Islands Trust Area, Islands Trust Position Paper No. 3* (Victoria: Queen's Printer, 1986); *The Planning and Regulation of Aquaculture in the Islands Trust Area, Islands Trust Position Paper No. 4* (Victoria: Queen's Printer, 1987).

responsibilities for land use planning and regulation and to coordinate those functions with other agencies.¹⁷²

Therefore, the Islands Trust was attempting to improve its capacity to coordinate other agencies in the Trust area by establishing communications with other provincial agencies. This effort was aided by the Islands Trust staff being a part of the Ministry of Municipal Affairs.

Despite these positive aspects of the move of the Islands Trust staff to the ministry, the transfer and the Islands Trust's loss of the power to appoint employees was a move away from the ideal of local self-government.

In the summer of 1986, Premier Bennett resigned after three years of his fourth consecutive term in office. Bill Vander Zalm, who had spent much of his sabbatical developing and tending the gardens of his Fantasy Garden World tourist attraction, won the Social Credit party leadership convention. Rita Johnston, one of the Surrey MLAs, was appointed by Vander Zalm as Minister of Municipal Affairs. The provincial general election was held on October 22, 1986, and Vander Zalm became Premier as Social Credit won a majority of the seats in the Legislature. Rita Johnson remained in the Municipal Affairs portfolio.

¹⁷² Islands Trust, *The Object of the Islands Trust: Renewing the Consensus, Islands Trust Position Paper No. 1* (Victoria: Queen's Printer, 1986), 1.

E. 1986 - 1989: Trust Fund Proclaimed, Restructure Studies

1. Generally

The term of office of British Columbia local government officials was lengthened from two to three years in 1987 when the *Local Election Reform Act, 1987*, was enacted.¹⁷³ The change became effective commencing with the 1990 elections. A longer term of office theoretically decreases the accountability of the elected official to his or her constituents. Efficiency is gained, however, with lower election administrative costs and fewer post-election transition periods. Local government officials also have a longer term to develop expertise in their positions.

2. Trust fund

The *Islands Trust Amendment Act, 1975*, had established the Islands Trust fund to receive gifts of money to be used for the purpose of carrying out the objects of the Trust. Under this legislation the fund was to be administered by the Islands Trust; however, the Trust fund provisions remained unproclaimed until 1987.¹⁷⁴ The intention of the Trust fund was explained in 1975 by then Minister of Municipal Affairs, James Lorimer, as follows:

... the principle of the bill is to allow the trust to hold lands in its name.... Most people don't want to donate property as a trust to a department of government; they would far rather prefer to donate it to a trust in which there

¹⁷³ S.B.C. 1987, c. 41, ss. 43 and 46.

¹⁷⁴ B.C. Reg. 68/87.

would be some control of that particular land or personal property in conjunction with terms of the trust.¹⁷⁵

Calls had been made over the years for the proclamation of the Trust fund provisions of the *Islands Trust Act*.¹⁷⁶

Lorimer's reasoning was referred to in 1985 in the Legislature when the NDP Municipal Affairs critic, Robin Blencoe, asked the Minister of Municipal Affairs to proclaim the Trust fund.¹⁷⁷ Ritchie refused, saying that there was an existing mechanism for donations of property to the Crown.¹⁷⁸

It may be that the Trust fund provisions were included in the *Islands Trust Act* in 1974 to provide some substance to the "trust" aspect of the Islands Trust, but the provisions were left unproclaimed because the Islands Trust's powers were very limited and land holding as a true trust was beyond the powers envisioned by the government for the Islands Trust. If the Trust fund had been established in the 1970s it might have been seen as entrenching the Islands Trust to a stronger degree than the government was willing to accept in the Islands Trust's early years. In the late 1980s, however, with the Islands Trust staff in the

175 Statement of James Lorimer, *B.C. Hansard*, 18 June 1975, 3689.

176 "Pender Island forum on Islands Trust," *Gulf Islands Driftwood*, 8 October 1980, 16.

177 *Islands Trust Act*, R.S.B.C. 1979, c. 208, s. 3.

178 Statements of Robin Blencoe and Bill Ritchie, *B.C. Hansard*, 17 June 1985, 6662.

Ministry of Municipal Affairs, the Islands Trust was less independent under the control of the ministry. Therefore, the proclamation of the Trust fund may have been seen by the provincial government as involving little risk, especially since the Trust fund was given no seed money to begin to acquire properties of special environmental significance in the Trust area. The Minister of Municipal Affairs retained a further degree of control over the Trust fund by enacting an amendment to the *Islands Trust Regulations* declaring that every payment greater than \$100 from the Trust fund was required to be signed by the minister.¹⁷⁹

Before the Trust fund provisions of the *Islands Trust Act* are analyzed in terms of formal characteristics of government, the following discussion of trust concepts serves to briefly describe the following points: the legal concept of a trust relationship, the trust aspect of the *Islands Trust Act*, and questions concerning the role of the Islands Trust fund in the Islands Trust area.

The hallmark of the legal concept of a trust is "the fiduciary relationship which exists between trustee and beneficiary"¹⁸⁰ in which "the trustee holds the title to property, and manages the property, making the 'fruits', so to speak, available to the beneficiaries."¹⁸¹ Such a "true

179 B.C. Reg. 69/87 amending *Islands Trust Regulation*, B.C. Reg. 271/81.

180 D.W.M. Waters, *Law of Trusts in Canada*, 2nd ed. (Toronto: Carswell, 1984), 10.

181 Waters, 8.

trust" in the private law sense can be distinguished from a "political trust", or non-charitable "public trust" in which the general public is considered the beneficiary of the government that has statutorily assumed the fiduciary role of trustee.¹⁸² A common law public trust doctrine has not developed in Canada as it has in the United States where the state is considered a fiduciary for the people to ensure public access to public lands and, more recently, to protect the natural landscape.¹⁸³ However, Waters refers to the statutory public trust established by the Yukon Territory and the Northwest Territories¹⁸⁴ as examples of how Canadian jurisdictions are moving to establish general rights and duties in environmental protection. The essential elements of the Yukon legislation are described by Waters as follows:

... the "Government" of the territory "is the trustee of the public trust", and "shall ... conserve the natural environment in accordance with the public trust." The beneficiaries of this trust, it appears, are "the people of the Yukon [who] have the right to a healthful natural environment." ... In these ways any adult

182 Waters, 26-27.

183 D.W.M. Waters, "The Role of the Trust in Environmental Protection Law," Paper presented at the Second International Symposium on Trusts, Equity and Fiduciary Relationships, University of Victoria, Victoria, B.C., January, 1993. And see Joseph L. Sax, "The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention," *Michigan Law Review* 68 (1970), 471-566; H.R. Bader, "Anateus and the Public Trust Doctrine: A New Approach to Substantive Environmental Protection in the Common Law," *Boston College Environmental Affairs Law Review* 19 (1992), 749.

184 *Environment Act*, S.Y. 1991, c. 5; *Environmental Rights Act*, S.N.W.T. 1990, c. 38.

individual and any corporation in the Yukon is enabled "to protect the natural environment and the public trust." The term, public trust, is defined as "the collective interest of the people of the Yukon in the quality of the natural environment for the benefit of present and future generations."¹⁸⁵

Waters cautions that this type of instrument is in its infancy in Canada and that despite the difficulty in determining the specific focus of the trust in conserving the natural environment, "it is the specific provisions of the legislation rather than the trust concept which will give this 'public trust' efficacy."¹⁸⁶

This same reasoning applies to the Islands Trust. The Islands Trust in name and legislative provisions reveals trust principles. For example, the wording of the original *Islands Trust Act* in s. 2 stated: "There is hereby established a trust", however, the nature of the Islands Trust as a trust was not developed beyond the object of the Islands Trust as stated in s. 3:

It is the object of the trust to preserve and protect, in co-operation with municipalities and the Government of the Province, the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of the Province generally.¹⁸⁷

185 Waters, "The Role of the Trust in Environmental Protection Law," 5-6.

186 *Ibid.*, 6-7.

187 *Islands Trust Act*, S.B.C. 1974, c. 43, s. 3.

Further evidence of the trust concept is found in amendments to the *Islands Trust Act* in 1975 and 1977: the 1975 amendment established a Trust fund to hold money received by gift or grant (but these provisions were not proclaimed until 1987), and the 1977 amendment allowed the Islands Trust to hold real property (this amendment was also not proclaimed until 1987). However, these very general references to the trust concept were not given effect with any more specific substantive provisions such as those in the Yukon legislation noted above.

The question of the powers of the Islands Trust and the rights of individuals as beneficiaries of the Islands Trust arose in the *Gambier Island Preservation Society v. Islands Trust* case¹⁸⁸ when the Gambier Island Preservation Society, claiming as beneficiaries of the Islands Trust, sought to compel the Islands Trust to obtain judicial determination of the legality of a mining company's activities on Gambier Island. Meredith J. declined to consider the powers of the Islands Trust and the rights of the alleged beneficiaries because he found that the mining company had not committed any wrong under the *Mineral Act* which could be remedied.

Therefore, although the Select Standing Committee in 1973 recommended a trust and the Minister of Municipal Affairs, Jim Lorimer, introduced the *Islands Trust Act* in

188 (1984), 54 B.C.L.R. 93, and see the discussion of this case above in section "D.2. Gambier Island mining: resource issues and community planning."

1974 with frequent references to the concept of a trust, trust principles were not defined in the Act; rather, a committee controlled by provincial appointees was established with the unique mandate to preserve and protect the islands.

An example of a legislated property trust is the United Kingdom's National Trust. British Columbia Liberal MLA David Anderson had suggested in 1971 that a trust similar to the British National Trust be established for the Gulf Islands.¹⁸⁹ During debate over the *Islands Trust Act* in 1974, Anderson made the distinction between a public trust and the Islands Trust established in the 1974 *Islands Trust Act*, as he argued that the Islands Trust was not a trust at all: "the type of legislation we have is not a trust; it's a commission."¹⁹⁰ The National Trust that Anderson referred to was instituted as a charitable association in 1895 in response to the spread of industrialization and the growth of population in England and the resulting spoilation of the landscape. The purpose of the National Trust was to acquire land and buildings of historical interest or natural beauty.¹⁹¹ In 1907 the National Trust was given greater powers and legislative sanction with the proclamation of the

189 "Anderson wants National Trust," *Gulf Islands Driftwood*, 9 September 1971, 1; "Anderson Plan and National Trust," *Gulf Islands Driftwood*, 7 October 1971, 7.

190 Statement of David Anderson, *B.C. Hansard*, 21 May 1974, 3267.

191 National Trust Advisory Committee, *The National Trust Report by the Council's Advisory Committee* (London: Waterlow & Sons, 1968), 27.

National Trust Act.¹⁹² One example of this power is the current exceptional provision providing that lands vested in the National Trust are inalienable and so permanently preserved subject only to special parliamentary procedure.¹⁹³

When the Islands Trust fund provisions were proclaimed in 1987, there was uncertainty as to how the Trust fund would be administered due to the generality of the legislation. This was one factor in the provincial government's decision to order a Standing Committee Review of the Islands Trust with a specific reference to study "matters arising out of the proclamation of section 3 [the Trust fund] of the *Islands Trust Act*."¹⁹⁴ This Standing Committee Review will be discussed in more detail in the following section.

The proclamation of the Trust fund provisions of the *Islands Trust Act* was also the impetus for the Islands Trust to review the role that the Islands Trust should play in the Trust area. At a quarterly meeting of all of the local trustees on Galiano Island, one general concern expressed by the trustees relating to the Trust's role was expressed as follows:

192 See *The National Trust Acts, 1907-1971* (U.K.).

193 Robin Fedden, *The National Trust Past and Present* (London: Jonathan Cape, 1974), 170.

194 Statement of Rita Johnston, *B.C. Hansard*, 22 May 1987, 1303.

Island Trustees spend too much time acting as land-use approval agents and regulatory watchdogs--and too little time as advocates for measures which would preserve and protect the islands.¹⁹⁵

A second area of concern was the administration of the Trust fund. Although the trustees expressed confidence that the ability to accept donations of land and money would enable the Islands Trust to fulfill its object to preserve and protect the Trust area; however, Marc Holmes, former Chairman of the Islands Trust, recognized a potential problem with the functions of the Islands Trust in land use regulation and in holding land in trust:

The body accepting and administering donations should be kept at arm's-length from the Trust itself, he said, to avoid both the appearance of and potential for a conflict-of-interest.

He explained that because the Trust has responsibility for zoning and land-use planning, its administration of the fund could tempt trade-offs with developers--i.e., permitting a rezoning in return for a donation of land.¹⁹⁶

Therefore, it was seen as desirable that the Islands Trust separate the two distinct, but related roles as a governing body for land use regulation and as a steward of land with the Trust fund.

The proclamation of the Trust fund provisions of the Islands Trust Act enhanced the authority of the Islands Trust to address its object to preserve and protect the

195 "Trust's role topic at Galiano meeting," *Gulf Islands Driftwood*, 10 June 1987, 1-2.

196 "Trust's role topic at Galiano meeting," *Gulf Islands Driftwood*, 10 June 1987, 1-2.

Trust area by providing the Islands Trust with more powers to establish, implement and enforce preservationist policies; however, the proclamation of the Trust fund also focussed attention on fundamental questions as to the ways in which the Trust might effectively fulfill its object. Despite these questions, the trustees at the Galiano Island meeting recognized that the proclamation of the Trust fund was an important development for the Islands Trust and hope was expressed that with suitable financial and administrative arrangements the Islands Trust could effectively manage the land use regulation role and the more preservationist role of stewardship of land that the Trust fund represented.¹⁹⁷

The proclamation of the Trust fund was also positive in terms of the *revenue-raising* ability of the Islands Trust. One hope expressed was that the provincial government would provide the Trust fund with seed money to assist in the development of preliminary administrative arrangements and conservation projects that the Trust fund might undertake, but that type of financial assistance has not been forthcoming.¹⁹⁸

The *autonomy* of the Islands Trust was also enhanced by the proclamation of the Trust fund. The Islands Trust's new responsibilities to accept donations of land and money

197 *ibid.*

198 "Trust members discuss format for new fund," *Gulf Islands Driftwood*, 10 June 1987, 2.

allowed the Islands Trust to make decisions about priorities that the Islands Trust would pursue and how any donations or purchases of property would be handled, but the minister's approval was required for expenditures greater than \$100 and the Trust fund provisions of the *Islands Trust Act* were very general and unclear as to the specific operation of the Trust fund.

The vagueness of the *Islands Trust Act* with respect to how the Trust fund should be administered was one factor prompting the provincial government to undertake a review of the Islands Trust. Other factors which may have contributed to the decision to review the Islands Trust are discussed in the following section.

3. Standing Committee Review and Report

On May 22, 1987, the Minister of Municipal Affairs, Rita Johnston, requested that the Legislative Assembly authorize the Select Standing Committee on Economic Development, Transportation and Municipal Affairs ("Standing Committee") to undertake a study of the *Islands Trust Act* with reference to the following:

(1) the object of the trust; (2) governmental structure within the trust area, including representation; (3) provision of local government services within the trust area, including land use planning and zoning; and (4) matters arising out of the proclamation of section 3 of the *Islands Trust Act* [Trust fund].¹⁹⁹

¹⁹⁹ B.C. Hansard, 22 May 1987, 1303.

The factors that may have influenced the government to undertake a review of the Islands Trust are numerous. The proclamation of the Trust fund provisions of the *Islands Trust Act* referred to above was one factor.

A second factor was the influence of Premier Vander Zalm. Recall that in 1982 Vander Zalm failed to abolish the Islands Trust when his *Bill 72--the Land Use Act*, died on the order paper. It is uncertain how important Vander Zalm's influence was in the decision to review the Islands Trust, but the timing of Vander Zalm's resignation, revival, and the announcement of the review of the islands Trust is interesting. Vander Zalm resigned in 1983, six months after calling his cabinet colleagues "gutless" for not supporting *Bill 72--the Land Use Act*, Vander Zalm's land reform bill that had proposed abolishing the Islands Trust. Vander Zalm returned to provincial politics to win the Social Credit leadership convention in August, 1986. Two months later Vander Zalm was Premier of British Columbia after the Socreds attained a majority of seats in the provincial general election held in October, 1986. Seven months to the day after the election, a review of the Islands Trust was announced by Minister of Municipal Affairs Rita Johnston. Mrs. Johnston had previously served with Bill Vander Zalm on Surrey council after Vander Zalm was elected as mayor and Johnston as alderman in 1969.²⁰⁰

²⁰⁰ Twigg, 51.

A third factor in the decision to review the Islands Trust was the Vander Zalm government's policy of government restructuring to promote privatization and decentralization. In pursuit of these goals Vander Zalm formed eight economic development regions each headed by a Cabinet minister.²⁰¹ These initiatives appeared to be the first step in a plan to establish a county system of governance in the province. Vander Zalm had expressed interest in a county system during his tenure as Minister of Municipal Affairs.²⁰² In a 1987 interview with the GVRD publication, *GVRD NEWS*, Vander Zalm did not discount the possibility that the regional districts could be absorbed by the economic development regions as counties.²⁰³ Vander Zalm's county idea and the economic development regions never developed beyond these preliminary stages. Vander Zalm had promoted the idea of economic development regions as a decentralization of power, but the general perception was that economic development regions centralized power in the provincial Cabinet.

The influence of development interests in the decision to review the Trust was identified as being an important factor by some of the Islands Trust trustees interviewed for

201 Province of British Columbia, *Government Restructuring: Statement of Principles* (Victoria: Queen's Printer, 1987), 1-2.

202 Frank Richards, "Region recommends county government," *Gulf Islands Driftwood*, 9 December 1981, 18.

203 "County System Could Replace Regional Districts; 10 Years Before Metro Area Affected - Premier," *GVRD NEWS*, November/December 1987, 1-3.

this study.²⁰⁴ The Trust's scrutiny of development proposals, perhaps perceived by development applicants as an unnecessary delay in the process, was thought to have been an influence in the government's decision to test the waters of public opinion regarding the Islands Trust before proceeding with any changes to the Trust. This view of the importance of development interests in the decision to review the Trust was evidenced by the Standing Committee's observations published in its report:

Protection of the "unique amenities" and "environment" referred to as the OBJECT in Section 4 became the focal point of the operation of the Trust, sometimes to the detriment of reasonable development proposals.²⁰⁵

This also expressed what M'Gonigle viewed as the Islands Trust developing its own "organizational ideology". In this quote, however, the provincial government demonstrated that it did not view the focus of the Islands Trust on its object to "preserve and protect" as a positive philosophy.

Finally, a factor in the decision to undertake a review of the Islands Trust involved the ongoing question concerning governance of the islands, especially relating to

204 Melinda Auerbach, Lasqueti Island trustee and executive committee vice chairperson, personal interview, Lasqueti Island, 9 August 1993; Nick Gilbert, former Salt Spring Island trustee and Islands Trust chairman, personal interview, Salt Spring Island, 16 August 1993; John Fletcher, former Hornby Island trustee, personal interview, 11 August 1993.

205 Province of British Columbia, Select Standing Committee on Economic Development, Transportation and Municipal Affairs, *Islands Trust Act Review Report and Recommendations* (Victoria: Queen's Printer, 1987), 3.

the possibility of incorporation of the more populated islands such as Salt Spring Island and Bowen Island. For example, three studies of the governance of Bowen Island were undertaken in the late 1980s. These studies will be discussed below;²⁰⁶ they are noted here as evidence of the activities being undertaken to study options for local governance on the islands.

The Standing Committee held public hearings and accepted public submissions before reporting back to the Legislature. The Islands Trust received an overwhelming show of support at the public hearings, but the view was often expressed that the Islands Trust needed more financial and staffing resources, and stronger authority over decisions made by other government agencies that affected island life.²⁰⁷

The Standing Committee reported back to the Legislature on December 14, 1987, with the major recommendation that the Trust area be reorganized as a regional district in order to provide the efficient delivery of services.²⁰⁸ The reaction of the Islands Trust to the Standing Committee Report was to make it clear that it did not approve of the idea of making

206 See section "E.5. Bowen Island local government restructure studies," and section "G.3. Salt Spring Island restructure study."

207 Duncan MacDonnell, "Islanders give Trust ringing endorsement," *Gulf Islands Driftwood*, 19 August 1987, 1.

208 *Islands Trust Act Review Report and Recommendations*, 16.

the Islands Trust area a regional district.²⁰⁹ The Islands Trust did, however, support the Standing Committee's recommendations to continue the Trust's mandate to "preserve and protect". The Islands Trust also recommended that the focus of the Islands Trust should remain on land use planning and regulation with more responsibility to raise funds and to establish "regional policy guidelines for land use."²¹⁰

The reason for the Islands Trust's rejection of the Standing Committee's recommendation for regional district status was, in then chairman Nick Gilbert's view, that the servicing issues would detract from the mandate of the Trust:

There was a fear on the part of many of the trustees that it would water down the mandate of the Trust to be involved with all the nitty-gritty servicing issues that a regional district has to deal with and it was rejected by the Trust council. It was also rejected by some of the key regional districts.²¹¹

M'Gonigle argued that the recommendation of an island regional district was an attempt by the provincial government to fundamentally alter the institutionalized

209 Islands Trust, Islands Trust Council Response to Select Standing Committee "Islands Trust Act Review and Recommendations," Letter from Nick Gilbert, Chairman, Islands Trust, to Rita Johnston, Minister of Municipal Affairs, 21 January 1988.

210 *Ibid.*

211 Nick Gilbert, former Islands Trust chairman, personal interview, Salt Spring Island, 16 August 1993.

ideology of the Islands Trust mandate of preservation and protection "into the more development-oriented role of service-provider to the detriment of its traditional focus on protective planning."²¹²

The Standing Committee's recommendation of a regional district for the Islands Trust area was not acted on, but the provincial government introduced a major revision of the *Islands Trust Act* two years after the Standing Committee tabled its report.

The reasons for a revision of the *Islands Trust Act* included some of the same reasons for the decision to review the Trust discussed above. For example, the proclamation of the Islands Trust fund provisions of the *Islands Trust Act* in 1987 left many questions unanswered: s. 3(2) stated simply that the "Islands Trust Fund shall be used for carrying out the object of the trust." Thus, some direction was needed on how the Trust fund was to be administered.

A second inducement for a revision of the *Islands Trust Act* came from the Islands Trust itself. The Islands Trust had been requesting amendments to the *Islands Trust Act* to address a number of different issues. For example, with the ongoing discussion regarding incorporation,²¹³ the Islands Trust recognized that there was a need for a mechanism to

212 Michael M'Gonigle, "Sustainability and local government: The case of the British Columbia Islands Trust," *Canadian Public Administration* 32 (1989), 531.

213 See section "E.5. Bowen Island local government restructure studies," and section "G.3. Salt Spring Island restructure study."

deal with incorporation in the Trust area that would provide for the object of the Islands Trust to be preserved. This was one of the Islands Trust's recommendations in its submission to the Standing Committee. The Trust recommended that there be some kind of local council system for Snug Cove, Bowen Island; and Ganges, Salt Spring Island, with the Islands Trust to be represented on the local council. Other issues that the Islands Trust wanted the government to address included the following: an increase in staffing, an independent Trust office, an increase in financial aid, authority over garbage and parks, increased land use powers for the Trust to issue permits for subdivisions, forestry, soil removal, and siting and use permits. The Islands Trust was interested in initiating long range planning and increasing its influence with other agencies such as B.C. Ferries, the Ministry of Transportation and Highways and the Ministry of Crown Lands.²¹⁴ The Islands Trust also wanted to give legislative recognition to the Trust council, the informal group of twenty-six local trustees, as the governing body of the Trust area.²¹⁵ In terms of the government/governance dimension, the informal practice of the Trust council, composed of the twenty-six local trustees meeting on a quarterly basis to discuss Trust issues, was formalized in the 1989 revisions of the *Islands Trust Act*.

214 "Nick wants," *Undercurrent*, 28 August 1987, 11.

215 Statement of Robin Blencoe, *B.C. Hansard*, 7 June 1988, 4921.

A third inducement for amendments to the *Islands Trust Act* was the high degree of support for the Islands Trust heard by the Standing Committee at its public hearings and received in written submissions. The Standing Committee's summary of submissions showed that the two highest ranked issues were support for the Islands Trust and support for the Islands Trust object. Other highly ranked issues included the desire for increased resources for the Islands Trust and increased Islands Trust jurisdiction over areas such as water, ferries, forestry and environmental protection.²¹⁶ In the opinion of Islands Trust trustees, this strong support for the Islands Trust was an important factor in the provincial government's decision to amend the *Islands Trust Act* to incorporate many of the Islands Trust's recommendations instead of the recommendations of the Standing Committee Report. The Standing Committee's finding of such strong support for the Islands Trust and the Islands Trust's object may also have been a factor in the decision of the provincial government to grant the Islands Trust increased authority and autonomy under the *Islands Trust Act*, 1989.

Local financial accountability also appears to have been an incentive for the provincial government to amend the *Islands Trust Act*. Minister of Municipal Affairs Rita Johnston, in referring to the financial contributions of the

²¹⁶ *Islands Trust Act Review Report and Recommendations*, 22.

provincial government to Islands Trust operations, stated the following in the Legislature during debate on the *Islands Trust Act*, 1989:

We will continue to contribute hundreds of thousands of dollars, more than enough to fund the trust policy statement, but we are looking at local autonomy, and if a decision is made by the local trustees that they want to undertake some aspect of the "preserve and protect" that is going to cause them considerable financial expense, I think they are going to have to look at possibly raising a good portion of the funding by looking at their own tax base.²¹⁷

Another factor which may have been an influence on the government's decision to revise the *Islands Trust Act* was the increasing environmental consciousness of the general public in the late 1980s. The Bruntland Report referred to above in chapter I was published in 1987 and the term "sustainable development" entered the public consciousness; sustainable development was defined by the Bruntland Report as "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."²¹⁸ The British Columbia initiatives noted above--the Round Table and CORE--were the B.C. government's responses to the Bruntland Report.

Stan Persky, author of *Fantasy Government: Bill Vander Zalm and the Future of Social Credit*, identified some of the environmental events that occurred in the late 1980s that

²¹⁷ Statement of Rita Johnston, *B.C. Hansard*, 17 July 1989, 8612.

²¹⁸ World Commission on Environment and Development, 8.

focussed public attention and the provincial government's attention on the environment: for example, the Grays Harbor, Oregon oil spill that resulted in oil being washed on to Vancouver Island's west coast,²¹⁹ and the Exxon Valdez oil spill in Alaska; the concerns expressed about logging in the Carmanah Valley, mining in Strathcona Park, and deep sea driftnet fishing; the calls for preservation of South Moresby Island in the Queen Charlotte Islands and the protection of the Stein Valley.²²⁰ Persky described the Vander Zalm government's new-found interest in environmental issues as "born-again environmentalism", an effort to recover the Social Credit government's sagging fortunes. Therefore, the provincial government's interest in the environment, and Vander Zalm's declining influence in the wake of his controversial policies and statements, were both factors external to the Islands Trust itself which may have been an influence on the Social Credit government's amendments to the *Islands Trust Act* in 1989.

The 1989 major revision of the *Islands Trust Act* in will be analyzed in detail after the following two sections: the first section describes a dispute concerning a proposal for a marina development in Snug Cove, Bowen Island; the

219 On Grays Harbour see also James Groen, "Provincial/International Relations: Case Studies of the Barrett and Vander Zalm Governments in British Columbia," M.A. Thesis, Department of Political Science, Simon Fraser University, January, 1991.

220 Stan Persky, *Fantasy Government: Bill Vander Zalm and the Future of Social Credit* (Vancouver: New Star Books, 1989), 218-236.

second section discusses the Bowen Island local government restructure studies.

4. Snug Cove marina, Bowen Island

Bowen Island has experienced strong pressures of development because of its proximity to the city of Vancouver. The island has been developing from a rural to a suburban community as potential homeowners are attracted to the island's rural character, and lower housing prices and taxes relative to the Lower Mainland area. Increasing numbers of Bowen Island residents commute from their island homes to city jobs via the twenty minute ferry ride from Snug Cove to Horseshoe Bay, West Vancouver.

Snug Cove is a small harbour on Bowen Island's east side. In 1987, facilities in Snug Cove included a ferry dock, a federal government wharf and two small marinas. On shore there was a 300 metre strip of commercial development primarily consisting of small stores and services. In 1985, the new owner of the Snug Cove marina proposed a plan to dredge the mudflats at the head of Snug Cove, construct a seawall, expand the marina to accommodate 300 boats, and build onshore facilities such as shops, a restaurant, and a pub. The proposal was investigated and debated for two years including a special Snug Cove joint integrated planning/development programme made up of the GVRD and the Islands Trust. The programme was set up to study the area of Snug Cove including the issues of the marina development,

sewage, ferry parking, and planning for a regional park. The study group decided that the authority to make decisions concerning the marina expansion plan rested with the Islands Trust as the land use authority.²²¹

The Bowen Island Local Trust Committee rejected the marina expansion application on the grounds that the proposal did not conform with the zoning bylaws and the official community plan. The main inconsistencies were "the location and amount of commercial development, sewage disposal and the overall scale of the marina development."²²²

The GVRD was also involved in the issue because the marina owner required use of the GVRD's water lot lease in Snug Cove, and the question of the scale of development in Snug Cove related to the question of what type of sewage was appropriate for the area. The GVRD regional district director for Bowen Island was supportive of the marina expansion, but the community was split on the issue between support for, and opposition to the plan. The two local Trust committee trustees were also split on the proposal. Therefore, the three general trustees were left to decide whether the community bylaws should be amended to allow for the marina expansion. This situation provoked criticism of a process allowing for "off-islanders" to make policy

²²¹ *Undercurrent*, 9 October 1987, 11.

²²² "Snug Cove Marina Expansion," *Undercurrent*, 29 November 1985, 19.

decisions of local importance to Bowen Island.²²³ The Islands Trust eventually voted to approve amendments to the official community plan to allow for a scaled down version of the marina development.

The federal government later provided \$980,000 to dredge Snug Cove²²⁴ and the Member of Parliament ("MP") for the area, Mary Collins, was reported to have said when she announced the federal grant that Snug Cove would become a "real showpiece".²²⁵

The provincial government provided a \$660,000 low-interest loan to the marina owner under a joint federal-provincial tourism development program declaring Snug Cove an international destination resort.²²⁶ The provincial program was an initiative to attract tourism by developing destination pleasure boat harbours.

These events in the Snug Cove debate on Bowen Island raised the issues of representation and capacity to coordinate with respect to the government/governance dimension. On representation, the general trustees were seen by some as off-islanders interfering in local decisions; however, others praised the presence of the

223 A.H. Elliott, "As I See It! - Democracy at the Crossroads," *Undercurrent*, 24 April 1987, 17.

224 Mark Hume, "It could be paradise lost for people of Snug Cove," *The Vancouver Sun*, 27 March 1991, B1.

225 Daphne Bramham, "Ottawa to help make Bowen Island vision a reality," *The Vancouver Sun*, 29 March 1989, A24.

226 Statement of Jan Pullinger, *B.C. Hansard*, 24 July 1990, 11329.

general trustees in supporting the Trust object to preserve and protect the Trust area. The GVRD, through its control over regional parks and sewage, had an important role in the issue. The provincial government's support of tourist facilities was not necessarily in accord with the Trust's philosophy, and the federal government MP's promotion of the harbour as a "show piece" was also not necessarily in keeping with what the Islands Trust had been trying to accomplish on the islands. The involvement of all of these different government agencies in Snug Cove also demonstrated the Trust's lack of authority in its capacity to coordinate other levels of government whose activities impacted on the environment and so affected the ability of the Islands Trust to address the object of the Islands Trust to preserve and protect the Trust area.

The reaction of some Bowen Island residents to the influence of the Islands Trust's general trustees in the decision-making process on Bowen Island was to call for more local autonomy for Bowen Island. Therefore, the Snug Cove controversy was one reason why local government restructure studies were undertaken on Bowen Island in the late 1980s. These studies are the focus of the following section.

5. Bowen Island local government restructure studies

Suggestions for changes to Bowen Island's structure of governance over the years have ranged from municipal

incorporation²²⁷ to one wag's proposal that Bowen Island should declare itself a monarchy and seek out a Queen.²²⁸ Controversies such as the Snug Cove case noted above in which local autonomy was seen to be threatened by "off-islander" control of local decisions was one impetus for change.

GVRD members had on many occasions supported municipal status for Bowen Island because electoral area problems were considered by some to be occupying too much time at GVRD meetings.²²⁹ More recently, it has been the GVRD's policy to encourage municipal incorporation for Bowen Island:

The GVRD is putting the pressure on. At its 1989 meeting the GVRD Board adopted a motion "... urging early consideration of municipal status for Bowen Island." ... GVRD's present policy is to reduce its local service delivery in local areas.²³⁰

The public discussion regarding municipal incorporation on Bowen Island led to a number of studies being conducted on the local governance of Bowen Island. In 1983, the former Minister of Municipal Affairs under W.A.C. Bennett, Dan Campbell, was appointed by the Bill Bennett Social Credit government to undertake a review of the regional

227 B.N. Takin, letter, *Undercurrent*, 26 October 1979, 26.

228 Bob Kingsmill, letter, *Undercurrent*, 13 August 1976, 8.

229 "Municipal Status?" Editorial, *Undercurrent*, 16 July 1976, 1.

230 "GVRD primer--attitude to Bowen," *Undercurrent*, 2 February 1990, 12.

district system. Campbell had overseen the creation of regional districts in 1965. An offshoot of Campbell's 1983 review of the regional districts was a 1986 study of the governance of Bowen Island.²³¹ Campbell's Bowen Island report concluded that a new "special circumstance governance structure" was needed in the *Municipal Act* to "offer differing opportunities, powers, duties and obligations to suitably identified communities across the Province."²³² Of particular note was his firm belief that incorporation as a municipality was not a viable option for Bowen Island.²³³

Campbell's conclusion is interesting in comparison to a Ministry of Municipal Affairs study conducted on the governance structure on Bowen Island, also in 1986. This study, while not recommending incorporation, promoted the benefits of municipal incorporation for Bowen Island.²³⁴

A third study of Bowen Island's governance structure--the Bowen Island Local Government Restructure Study ("Bowen Island Study")--was undertaken in 1988 when a restructure committee was appointed and financed by the Ministry of Municipal Affairs. The seventeen committee members were appointed from sixteen island organizations representing

231 Dan Campbell, Chairman, Regional District Survey Committee, *Bowen Island Report* (Victoria: Queen's Printer, 1986).

232 Campbell, 5.

233 Campbell, 2.

234 Province of British Columbia, Ministry of Municipal Affairs, Policy and Research Branch, *Local Governance Structures on Bowen Island* (Victoria: Queen's Printer, 1986), 15-18.

different levels of government, and non-government agencies, as follows: regional government and associated programmes (GVRD); local government organizations (Islands Trust, advisory planning commission, nine improvement districts); and a local service organization (chamber of commerce). The restructure committee commissioned a private consultant to study local government options for Bowen Island. The options considered included the following: municipal incorporation, special island district incorporation, increased use of improvement districts for selected services, and creation of a local community commission.²³⁵ The study was not intended to recommend any one option, but merely to provide information to the public concerning different options.

For the purpose of this thesis, the Bowen Island restructure studies indicated that the fragmented structure of Bowen Island service delivery, the pressures of development, and the influence of other actors in the governance of the Islands Trust--federal and provincial governments, the GVRD, and numerous improvement districts--were factors which made it difficult for the Islands Trust to effectively fulfil its object to preserve and protect the Trust area.

235 Sussex Consultants Ltd., *Bowen Island Local Government Restructure Study*, prepared for the Bowen Island Restructure Committee (Victoria: Queen's Printer, 1989), 1.

A referendum in November, 1991, on the question of whether Bowen Island should choose municipal incorporation resulted in the islanders voting not to proceed with municipal incorporation. Indications of why the residents of Bowen Island rejected incorporation were suggested by an anti-incorporation pamphlet published prior to the referendum by the Bowen Island Improvement Association, a local community group opposed to incorporation: uncertainty concerning the cost of incorporation; provincial financial incentives to incorporate were a temporary "carrot" and might not last; taxes likely rising; Bowen would no longer be guided by the Islands Trust philosophy to preserve and protect the island; Bowen would lose the economies of scale for technical, clerical, legal, research and planning help from the Islands Trust; developers would be able to devote more energy, time and money to influence voters than would most other citizens; pro-development forces were strongly pro-municipality because they wanted local control of land use.²³⁶ Other reasons given for rejecting incorporation were that there was an insufficient population base to support a municipality, and the feeling that Bowen Island was still a rural community and was not yet ready for municipal status. The Islands Trust also took part in the

236 Bowen Island Improvement Association, *Facts About Municipal Incorporation* (Bowen Island, B.C.: Bowen Island Improvement Association, 1991); Bowen Island Improvement Association, *Ten Good Reasons For Saying NO to Municipal Government For Bowen*, pamphlet (Bowen Island, B.C.: Bowen Island Improvement Association, n.d.).

campaign leading up to the referendum and made its views known that the Islands Trust was opposed to incorporation because of the Trust's concerns that a municipality might not be compatible with the Islands Trust, the "preserve and protect" mandate might be lost, the Trust needed Bowen's tax base to support the work of the Trust, and the long-term integrity of the Trust might be damaged.²³⁷ These concerns continue to be important to the Islands Trust because they are questions that the 1989 revision of the *Islands Trust Act*, discussed in the following section, has not clarified. The revised *Islands Trust Act* contains provisions for some aspects of possible municipal incorporation in the Trust area, but more specific details concerning the relationship between a municipality in the Trust area and the Islands Trust, especially with respect to the Trust object, are not clear.

F. 1989 - 1990: Reform of the Islands Trust

1. Introduction

The events leading to the introduction of *Bill 78*, the *Islands Trust Act*, 1989,²³⁸ to the Legislative Assembly on July 12, 1989, were described above in section "E.3. Standing Committee Review and Report." This section describes the structure of the Islands Trust under the

²³⁷ Carol Martin, Islands Trust Chairperson, letter, *Undercurrent*, 8 November 1991, 6.

²³⁸ *Islands Trust Act*, S.B.C. 1989, c. 68.

revised *Islands Trust Act* and compares it with the organization of the Islands Trust before the revision. The revised Islands Trust is then analyzed with respect to characteristics of government. Significant events that affected the Islands Trust during this period are also discussed in terms of the government/governance dimension.

2. Structure of the Islands Trust

a. Generally

The explanatory note to *Bill 78, the Islands Trust Act, 1989*²³⁹ described the *Bill* as a comprehensive revision of the Islands Trust to preserve "the mandate of the Islands Trust while restructuring its organization to increase its effectiveness." The manner in which these goals were legislated in the revised *Islands Trust Act* began with s. 2 which continued the Islands Trust and Trust fund. The "preserve and protect" object of the Trust was continued in s. 3. The restructuring established four Islands Trust organizations pursuant to s. 4(1): the Trust council, the executive committee, the local Trust committees and the Trust fund board (see a summary of the Islands Trust legislative structure: Figure 1, p. 187). The following brief description of the structure and responsibilities of each of the Islands Trust agencies is intended to provide an overview of the organization of the Islands Trust. The

239 See Appendix 3 for the text of the *Islands Trust Act, S.B.C. 1989, c. 68.*

Figure 1. Islands Trust Legislative Structure

<u>Organization</u>	<u>Jurisdiction</u>	<u>Composition</u>	<u>Responsibilities</u>
Local Trust Committees	Local Governance	2 locally elected trustees and 1 member of the executive committee appointed by the chairperson of the Trust council.	<ul style="list-style-type: none"> Regulate development and land use in the local Trust area. Submit bylaws to the executive committee for approval, a local Trust committee may appeal to the Trust council. May enter into coordination agreements with municipalities, regional districts and boards of school trustees.
Trust Council	Trust Area Governance	All local trustees and 2 municipal trustees appointed by each municipality in the Trust area (presently there are no municipalities in the Trust area).	<ul style="list-style-type: none"> Establish general policies of the Islands Trust. Adopt a Trust policy statement. Adopt an annual budget. File an annual report. Appoint officers and employees. May undertake specified activities in s.8 of the Islands Trust Act for the purpose of carrying out the object of the Islands Trust. May enter into coordination agreements with specified government bodies.
Executive Committee	Trust Area Governance	1 chairperson and a minimum of 2 vice chairpersons elected by the Trust council from its members.	<ul style="list-style-type: none"> Carry out the daily administrative business of the Islands Trust. Consider bylaws submitted by local Trust committees. Act as the local Trust committee for areas not covered by a local Trust area or a municipality.
Trust Fund Board	Property Trust	1 member of the executive committee elected from its members by the executive committee; 2 persons elected by the Trust council from its members; and up to 3 persons appointed by the Minister of Municipal Affairs.	<ul style="list-style-type: none"> Administer Trust fund and manage the property of the Trust fund. Prepare a Trust fund plan. File an annual report.

Source: Islands Trust Act, S.B.C. 1989, c. 68, including 1994 amendments.

revised Islands Trust will then be analyzed with respect to formal characteristics of government.

b. Trust council

The Trust council established by the revised *Islands Trust Act* is comprised of local trustees and municipal trustees (s. 5).²⁴⁰ The two local trustees are elected from each of the "local trust areas": each of the thirteen major designated islands, or a designated island or group of islands not including municipal land.²⁴¹ The municipal trustees will be two members of each municipal council appointed annually by any municipal councils in the Trust area (s. 7(1)).

The function of the Trust council is described in s. 4(2) of the Act:

The trust council is intended to establish the general policies for carrying out the object of the trust and to be responsible for the financial management of the trust, other than financial management of the trust fund.²⁴²

The Trust council is responsible for the adoption of an annual budget and an annual report, formulation of a Trust policy statement, consideration of bylaws in certain situations and appointment of Islands Trust employees (s.

240 As of August, 1994, there are no municipalities incorporated in the Trust area.

241 See Appendix 4 for a list of the local trustees and executive committee members, 1993-1996.

242 *Islands Trust Act*, S.B.C. 1989, c. 68, s. 4(2).

8(1)). The Trust council may also make recommendations to Cabinet regarding specified activities regarding the object of the Trust (s. 8(2)).

The establishment of the Trust council in the revised *Islands Trust Act* formalized what had before the revision developed as an informal committee consisting of the twenty-six elected trustees from the thirteen designated islands.

c. Executive committee

The executive committee is comprised of one chairperson and at least two vice-chairpersons elected by the Trust council from among the Trust council members.²⁴³ The general duties of the executive committee are described in s. 4(3):

The executive committee is intended to carry out the daily business of the trust, to review the activities of the local trust committees and to act as a local trust committee for that part of the trust area that is not within a local trust area or municipality.²⁴⁴

More specifically, the executive committee is responsible for considering bylaws formulated by the local Trust committees and mandatorily submitted to the executive committee.²⁴⁵

243 *Islands Trust Act*, s. 18, as amended by the *Municipal Affairs Statutes Amendment Act, 1994*, S.B.C. 1994, c. 21, s. 36; *Islands Trust Regulation*, B.C. Reg. 119/90, s. 6.

244 *Islands Trust Act*, s. 4(3).

245 *Islands Trust Act*, ss. 19, 25, 34.

One member of the executive committee is appointed by the chairperson of the Trust council to sit with a local Trust committee (s. 21). An executive committee member cannot serve as the executive committee member for the local Trust committee that he or she serves as a local trustee. Travel and work load considerations also enter into the decision to appoint a particular executive committee member to a particular local Trust committee.

Bylaws formulated by the local Trust committees or a municipality in the Trust area are considered by the three executive committee members to, *inter alia*, ensure compliance with the Trust policy statement. If the executive committee does not approve the bylaw, the local Trust committee or municipality may refer the bylaw to the Trust council for approval (ss. 25 and 34). A municipality has a final appeal from the Trust council to the minister (s. 34).

d. Local Trust committees

The local Trust committees consist of the two trustees elected from the local Trust area and a member of the executive committee appointed by the chairperson of the Trust council (s. 21). The general responsibilities of the local Trust committees are set out in s. 4(4):

The local trust committees are intended to regulate the development and use of land within their local trust area by exercising powers conferred by this Act, including powers that would

otherwise belong to the regional district for each area.²⁴⁶

Therefore, the local Trust committees are specifically granted the powers of land use regulation that the local Trust committees under the previous *Islands Trust Act* had exercised, but the structure and procedure of the local Trust committees under the revised *Islands Trust Act* are different: instead of the three general trustees sitting with the local trustees, only one executive committee member sits on the local Trust committee with the two local trustees. However, the bylaws formulated by the local Trust committees are considered by the three executive committee members for approval. The significance of these procedural changes is discussed below in section "F.3. The revised *Islands Trust*--local self-government?"

e. Municipal councils

The revised *Islands Trust Act* provides for the possibility that municipalities may be incorporated in the Trust area, but none exist to date. The local Trust areas are defined in the *Islands Trust Act* as excluding land within a municipality which is within the Trust area.²⁴⁷

The Trust council includes two municipal trustees appointed annually by each municipal council from among its members (s. 7).

²⁴⁶ *Islands Trust Act*, s. 4(4).

²⁴⁷ *Islands Trust Act*, s. 1.

A municipal council must submit its bylaws to the executive committee if the bylaws relate to the adoption of a community plan that applies to land within the Trust area to the executive committee, or if no official community plan applies (s. 34). If the executive committee does not approve the bylaw the municipality may submit the bylaw to the Trust council. If the Trust council does not approve the bylaw the municipality has a final appeal to the minister for approval.

f. Trust fund board

The Trust fund board is established under the revised *Islands Trust Act* to administer the Trust fund and to manage the property of the Trust fund (s. 4(5)). The Trust fund board is comprised of up to six persons: one member of the executive committee elected from among its members by the executive committee; two persons elected by the Trust council from among its members; and up to three persons appointed by the minister.²⁴⁸

For the first provincial appointments to the Trust fund board, the Minister of Municipal Affairs requested that the Islands Trust suggest suitable candidates. The ministerial appointments have not yet been made.²⁴⁹

248 *Islands Trust Act*, S.B.C. 1989, s. 36, as amended by the *Municipal Affairs Statutes Amendment Act*, 1994, S.B.C. 1994, c. 21, s. 39.

249 Melinda Auerbach, Lasqueti Island trustee and executive committee vice chairperson, telephone interview, 15 August 1994.

The Trust fund board prepares a Trust fund plan and an annual report, and is able to acquire, hold and dispose of land and other property (s. 37). The activities of the Trust fund to date are described below in section "G. 1991 - Present: The Policy Reality".

3. The revised Islands Trust--local self-government?

Generally, the means by which the Islands Trust representatives are chosen under the revised *Islands Trust Act* have not been changed from the former *Islands Trust Act*, but the structural changes to the Islands Trust have important implications for the *representative* character of the Islands Trust. With respect to the local Trust committees, the former *Islands Trust Act* and the revised *Act* are similar in that two local trustees are elected for each of the local Trust committees, but instead of three general Trust committee members serving on each of the local Trust committees, now only one of the executive committee members sits with the local Trust committees. This change means that the two local Trust committee members have the majority control over local decisions in contrast to the previous situation where the three general trustees, sometimes seen as "outsiders", had the majority control over the two local trustees. The revision formalizes what had become the practice of the three general trustees under the former *Act* to defer to the local trustees if the local trustees agreed on the issue being discussed. The one executive committee

member on the local Trust committees assists in maintaining procedural accuracy and consistency and provides a comparative perspective from the other local Trust committees.²⁵⁰

This control of the local Trust committees by the local trustees strengthens the local accountability aspect of representation as the local Trust committee members are seen as responsible for the decisions made by a local Trust committee.²⁵¹ The accountability aspect of representation is also enhanced because of the more precise specification of responsibilities for the local Trust committees, the Trust council and the executive committee. This specification of responsibilities makes it more apparent in the legislation as to what organization has responsibility for what function.

This change in the representation of the local Trust committees was intended to increase the autonomy and accountability of the local Trust committees. A second reason for the change relates to the territorial aspect of representation. The transportation problems inherent in the geographically dispersed nature of an archipelago such as the Trust area previously meant that the three general trustees were faced with a demanding transportation

250 Graham Dinsdale, Bowen Island trustee and executive committee chairperson, personal interview, Bowen Island, 12 August, 1993.

251 On this point see the Saturna Island park controversy discussed below in "Section G. 1991 - Present: The Policy Reality".

schedule. Under the revised *Islands Trust Act*, the travel burden is reduced by the appointment of one executive committee member for a few, rather than all of the local Trust committees.

The local decision-making process described above is overseen by the Trust council and executive committee. Local governance by the Islands Trust in the Trust area is complicated by the statement in the object of the Islands Trust that the Trust is to address the interests the residents of the Trust area and of the Province generally. In addition to the representation of these two broadly defined interest groups, there was under the previous *Islands Trust Act* a tension between the interests of the local Trust committee areas and the interest of the Trust area as a whole.²⁵² The previous *Act* resulted in local decisions being made by the local Trust committees with the three general trustees present to represent the regional interest. Now, the revised *Act* strengthens the local autonomy of the individual local Trust committees by allowing local decisions to be made by the local trustees, but the regional interest is represented by the provisions allowing the Trust council to review the locally formulated bylaws to ensure conformity with the Trust policy statement (ss. 14 and 25).

252 "Trust system places onus on local level decision making," *Gulf Islands Driftwood*, 16 April 1986, 20.

The local and regional representative character of the Islands Trust is strengthened by the decrease in provincial control over local decisions. Under the revised *Islands Trust Act*, the minister is involved in land use bylaw approval only in the case of the amendment or adoption of a community plan bylaw (s. 25(b)) and if a municipality submits a bylaw to the minister after the Trust council has returned or refused to approve it (s. 34(4)).

In the former Act, the three general trustees had responsibility for general affairs relating to the Trust area as a whole. Under the revised Act, the Trust council, comprising all of the locally elected trustees and any municipal trustees, has responsibility over the general policy direction of the Islands Trust (ss. 4 and 8). Under the new legislation this is a significant change from the former Act as the Trust council sits as a regional body with the important responsibility of preparing a Trust policy statement (s. 13). In practice the Trust council formalizes the informal arrangement that had developed of the whole group of trustees meeting as a Trust council.

The provision for municipal trustees to be appointed to the Trust council by municipal councils in the Trust area means that if municipal incorporation takes place in the Trust then municipal trustees will be involved in decisions concerning the general policies of the Trust and the Trust's object (ss. 5 and 7). This provision ensures that representation is preserved in the Islands Trust for those

areas within the Trust area that, once incorporated, no longer fall within a local Trust area and so are not subject to the jurisdiction of a local Trust committee. Under the present *Islands Trust Act*, municipal councillors, while acting on the municipal council, are not bound by the object of the Trust. It is assumed, however, that in their role as municipal trustees on the Trust council, the municipal trustees will be subject to the same intention of the Act as the Trust council to establish the general policies for carrying out the object of the Trust. One of the ambiguous aspects of the new Islands Trust legislation is the question of how a municipal council will interact with the Islands Trust and the Trust's object to preserve and protect the Trust area.

Therefore, in terms of *representation* the Islands Trust has been revised to strengthen local representation and local accountability on the local Trust committees to attempt to increase local democratic decision-making on the islands. The Islands Trust is more of an autonomous, democratic local government; however, the Islands Trust also demonstrates regional governance in the provisions for the Trust council to oversee the general policies of the Trust and to develop a Trust policy statement that local Trust committees may not act contrary to or at variance with. The executive committee will oversee the local Trust committees in approving the local Trust committee bylaws.

These changes were the result, in part, of the formalization of the existing practice of Islands Trust governance of the islands in the practice of the local Trust committees and the informal Trust council.

With respect to *revenue-raising*, the revised *Islands Trust Act* provides for increased responsibilities and autonomy for the Islands Trust: the Trust council must adopt an annual budget (s. 8(1)(a)), which must be approved by the minister (s. 12). The cost of operations of the local Trust committees are covered in full by a property value tax (s. 43). The cost of operations of the Trust council and executive committee are funded in part in the same manner, but any municipalities in the Trust are also required to contribute to the financing of these operations. The provincial government contributes to the operation of the Trust fund board, executive committee and Trust council operations with a provincial grant. In the fiscal year 1990-1991, the provincial grant provided 30% of the total revenue of the Islands Trust, 63% was raised by the property tax, and 7% was earned through interest and other sources such as a charge for services and publications.²⁵³

Despite the increased responsibilities of the Islands Trust with respect to revenue-raising, the provincial government retains a large degree of involvement in the financing operations of the Islands Trust. For example, the

²⁵³ Islands Trust, *Annual Report 1990-1991* (Victoria: Queen's Printer, 1991), 21.

Trust council cannot incur liabilities or borrow money without the approval of the minister (s. 8(2)), the budget prepared by the Trust council has no effect until approved by the minister (s. 12(2)), and the Trust council is required to prepare and file with the minister an annual report (s. 17). The Trust fund may receive money and other property and receive grants from the federal or provincial governments or from private sources, but the Trust fund board may not incur liabilities or borrow money without prior approval of the minister (s. 37); investments are subject to approval by the minister and the Trust fund board may not acquire, hold or dispose of land other than with the approval of the minister in accordance with a Trust fund plan also approved by the minister (s. 40).

Therefore, although the Islands Trust achieves greater autonomy and responsibilities in revenue raising under the revised *Islands Trust Act*, the Islands Trust also promotes enhanced provincial government funding of the Islands Trust by referring to the provincial interest in the Trust's object: the need to respond to the interests of the residents of the Province generally. Policies supporting these provincial interests may be beyond the means of the local tax base.²⁵⁴ These responsibilities include long range planning such as the Trust policy statement, and special initiatives to carry out the object to preserve and

²⁵⁴ Islands Trust, *Islands Trust Annual Report 1990-1991* (Victoria: Queen's Printer, 1991), 3.

protect such as studies to identify significant areas of the Trust area. In attempting to carry out the object, the Islands Trust is leery of being put in the position of having to sacrifice that object, that is, to allow development to increase the tax base to raise sufficient funds to support the object.

With regard to *authority*, the responsibility of the Islands Trust for land use planning and regulation under Part 29 of the *Municipal Act* is continued (s. 27). The authority of the Islands Trust has been increased by the provisions of the revised *Islands Trust Act* relating to increased administrative autonomy (s. 15), increased control of the Trust budget (s. 12), adoption of a Trust policy statement (s. 13), and the administration and preparation of a plan for the Trust fund (ss. 37 and 40). These changes also address a second aspect of authority, the practical ability of the Trust to carry out its responsibilities. In this respect the amendments attempt to address the concern that the trustees had been spending too much time on land use regulation and administration and not enough time on their environmental stewardship role to preserve and protect the islands.²⁵⁵ Hornby Island local trustee, John Fletcher, expressed this sentiment as follows:

As a trustee there are so many things to do you
spend a lot of time having to deal with immediate

²⁵⁵ "Trust's role topic at Galiano meeting," *Gulf Islands Driftwood*, 10 June 1987, 1.

situations, you are too busy travelling down to Victoria dealing with nuts and bolts and it is very difficult to sit back and come up with planning for changes.²⁵⁶

Therefore, the revised Act provides for the responsibility to appoint staff and budget accordingly, reduces the travel necessary for the executive committee members who sit on the local Trust committees, provides for the administration of the Trust fund and the preparation of the Trust policy statement. Recall that the regional plan developed by the Islands Trust in 1983 shortly before regional plans were rescinded by the provincial government was adopted by the Trust as the Islands Trust policy statement, but the policy statement did not have legal effect. In the new Act the Trust policy statement gives a regional perspective to planning. The relationship between the Trust policy statement and the official community plans is analyzed below in section "G.2. The Islands Trust policy statement."

In terms of *autonomy*, Minister of Municipal Affairs Rita Johnston stated that the autonomy of the Islands Trust would be enhanced by the 1989 revision of the *Islands Trust Act*.²⁵⁷ NDP Municipal Affairs critic Robin Blencoe, however, replied by pointing to the requirement that the minister approve "local community plans, municipal bylaws that the trust refused to approve, and trust fund plans" and

²⁵⁶ John Fletcher, Hornby Island local trustee, personal interview, Hornby Island, 11 August 1993.

²⁵⁷ Statements of Rita Johnston, *B.C. Hansard*, 17 July 1989, 8609-8614.

the provision for ministerial appointments to the Trust fund board.²⁵⁸ The minister retained these powers of review in the revised *Islands Trust Act*, but this was an increase in autonomy for the Islands Trust from the former Act. Under the former *Islands Trust Act* ministerial approval was also required for bylaws regulating the use or subdivision of land within the Trust area.²⁵⁹ The new provisions requiring approval of community plans by the minister equate the Islands Trust with the regional district community plan adoption procedure. In the case of municipalities, a community plan does not require the approval of the Minister.²⁶⁰

Other provisions of the revised *Islands Trust Act* relating to ministerial influence on the Islands Trust that may affect the autonomy of the Islands Trust include the requirement of ministerial approval for entering into agreements with provincial agencies (s. 8 (2)(a)); acquiring and disposing of land (ss. 8(2)(b) and 40); incurring liabilities or borrowing money (s. 8(3) and s. 37(3)); adopting an annual budget (s. 12(2)); ensuring the binding nature of the Trust policy statement over local Trust committee bylaws (s. 13(2)(c)); and adopting or amending a community plan (s. 25(2)(b)). Thus, the minister retains

258 Statement of Robin Blencoe, *B.C. Hansard*, 13 July 1989, 8529.

259 *Islands Trust Act*, S.B.C. 1974, c. 43, s. 8(1)).

260 *Municipal Act*, ss. 948 and 947, respectively.

the power of approval over many of the Trust's activities. Under the former Act the formal authority of the minister to overrule the Islands Trust under the appeal provisions was rare, but the Islands Trust was hampered by the appeal procedure because when appeals were made to the minister, the minister would often request clarification of the matter from the Islands Trust.²⁶¹

The minister as an avenue of appeal is reduced in the revised *Islands Trust Act*. The only formal appeal process allows municipalities to appeal to the minister if the Trust council refuses to approve a municipal bylaw (s. 24(4)).

The minister provides for a strong provincial presence on the Trust fund board with the provision for up to three provincial appointments, and a supervisory role with the audit power (ss. 36 and 41).

An important change in the revised *Islands Trust Act* is the authority of the Islands Trust to appoint officers and employees. In exercise of this newly granted independence the Islands Trust has moved into its own office in Victoria and has opened an Islands Trust office on Salt Spring Island with four staff members. This important aspect of autonomy has allowed the Islands Trust to hire new staff in the areas of management, policy and research, local planning,

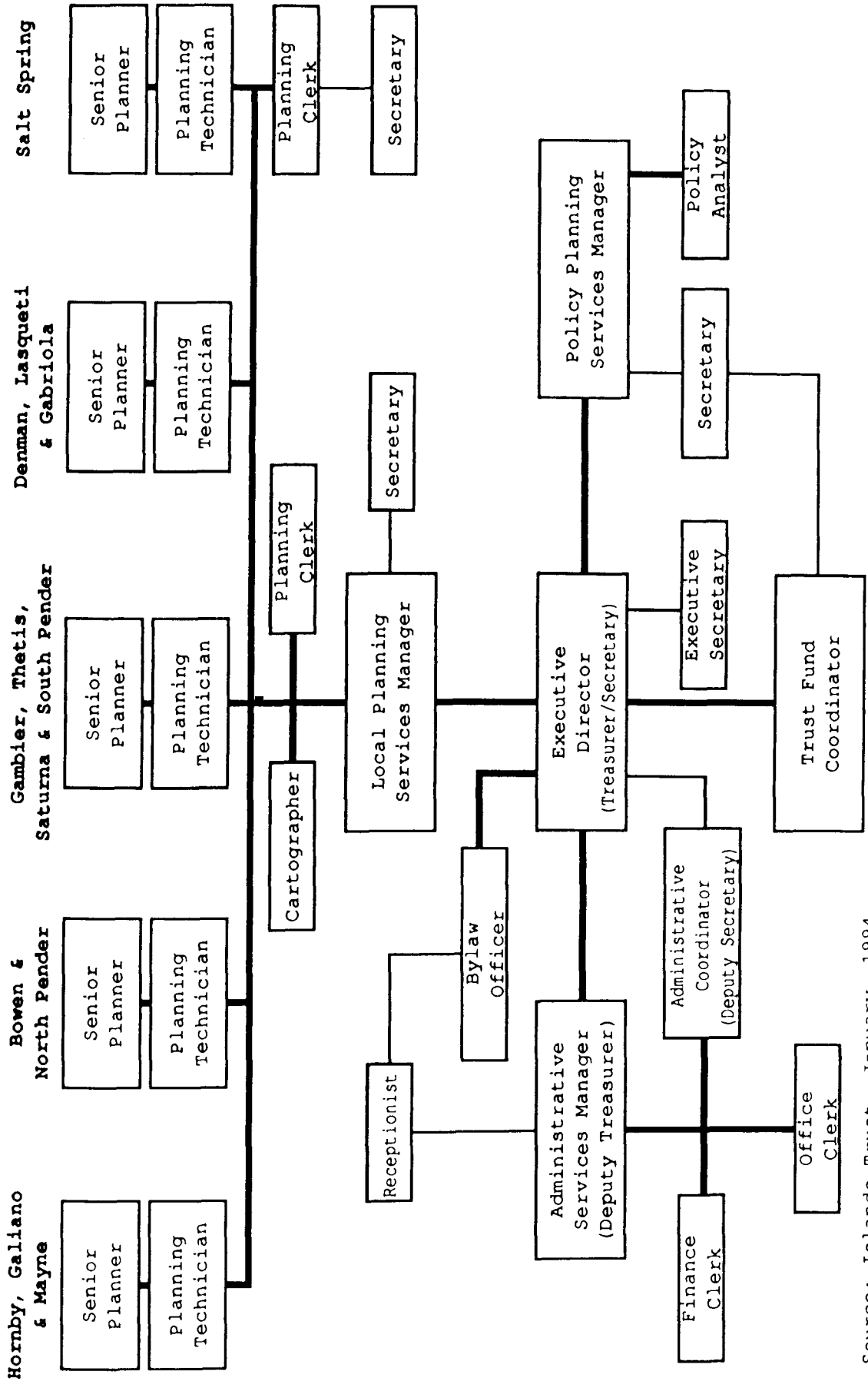
261 Recall the comments of former Islands Trust chairman Nick Gilbert above in section "A. 1974-1976: Islands Trust established," regarding ministerial involvement in the Islands Trust, usually to clarify Islands Trust policies in response to complaints about the Islands Trust.

administration, clerical and bylaw investigation²⁶² (see Figure 2: Islands Trust Staff Organization Chart, p. 205). The number of staff increased from the five employees left after the transfer of the Islands Trust staff to the Ministry of Municipal Affairs in 1985, to the present twenty-eight positions indicated on the organization chart. This fact alone provides evidence of the significance of the 1989 revision of the Islands Trust because the large increase in the number of Islands Trust staff is in dramatic contrast to the present general climate of government attempts to control the size of government and reduce government spending. This greater independence for the Islands Trust increases the Trust's ability to develop, implement, and enforce Islands Trust policies.

The provincial government retained the right to provide direction to the Trust under s. 8(1)(f). The government had not taken advantage of this provision of the former *Islands Trust Act*. This is another example of how the *Islands Trust Act* provided the provincial government with formal powers of control over the Islands Trust, but the formal power was rarely exercised and the Trust operated with little day to day interference from the provincial government, except for the ministerial requests for policy clarification in response to appeals noted above.

262 Islands Trust, *Islands Trust Annual Report 1990-1991* (Victoria: Queen's Printer, 1991), 16.

Figure 2. Islands Trust Staff Organization Chart



Source: Islands Trust, January, 1994.

The Trust's ability in terms of the *capacity to coordinate* other government agencies in the Trust area has been enhanced under the revised *Islands Trust Act*. Under the previous Act there were no formal provisions for the Trust to enter into agreements with other provincial agencies regarding other agencies' activities in the Trust area aside from the Trust's ability to recommend coordination of government policies in the Trust area. Under that authority the Islands Trust had been developing protocol agreements on an informal basis,²⁶³ for example, with the Ministry of Environment, Lands and Parks relating to Crown land disposal and lease agreements and with the Ministry of Transportation and Highways relating to road standards.²⁶⁴ The Islands Trust continued to encounter problems associated with its lack of authority to coordinate other government agencies in the Trust area. For example, a new ferry terminal for Isabella Point, Salt Spring Island was announced in April, 1989, by Minister of Transportation and Highways Neil Vant, without consultation with the Islands Trust.²⁶⁵ The revised *Islands Trust Act*

263 Alan Osborne, former Islands Trust planner, presently Manager, Policy and Research Branch, Ministry of Municipal Affairs, Recreation and Housing, personal interview, Victoria, 18 August 1993.

264 See the discussion of the Saturna Island park controversy in "Section G. 1991 - Present: The Policy Reality," below regarding the continuing intransigent attitude of the Ministry of Transportation and Highways regarding the imposition of provincial road standards on the Gulf Islands.

265 See "Islanders condemn absence of process," *Gulf Islands Driftwood*, 5 April 1989, A1; "Ferry 'decision' an opportunity," editorial, *Gulf*

strengthened the Islands Trust in this regard by allowing the Trust council, subject to approval by the minister, to enter into coordinating agreements with provincial agencies (s. 8(2)(a)). The less formal powers of recommending and coordinating government policies in the former Act were continued in the revised Act (s. 8(2)(c) and (f)). The Islands Trust has been taking advantage of these new provisions, see the discussion of negotiations on protocol agreements with provincial agencies in the following section "G. 1991-Present: The Policy Reality."

The revised *Islands Trust Act* came into force on April 1, 1990. The Islands Trust continued with its land use regulation operations, but the Islands Trust also was working to set up an independent Islands Trust office and to undertake work to develop administrative policies and procedures for the new organizations and responsibilities established by the revised *Islands Trust Act*. The first annual report of the Islands Trust council described the work of the Trust in reorganizing under the revised Act. A new main office was established in Victoria, a branch office was established on Salt Spring Island, and trustee meeting offices were opened on Bowen Island and Gabriola Island. The Islands Trust council established administrative policies and procedures and began preliminary work for the

Islands Driftwood, 5 April 1989, A3; "Report faults Ferries for not listening," *Gulf Islands Driftwood*, 12 July 1989, A1.

process of developing an Islands Trust policy statement.²⁶⁶ The executive committee developed procedures for reviewing local Trust committee bylaws.²⁶⁷ The local Trust committees continued their land use regulation functions and developed procedures for new functions under the revised *Islands Trust Act*, for example, under s. 27, the regulation of mobile home parks, and campgrounds and soil and gravel bylaws.²⁶⁸

The Islands Trust fund was also involved in setting up procedures and an administrative framework and began work on the Islands Trust fund plan.

Some of the Islands Trust activities demonstrated how the Islands Trust was able to govern more effectively than what was apparent in the formal authority provided for in the *Islands Trust Act*. For example, in terms of capacity to coordinate, the Trust fund established linkages with organizations such as the Nature Conservancy of Canada, the Niagara Escarpment Fund, the West Coast Islands Conservancy, Turtle Island Earth Stewards, Galiano Conservancy Association, and other local non-government community groups.²⁶⁹ The Trust fund board also developed in the Trust fund plan, policies to extend the Trust fund influence beyond merely holding land in trust. For example, by

²⁶⁶ Islands Trust, *Islands Trust Annual Report 1990-1991* (Victoria: Queen's Printer, 1991), 16.

²⁶⁷ *Ibid.*

²⁶⁸ *Ibid.*

²⁶⁹ *Ibid.*, 25.

identifying significant areas and encouraging private landowners to take an informal or a more formal legally binding stewardship role over their land the Trust fund board recognized that more of the significant areas and features of the Trust area could be protected than the Trust fund board alone could protect through acquisition or regulation.²⁷⁰

These activities of the Islands Trust and the Islands Trust fund demonstrated that the Trust was taking full advantage of its new powers. These primarily administrative and organizational changes alone, by expanding the Trust's staff and developing procedures for the newly constituted bodies of the Islands Trust, signalled a dramatic change in the Trust, a revitalization and the possibility of significant substantive progress in the work of the Trust towards its object to preserve and protect the Trust area. That was the policy promise of the 1989-1990 changes to the Islands Trust.

G. 1991 - Present: The Policy Reality

1. Generally

Premier Bill Vander Zalm resigned on April 2, 1991, due to conflicts of interest and Rita Johnston was elected by the Social Credit party as interim leader. The provincial general election of October 17, 1991, resulted in the NDP

²⁷⁰ Islands Trust, Islands Trust Fund Board, *The Islands Trust Fund Plan* (Victoria: Queen's Printer, 1992), 8.

gaining power for the first time since the party's term in office from 1972-1975 when the original *Islands Trust Act* was enacted in 1974. NDP leader, Michael Harcourt, had previously served as Vancouver mayor and he was also a frequent visitor to the Gulf Islands as an owner of land on North Pender Island. Therefore, the new Premier had a familiarity with municipal issues and the Gulf Islands. Robin Blencoe, who had served as Municipal Affairs critic, was appointed as the NDP's Minister of Municipal Affairs. The attitude of the NDP to the Islands Trust compared to the previous Social Credit government, in the opinion of Lasqueti Island trustee Melinda Auerbach, is that the government and its agencies have been more communicative and generally more aware of the Islands Trust. The NDP in power, however, is subject to the same constraints as any provincial government with a wide variety of issues and agendas to address.

The provincial government's financial support of the Islands Trust has decreased since the NDP was elected. The provincial grant to the Island Trust remained at \$494,145 for the fiscal years 1990/91, 1991/92, and 1992/93, representing 30%, 26%, and 20% of the Trust's revenue, respectively.²⁷¹ The 1994 provincial grant has been reportedly reduced by over \$20,000.²⁷² Thus, the NDP, who

²⁷¹ Islands Trust, *Islands Trust Annual Reports 1990-1991, 1991-1992, 1992-1993* (Victoria: Queen's Printer, 1991, 1992, 1993), 3.

²⁷² Melinda Auerbach, Lasqueti Island trustee and executive committee vice chairperson, telephone interview, 15 August 1994.

are responsible for the 1992/93 fiscal year and later, held the provincial grant to the Islands Trust at the same level as the previous year in their first year in office--a drop in real terms--and then decreased the grant in their second year in office.

The NDP took office eighteen months after the revised *Islands Trust Act* came into force on April 1, 1990. Therefore, it would not be expected that any substantial amendments to the Act would occur until the structural and administrative changes arising out of the legislative revision had time to be organized and implemented. The Islands Trust itself reviewed the *Islands Trust Act* in 1992 and requested amendments to the Act. Some of these requests were implemented in 1994. These amendments are discussed after the following discussion of the activities of the Islands Trust in the 1991-1993 period.

The Islands Trust activities in 1990, the first year under the revised *Islands Trust Act*, besides the continuing provision of land use regulation services, were described above as developing administrative procedures for the implementation of the amendments to the *Islands Trust Act*. The 1991/1992 Islands Trust annual report described the Islands Trust as continuing to clarify these procedures relating to the operation of the different organizations in the Islands Trust.

The Trust council established the following four Trust council committees to investigate, develop policies and report on subjects within their areas of responsibility: the servicing/local planning committee; the finance committee; the sustainable communities committee; and the environmental planning committee.

The 1992/1993 annual report described more substantive activities of the Islands Trust in the exercise of its new powers under the revised *Islands Trust Act*. A program was developed to review the islands' official community plans. The Islands Trust assisted the Ministry of Environment, Lands and Parks in groundwater pilot studies within the Trust area as part of the reform of the ministry's water management policies and legislation.²⁷³ A protocol agreement was negotiated with the Ministry of Transportation and Highways. This agreement was significant because it addressed a long-standing concern of the Islands Trust that provincial road standards are not necessarily appropriate to the rural environment that the Trust is attempting to preserve and protect. This agreement provided a special road standard for the Trust area. The negotiation of the road standard agreement provided evidence that the formal provisions of the revised *Islands Trust Act* regarding the authority of the Trust council to enter into such agreements has been effective in providing the Trust with a formal

²⁷³ Islands Trust, *Islands Trust Annual Report 1992-1993* (Victoria: Queen's Printer, 1993), 10-13.

capacity to coordinate other agencies' policies and activities in the Trust area where the Trust has been unsuccessful in the past. The Trust is now negotiating for agreements with B.C. Lands, B.C. Parks, B.C. Hydro and B.C. Ferries.²⁷⁴

The Trust fund board evaluated proposals for property acquisition and registered a conservation covenant²⁷⁵ to protect a marsh and a profit a prendre²⁷⁶ to protect trees on parcels of land on Salt Spring Island.²⁷⁷ The Trust fund board also accepted donations of land on Salt Spring Island and Denman Island totaling 25.9 hectares of land.²⁷⁸

274 *Ibid.*, 13.

275 The Islands Trust Fund Plan describes conservation covenants as restrictions on the use of land which under the *Property Purchase Tax Amendment Act* allows for property purchase tax exemptions for land subject to a covenant that specifies protection, preservation or conservation of land or a specific amenity of land "provided the covenant is in favour of the Crown (or the Trust Fund Board) ...". See this and other conservation strategies described by the Trust fund plan: Islands Trust, Islands Trust Fund Board, *The Islands Trust Fund Plan* (Victoria: Queen's Printer, 1992), 9-12.

276 A profit a prendre allow a property owner to assign "certain rights such as the right to the trees on the property to another individual or agency such as the Trust Fund Board. The assignee then has the right to control cutting of the trees" and the profit a prendre is registered on the title of the property. See Islands Trust, Islands Trust Fund Board, *The Islands Trust Fund Plan* (Victoria: Queen's Printer, 1992), 11.

277 Islands Trust, *Islands Trust Annual Report 1991-1992* (Victoria: Queen's Printer, 1992), 10.

278 Islands Trust, *Islands Trust Annual Report 1992-1993* (Victoria: Queen's Printer, 1993), 15.

2. The Islands Trust policy statement

A priority of the Islands Trust following the coming into force of the revised *Islands Trust Act* was the development of an Islands Trust policy statement. The importance of the Trust policy statement to the Islands Trust is evident from the description of the policy statement in the *Islands Trust Act* as "a general statement of the policies of the trust council to carry out the object of the trust."²⁷⁹ The policy statement also plays an important role as one of the links between the local Trust committees and the more regional Islands Trust organizations--the executive committee and the Trust council.

The process of development of the policy statement included sixteen public forums held on the islands and in Vancouver and Victoria in 1992. The purpose of the public forums was to develop "a statement of fundamental public values regarding the Trust area and the public's concerns and hopes for the future of the area."²⁸⁰ The forums attracted over 1200 participants. The key themes identified in the forums were the following: planning and management of fresh water supplies; the stewardship of resources and the environment; the management of growth and development; the importance of community values and the rural atmosphere of

²⁷⁹ *Islands Trust Act*, S.B.C. 1989, c. 68, s. 13(2)(a).

²⁸⁰ Islands Trust and Dovetail Consulting Inc., *Summary Report on the Islands Trust Public Forums: These Islands of Ours ... Framing Our Common Future* (Victoria: Queen's Printer, 1992), 2.

the islands; local control in decision-making; and government and the role of the Islands Trust.²⁸¹ The articulation of these themes demonstrated the importance of environmental issues to the public forum participants. The final two themes noted--local control in decision-making, and government and the role of the Islands Trust--are the most relevant for the purpose of this study. The discussion of these two themes at the forums expressed a resentment of the remoteness of the Islands Trust office in Victoria and the feeling that the Trust staff did not understand community needs. There was strong support voiced for the efforts of the local trustees, but that the Trust should be empowered in the following ways:

... to protect the interests of island residents in competition with outside interests; to avoid caving in to political pressures for development; to control development and protect the environment, especially in relation to foreshore use, pollution, logging and groundwater; and to pursue island priorities through interaction with powerful agencies like B.C. Ferries. Some suggested that the Trust's resources should be increased and that its responsibilities should be expanded to include forests, highways and water supply.²⁸²

With regard to government structure, the report of the forums identified the expression of frustration concerning

281 *Ibid.*, 27-33.

282 *Ibid.*, 32.

"the division of responsibilities between the Trust and the regional districts."²⁸³

Therefore, in terms of formal characteristics of government, the key problems concerning the Islands Trust identified at the public forums were the weakness of the representation and accountability of the Trust bureaucracy to islanders; and the Islands Trust's lack of authority and capacity to coordinate other agencies in important policy areas impacting the Trust area environment such as B.C. Ferries, forestry, highways and water.

The Trust policy statement, as a general strategy for land use planning in the Trust area, is essentially a regional plan by another name and it is another example of how an aspect of the governance of the Trust area by the Islands Trust has now been formalized in the *Islands Trust Act*. Recall that the Trust had been working towards completion of a regional plan for the Trust area in 1983 when the provincial government rescinded all regional plans and removed the power to develop regional plans from the regional districts and the Islands Trust. The Trust then adopted that document as the policy of the Islands Trust. The process of development of the 1994 Trust policy statement is a contemporary version of the process of public participation undertaken in the late 1970s and early 1980s

²⁸³ *Ibid.*, 33.

to develop a regional plan for the Trust area before regional plans were rescinded in 1983.

Following the 1992 public forums a draft Trust policy statement was prepared for public review and comment. The draft Trust policy statement ignited a great deal of criticism of the Islands Trust. The criticism was based on the perception that the Islands Trust was placing too much emphasis on conservation and not enough emphasis on people. Sentiments expressed by critics of the draft Trust policy statement included that seen on bumper stickers: "Protect me from the Islands Trust!" A new publication was established, *The Liberator*, the philosophy of which is perhaps best revealed by the following front page quote regarding the Trust policy statement:

Surely a more bizarre combination of reasonably level-headed land-use-planning prose on the one hand and fatuously banal and sentimentally pseudo-scientific ecological claptrap on the other has never been published by another government agency in the whole of Canada.²⁸⁴

The public support for environmental protection demonstrated at the public policy forums, contrasted with the critical public reaction to the draft Trust policy statement, demonstrated the difficult balance that the Islands Trust faces in attempting to fulfil its object to preserve and protect the Trust area--a balance made difficult by the

284 "Blue Peter Meeting Sets Course," *The Liberator*, 1 No. 2, September 1993, 1.

philosophical and legal constraints involved in the Trust's attempts to address communal concerns for environmental protection and the control of development, while respecting individual freedoms and the property rights of land owners.

The draft Trust policy statement referred to the purpose of the document as being "to establish a conservation oriented vision for the future of the Islands Trust Area ...".²⁸⁵ The Islands Trust reacted to the criticism of the draft version and prepared a revised draft that demonstrated a less conservation-oriented purpose. The revised draft Trust policy statement and the final version referred to the purpose of the document as being "to establish a vision for the future of the Islands Trust Area ...".²⁸⁶

The substantive parts of the policy statement-- ecosystem preservation and protection, stewardship of resources, and sustainable communities--reveal the broad scope of the Trust object, but the policies promoted by the Trust policy statement in these areas are carefully worded as policy "directives" to local Trust committees that must be "addressed" in the official community plans and bylaws and in municipalities' official community plans (when

285 Islands Trust, *Draft Islands Trust Policy Statement* (Victoria: Queen's Printer, 12 May 1993), iii.

286 Islands Trust, *Revised Draft Islands Trust Policy Statement* (Victoria: Queen's Printer, 1 October 1993), 1; Islands Trust, *Islands Trust Policy Statement, Islands Trust Council Bylaw No. 17* (Victoria: Queen's Printer, 11 June 1994), 1.

municipalities exist in the Trust area). The Trust policy statement also includes policy "recommendations" to other governmental and non-governmental organizations and private persons, reflecting the Islands Trust lack of authority in these areas. Finally, the Trust policy statement includes policy "commitments" of the Trust council itself, the policies meant to reflect the Trust council's position or philosophy on the indicated matters. This wording is important because the original draft policy statement's mandatory directives to the local Trust committees suggested a view of the Islands Trust as a federation with a strong regional overview of the local Trust committees; however, the final policy statement suggests a confederation with relatively independent local Trust committees with the common policy guide of the Trust policy statement. For example, the draft policy statement, in referring to policies for ecosystem preservation and protection, proposed to establish the following policy with respect to forest ecosystems:

Local trust committees and municipalities shall protect the unfragmented forest ecosystems in their planning area from potentially adverse impacts of growth, development and land use through patterns of road and land use and the establishment and/or maintenance of parcel sizes which are large enough to sustain the forest ecosystem and contain and sustain the forests' characteristic species.²⁸⁷

²⁸⁷ Islands Trust, *Draft Islands Trust Policy Statement* (Victoria: Queen's Printer, 12 May 1993), 7.

Contrast this wording with the provision in the final policy statement referring to the same subject matter:

Local trust committees and, where applicable, municipalities shall, in their official community plans and regulatory bylaws, address the protection of unfragmented forest ecosystems in their planning area from potentially adverse impacts of growth, development and land-use.²⁸⁸

Although the final policy statement is more muted than the draft version in its directions to local Trust committees and municipalities in the substantive provisions of the policy statement, the final version maintains a directive approach in defining the role of the local Trust committees in the Trust area. Thus, the definition of the local Trust committees' role includes the instruction to local Trust committees that "directive policies identify matters which must be addressed in the official community plans and regulatory bylaws ..." and "the official community plans must contain policies that implement the policy statement by Trust Council unless the local trust committee sets out explicitly in the plan the reasons and justification for local policies that do not do so."²⁸⁹

The definition of this relationship between the policies of the Trust council as established in the Trust policy statement, and the local Trust committees and the

²⁸⁸ Islands Trust, *Islands Trust Policy Statement* (Victoria: Queen's Printer, 1994), 9.

²⁸⁹ *Ibid.*, 3.

municipalities, is not clear in the *Islands Trust Act*. The *Act* lists the responsibilities of the Trust council, which include s. 8(2)(h): "assign duties to the executive committee and to the local trust committees." Therefore, an important question is to what extent the Trust council may control the substantive activities of a local Trust committee if the Trust council assigns a duty to a local Trust committee? One suggestion is provided by the 1994 amendments to the *Islands Trust Act*.²⁹⁰ The amendments include a section that allows the Trust council to establish procedures for the local trust committees, but the section relates exclusively to procedural matters, not substantive matters.

Another provision of the *Islands Trust Act* relating to the relationship between the Trust council and local Trust committees is s. 13, which deals with the Trust policy statement. The Trust policy statement is described in s. 13 as a "general statement of the policies of the trust council to carry out the object of the trust." Section 13 also states that a bylaw prepared by a local Trust committee "shall 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." "Contrary"

²⁹⁰ See the discussion below concerning the *Municipal Affairs Statutes Amendment Act, 1994*, s. 35, in section "G.6. 1994 amendments to the *Islands Trust Act*."

may be defined as "opposite in direction",²⁹¹ and "variance" as "conflicting."²⁹² Therefore, if the executive committee or Trust council do not approve a local Trust committee's bylaw, the wording of the *Islands Trust Act* indicates that this refusal must be based on a conflict between a local Trust committee bylaw and the Trust policy statement. Contrast this need for a conflict with the interpretation by the Trust policy statement that a bylaw will not be approved if the local Trust committee has not *addressed* or *implemented* the policy of the Trust policy statement. Therefore, it appears that the Trust policy statement will attempt to hold the local Trust committee bylaws to a higher standard of compliance with the Trust policy statement than the *Islands Trust Act* indicates.

The following comments of Graham Dinsdale, Bowen Island local trustee and executive committee chairperson, regarding the relationship of the Trust policy statement with the local Trust committees, are less supportive of the strong directive approach of the Trust policy statement to the local Trust committees:

The policy statement will be a general statement of policies that will be applicable throughout the Trust area and the official community plans will need to fit within that framework.... For the most part the policy statement will be pretty much a reflection of what is already in official

291 J.B. Sykes, ed., *The Concise Oxford Dictionary*, 7th ed. (Oxford: Oxford University Press, 1982), 205.

292 *Ibid.*, 1188.

community plans and the old policy statement. Hopefully it will be a little stronger in things like the preservation of ecologically sensitive areas and wetlands.

In doing official community plans, local Trust committees will have to address those issues, not that they will have to do anything specific about them but they will have to address the issue of the preservation of wetlands on their island and the quality and quantity of water and things like that.

What the policy statement cannot do is direct the local Trust committees in terms of land use planning and zoning because they are a separate corporate entity and they have that ability to do those zoning and planning functions.... The first draft of the policy statement said you must identify all ecologically sensitive areas and use every means within the disposal of the Trust committee to protect them, but there you are restricting the local committees' work program, they cannot do anything until they have identified all these wetlands and then gone to every measure to protect them and you cannot do that, all you can do is address the issue.... That function of land use is a local community issue and there is very little that the policy statement can do that can disenfranchise people from the use of their land.²⁹³

Dinsdale's comments are interesting in his references to the inappropriateness of the mandatory directives of the first draft of the policy statement, and the role of local autonomy in decisions regarding land use. Thus, Dinsdale's view of the relationship between the Trust policy statement and the local Trust committees suggests more local autonomy for the local Trust committees than what the Trust policy statement defines as the role of the local Trust committees in relation to the Trust policy statement.

293 Graham Dinsdale, Bowen Island trustee and executive committee chairperson, personal interview, Bowen Island, 12 August 1993.

The provisions of the *Islands Trust Act* relating to the relationship between municipalities and the Trust council and Trust policy statement are also important because the Trust Council does not have the authority to assign duties to a municipality in the Trust area and a municipality has a further appeal to the minister that a local Trust committee does not have. If the executive committee and the Trust council do not approve a municipality's bylaw, a municipality may appeal to the minister.²⁹⁴

Therefore, the debate concerning the Trust policy statement highlights the problems inherent in increasing the local autonomy of the local Trust committees and also providing for a regional overview of the Trust area by the Trust council and the Trust policy statement. The preceding discussion of the relevant provisions of the *Islands Trust Act* indicate that the Act does not adequately clarify this relationship.

Despite this need for clarification, and despite the criticisms of the final version of the Trust policy statement that it was "gutted" or watered down after the furore over the draft version,²⁹⁵ it is still premature to evaluate whether the Trust policy statement has been, or will be, successful. The articulation of a vision in the Trust policy statement--or a regional plan for the Trust

294 *Islands Trust Act*, S.B.C. 1989, c. 68, s. 34(4).

295 Glavin, 9.

area--is a positive step in the governance of the Trust area. The real test of the Trust policy statement as a general strategy for land use planning will be how the Islands Trust organizations and the Trust policy statement interact in the following ways: whether the local Trust committees effectively "address" the policies of the Trust policy statement in their bylaws and official community plans; whether the executive committee effectively reviews local Trust committees' bylaws, and municipal councils' bylaws, to ensure that these bylaws are not contrary to or at variance with directive policies of the policy statement; and whether government agencies and non-government organizations cooperate in using the Trust policy statement as a guide for their activities in the Trust area.

On September 15, 1993, Darlene Marzari replaced Robin Blencoe as Minister of Municipal Affairs.

The Islands Trust had reviewed the *Islands Trust Act* and developed a list of requested amendments. In 1994, some of the amendments that the Islands Trust requested were contained in Bill 25, the *Municipal Affairs Statutes Amendment Act, 1994*. Bill 30, the *Heritage Conservation Statutes Amendment Act, 1994*, also amended the *Islands Trust Act*. Other requested amendments such as clarification of the relationship between any future municipalities in the Trust area and the Islands Trust, have not yet been proceeded with by the provincial government. The amendments to the *Islands Trust Act* in Bills 25 and 30 are described

briefly below after the following four issues are discussed: the Salt Spring Island restructure study, Galiano forestry, the Greater Vancouver Regional District and Bowen Island, and the Saturna Island park controversy.

3. Salt Spring Island restructure study

The Salt Spring Island Local Government Options Study ("Salt Spring Island Study") was established in similar fashion to the Bowen Island Study described above. Questions had been raised on Salt Spring Island about the efficiency of the local governance situation on Salt Spring Island, including concerns about the effectiveness of the Capital Regional District and the Islands Trust in responding to the island's problems. These concerns prompted the Ministry of Municipal Affairs to establish a committee which was appointed by the Islands Trust trustees and the Salt Spring Island Regional Director of the Capital Regional District. The Salt Spring Island Study was conducted in 1992 and 1993 and considered a number of local government options for Salt Spring Island, including the following: status quo, local community commission; special island municipality; district municipality; Islands Trust-exempt municipality. The purpose of the exercise was to provide residents with an idea of how different options compared to each other in terms of functions, representation, and financial implications.

For the purpose of the present study, the Salt Spring Island Study is useful for the comments from islanders concerning Salt Spring Island local governance generally, and the Islands Trust specifically. The Salt Spring Island Study Committee held a number of workshops on the island to attempt to determine what issues people were concerned about. One general concern reportedly voiced was the difficulty some residents had in determining what organization is responsible for what decisions and services. Some of the comments regarding the Islands Trust were reported to include the following: the residents generally supported the Islands Trust concept, especially the "preserve and protect" mandate, but there were some questions and concerns, including the following: the representation of Salt Spring Island in the Trust; Trust meetings being held off-island; overworked trustees; whether the Trust's purpose was service-oriented, environmental protection, or coordination of local agencies; the cost-effectiveness of the Trust; and whether the Trust is a regional or local body.²⁹⁶ This was merely a workshop soliciting views and not a study of residents' opinions concerning the Trust, but despite this caveat the comments are interesting in the support shown for the Islands Trust and the concerns regarding representation and accountability

296 Province of British Columbia, Ministry of Municipal Affairs, *Salt Spring Island Local Government Options Study: A Guide to Local Government Services on Salt Spring Island - The Overview* (Victoria: Queen's Printer, 1992), Part II, 1-2.

of the Islands Trust. These questions are of crucial importance to the Islands Trust because the more populated islands such as Salt Spring and Bowen contribute a large proportion of the revenue necessary to fund the operations of the Islands Trust. The operations of the Islands Trust include local and regional initiatives benefitting the less populated islands--planning and preservation initiatives supporting the Islands Trust's object which could not be supported independently by the less populated islands in the Trust area.

The Bowen Island Study eventually led to a referendum being held in which residents voted against incorporation. On Salt Spring Island a referendum has not been held, but there is pressure for the local governance study to be continued to develop more specific local governance options for Salt Spring Island.²⁹⁷

4. Galiano Island: forestry

The limits of the authority of the Islands Trust and the specific limitations of the Islands Trust in the determination of forest policy was highlighted in the 1993 judgment of the British Columbia Supreme Court in *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee*. MacMillan Bloedel Ltd. owned 7,800 acres comprising 55% of Galiano Island. Increasing opposition to the company's forest

²⁹⁷ Nick Gilbert, former Islands Trust chairman, telephone interview, 4 August 1994.

harvesting operations had led the company to consider selling the land for residential purposes. The Galiano Island Trust Committee passed a bylaw to prevent the use of the land for residential use and to severely restrict or prevent the use of the land for forest harvesting. Mr. Justice Paris recognized that the case was unusual due to the extent of the company's land holdings on the island and the potential for sudden change of the lands from a natural state to residential development. He also recognized the public interest in such a case and stated that perhaps the public should have some say in such a course of events as existed in this case.²⁹⁸ Ultimately, however, Paris J. decided that the bylaw was void for illegality because the purpose of the bylaw, in seeking to change logging practices and acquire or preserve land without expropriation, was beyond the Trust committee's powers. Paris J. concluded his decision with the following comment:

This case is an example of the problem of individual rights in conflict with perceived collective interests. But if collective interests call for some interference with private rights in this case, it must be effected lawfully and by the proper legislative authority. A municipal council (in this case, the Galiano Island Trust Committee) can operate only within the powers delegated to it by provincial legislation.²⁹⁹

298 *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee*, [1994] B.C.D. Civ. 2939 01, 30 July 1993, Vancouver Registry No. A920930 (B.C.S.C.), 51.

299 *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee*, 51-52.

Therefore, this decision provides an example of the limits of the Trust's authority in terms of control over forestry practices, and the Islands Trust as a creature of the provincial legislature with its formal authority provided in provincial legislation.

5. The Greater Vancouver Regional District and Bowen Island

There has been another development in the structure of governance on Bowen Island since the incorporation referendum in 1991. Bowen Island previously comprised all of electoral area C in the Greater Vancouver Regional District ("GVRD"), but in November, 1993, electoral area B was merged with electoral area C.³⁰⁰ Electoral area C now includes the former electoral area B, which consists of a mountainous region north of West Vancouver stretching from Howe Sound east to the Pitt River, and Barnston Island in the Fraser River.

The reason for this amalgamation was that since the original formation of these electoral areas, the settled areas of Belcarra and Anmore, formerly in electoral area B, have incorporated as municipalities. Port Moody has annexed adjacent settled areas. Therefore, electoral area B was left with a substantially reduced population and tax base, but the area retained a GVRD representative and a vote on

300 The information concerning the amalgamation of the GVRD electoral areas B and C was provided by GVRD planning consultant, Jim Gilmore, telephone interview, 15 August 1994.

the GVRD board. Due to political concerns regarding this representative imbalance, electoral areas B and C were merged. Now, electoral area C is left with one regional director on the GVRD board with one vote. Before the amalgamation, Bowen Island had its own GVRD regional director and one vote on the GVRD board. Bowen Island is predominant in electoral area C in terms of population, causing concerns for the mainland areas of electoral area C that Bowen Island's issues will dominate electoral area C discussion.

The amalgamation has also had an impact on the representation of Bowen Island on the GVRD board because the concerns of the mainland areas of electoral area C must be addressed by the regional director for electoral area C. Therefore, Bowen Island's previously minimal influence on the GVRD board has been diluted as a result of the amalgamation. These events may be an impetus for further calls for incorporation on Bowen Island if the amalgamation of electoral areas B and C decreases the effectiveness of the GVRD's provision of services on Bowen Island.

6. The Saturna Island park controversy: local autonomy and community planning

The Saturna Island park controversy concerned a subdivision proposal at Crocker Point and Saturna Beach on the southwest shore of Saturna Island.³⁰¹ The area was targeted in

301 The background information concerning the Saturna Island park controversy is from Terry Glavin, "A Trust Misplaced?" *The Georgia Strait*, 28 No. 1386, 15-22 July 1994, 7-14.

Saturna Island's twenty year old official community plan as a place that should be preserved as park land. Recall that the official community plan is a general statement of the broad objectives and policies of the local government and it does not commit or authorize a local Trust committee to proceed with a specific project.³⁰²

Under the *Municipal Act*, s. 992, an owner of land being subdivided is required to provide up to 5% of the land as park land, or to pay to the local government the market value of that amount of land.

In March, 1993, the two local trustees for Saturna Island, believing that the island's residents were not interested in park land because of concerns that parks attracted undesirable visitors to the island, passed a resolution without a meeting foregoing the park land and accepting instead a \$32,000 donation for the island's Community Club. The deal was likely invalid because the deputy inspector of municipalities was reported to have declared that s. 992 cannot be waived.³⁰³ Whether there will be a park as originally proposed at Crocker Point and Saturna Beach is still unclear.

The Saturna Island park controversy raises some interesting issues regarding the Islands Trust. The

302 See the discussion above concerning the relationship between the Trust policy statement and official community plans, in section "G.2. The Islands Trust policy statement."

303 Glavin, 10.

Ministry of Transportation and Highways approving officer required a 66-foot-wide road to connect the subdivision with the island's road system even though the subdivision is designated as water access only and neither the developer, the islanders, or the Islands Trust wanted such a wide road.³⁰⁴ The Islands Trust was granted the authority in the revised *Islands Trust Act*, s. 30, to designate an Islands Trust staff member as the approving officer, but the Islands Trust has not yet taken on that responsibility. The reason given for the Islands Trust not taking on that function, was that it would entail a large increase in the budget of the Islands Trust. The Islands Trust presently considers that a more efficient strategy to exercise a greater capacity of coordination of provincial agencies in the Trust area is to pursue protocol agreements with provincial agencies pursuant to s. 8(2) of the *Islands Trust Act*.³⁰⁵

This decision by the Islands Trust not to take on the subdivision approval function is surprising considering the importance of that function to the Trust's object to preserve and protect the Trust area. This issue highlights the difficulty that the Islands Trust has faced as the increased authority, autonomy and revenue-raising ability of the Trust under the revised *Islands Trust Act* brings with it a greater sense of accountability to the Islands Trust's

304 *Ibid.*, 7.

305 Melinda Auerbach, Lasqueti Island trustee and executive committee vice-chairperson, telephone interview, 15 August 1994.

local constituency. Recall that the former Minister of Municipal Affairs, Rita Johnston, commenting in the Legislature during debate on the revised *Islands Trust Act*, said that if the local trustees wanted to address the object of the Trust to preserve and protect, they would have to look at raising the funds from their own tax base.³⁰⁶ This issue also raises questions of the extent to which the provincial government should be financially supporting the Islands Trust in light of the Trust's obligation to support the object to preserve and protect the Trust area not just for the benefit of the islands' residents, but also for the benefit of the residents of the Province generally.

Another issue that arises out of the Saturna Island park controversy concerns the increased local autonomy of local Trust committees under the revised *Islands Trust Act*. The resolution without meeting made by the two local trustees to forego the park land in lieu of a \$32,000 donation to the Community Club was made pursuant to s. 24(2) and (3) of the *Islands Trust Act*. Under this provision of the Act, if a majority of the members of a local Trust committee inform the Trust council secretary of their approval of a resolution by telephone or other form of telecommunication, then such a resolution is as valid as if it had been voted on and passed at a local Trust committee meeting. Under the revised Act a majority of the local

306 See the discussion above in section "E.3. Standing Committee Review and Report."

Trust committee can be achieved with the two local trustees alone. Under the former *Islands Trust Act* the same provision for a resolution without meeting existed,³⁰⁷ but in that case the majority of the local Trust committee would have included at least two general trustees. This resolution without meeting provision is useful in the Trust area where travel to Trust meetings can be a slow process, especially for the three executive committee members who each individually serve on a number of other islands' local Trust committees; however, this increased local autonomy of the now smaller local Trust committees under the revised Act has reduced the opportunity for the wider range of discussion with a larger group of trustee with experience from other local Trust committees on any particular issue. This change under the revised Act may have lessened the cohesiveness of the local Trust committees in policy-making.³⁰⁸ The recent amendments to the *Islands Trust Act* under the *Municipal Affairs Statutes Amendment Act, 1994*, described in more detail in the following section, include a new section, s. 9.1, to allow the Trust council to establish procedures that local Trust committees must follow in exercising their authority, including the consideration and adoption of resolutions and bylaws. This amendment may address this point about the lessened cohesion of the local

307 *Islands Trust Act*, R.S.B.C. 1979, c. 208, s. 7.

308 Carol Martin, former Hornby Island trustee and Island Trust chairperson, telephone interview, 8 August 1994.

Trust committees under the revised *Islands Trust Act* by allowing the Trust council to more effectively provide for consistency among the practice and procedures of the local Trust committees.

Finally, the Saturna Island park controversy highlights a weakness in the Islands Trust planning process since the Saturna Island official community plan referred to above was dated twenty years ago. Contrast this with the more recent Hornby Island official community plan, adopted in 1991, in which it is stated that the official community plan bylaw "should be reviewed in its entirety at least every five years from the adoption date."³⁰⁹ The reasoning behind the periodic review of official community plans is that the plan, as an expression of the preferences of the community for community development policy, may need to be changed if the attitude of the community has changed or if the community plan is contrary to or at variance with the policies of the provincial government or the Trust policy statement. The Islands Trust has recently developed a five year official community plan review program to review and update the Trust area's thirteen official community plans.³¹⁰

309 Islands Trust, *Hornby Island Official Community Plan Bylaw No. 45, 1990* (Victoria: Queen's Printer, 1991), 56.

310 Islands Trust, *Islands Trust Annual Report 1992-1993* (Victoria: Queen's Printer, 1993), 10.

Therefore, the Saturna Island park controversy is an interesting example of how the increased local autonomy of the local Trust committees under the revised *Islands Trust Act* may lessen the ability of the Islands Trust to provide effective regional governance of the Trust area as a whole. The increased autonomy of the Islands Trust also brings with it the responsibility to fund Trust initiatives from the local tax base, but the provincial government retains some degree of financial responsibility for the activities of the Islands Trust because of the need for the Trust to represent the interests of the residents of the Province generally, not just the local residents.

7. 1994 amendments to the *Islands Trust Act*

The Islands Trust executive committee examined the *Islands Trust Act* in 1992/1993 to decide whether there were any amendments that might improve the effectiveness of the legislative structure in the Trust area and the ability of the Trust to achieve its object.³¹¹ Bill 25, the *Municipal Affairs Statutes Amendment Act, 1994*, included amendments to the *Islands Trust Act*. These amendments allowed the Trust council to establish procedures to be followed by local Trust committees to provide for consistency among the local Trust committees.

The ability of the Trust council to make coordination agreements with other government bodies was strengthened

311 Islands Trust, *Islands Trust Annual Report 1992-1993* (Victoria: Queen's Printer, 1993), 10.

with a new section specifying a broader range of government bodies with which the Trust council is authorized to enter into agreements: the governments, or an agent of the governments, of British Columbia or Canada, a municipality, regional district or school boards. The local Trust committees were also granted the power to enter into coordination agreements with municipalities, regional districts and school boards.

Finally, the representation of the Islands Trust fund board was changed from the three executive committee members and three provincial appointees to one executive committee member elected by the executive committee members from among its members, and two Trust council member to be elected from among its member, and the three provincial appointees.

A second piece of legislation also amended the *Islands Trust Act*. *Bill 21, the Heritage Conservation Statutes Amendment Act, 1994*, provided the Trust council with a broader authority regarding heritage conservation in the Trust area.

Therefore, the 1994 amendments to the *Islands Trust Act* were generally procedural in nature, but incrementally increased the Trust's authority and capacity to coordinate other government agencies by clarifying and broadening the provisions of the *Islands Trust Act* relating to coordination agreements and heritage conservation.

V. CONCLUSION

The preceding analysis of the Islands Trust in terms of formal characteristics of government--representation, revenue-raising, authority, autonomy, and capacity to coordinate--demonstrates that the Islands Trust was established in 1974 as a weak local institution intended to review the regional districts' land use regulation in the Islands Trust area and to make recommendations to the provincial government regarding the Trust's unique object to preserve and protect the Islands Trust area and its special amenities and environment. Despite this formal weakness, the Islands Trust took advantage of its broad preservationist object to preserve and protect the Trust area. The Islands Trust became involved in a wide variety of initiatives to attempt to address the object; however, the lack of authority and capacity to coordinate the activities of other government agencies in the Trust area--particularly provincial agencies--limited the ability of the Islands Trust to effectively fulfill the object.

The transfer of the regional districts' land use regulation powers in the 1977 amendments to the *Islands Trust Act* strengthened the Islands Trust in terms of formal characteristics of government and moved the Trust along the local government continuum in the direction of the local self-government ideal.

In contrast to the strengthening of the Islands Trust in the 1970s, the early 1980s were more difficult years for the Islands Trust. The provincial government proposed abolishing the Islands Trust in 1982 and the power of regional planning was removed from the Islands Trust and the regional districts in 1983. Public demonstrations vigorously condemned the proposal to abolish the Islands Trust. The Islands Trust adopted the former regional plan as the Trust's policy statement as a guide for the Islands Trust in the governance of the Trust area. The twenty-six local trustees informally established a new organization--the Trust Council--to establish general policies for the Islands Trust. The public support shown for the Islands Trust and the initiatives taken by the Islands Trust to address the preserve and protect object, provide evidence that the Islands Trust was developing an ability of effective regional governance to achieve effective policy outcomes despite the relative absence of formal government characteristics.

The 1985 transfer of the Island Trust staff to the Ministry of Municipal Affairs moved the Trust away from the local self-government ideal as what little independence the Trust had was decreased, but the staff transfer allowed the Trust to work within the Ministry of Municipal Affairs to educate other ministries regarding the policies and work of the Islands Trust. This closer relationship of the Islands Trust staff with the Ministry of Municipal Affairs staff was

one factor leading to the 1987 proclamation of the Trust fund provisions of the *Islands Trust Act* which finally established the true "trust" aspect of the Islands Trust. The lack of clarity in the Act regarding how the Trust fund provisions would be put into practice, and increasing interest in the potential for incorporation on Salt Spring Island and Bowen Island, were factors in the provincial government establishing a review of the Trust in 1987. The outcome of this process of review--the major revision of the *Islands Trust Act* in 1989--was a significant move for the Islands Trust towards the ideal of local self-government on the local government continuum. The Trust's authority, autonomy, revenue-raising ability, and capacity to coordinate were strengthened.

Therefore, the Trust has made significant moves in the direction of the local self-government ideal since its inception in 1974. The Trust's authority is still primarily limited to land use regulation. The 1989 revision of the *Islands Trust Act* allowed the Islands Trust to pursue agreements with other provincial agencies whose activities impact on the Trust area and relate to the object of the Islands Trust, but the Trust continues to be constrained in its attempts to fulfil its preserve and protect object because of the Trust's limited authority to influence the activities of other government agencies in the Trust area.

Prescriptions for changing the Islands Trust in terms of formal characteristics of government are not the only

remedy for the problems faced by the Islands Trust, however, because effective *governance* of the islands is not simply a question of government characteristics, impediments to effective governance can be found within the local institution itself. The Islands Trust has declined to take advantage of the authority granted to the Islands Trust in the *Islands Trust Act* to appoint Islands Trust staff as the subdivision approving officer for the Trust area. The Islands Trust is also seen as being isolated from the islands because the majority of the Islands Trust staff work in the Islands Trust's Victoria office, outside of the Trust area.

Other challenges for the Islands Trust demonstrate that the Trust will need to continue to evolve if the Islands Trust is to address the Trust's object and effectively govern locally and regionally. For example, notwithstanding the amendments to the *Islands Trust Act* that provide for municipal incorporation in the Trust area, the relationship between a future Trust area municipality and the Islands Trust, and a municipality and the Islands Trust object is unclear. Neither does the 1989 revision of the *Islands Trust Act* address effectively the demand for more local autonomy on the more populated islands, or for a more representative structure for local government on the islands.

The 1987 Standing Committee proposal for a regional district for the islands was rejected by the Islands Trust.

The rejection was due in part to the Trust's unwillingness to take on service responsibilities that would further detract from the Islands Trust's attempts to address the preserve and protect object while so much of the Trust's effort was already dedicated to land use regulation. The Islands Trust may also have been leery of provincial government recommendations for such a change while the 1982 abolition attempt and the 1985 transfer of the staff into the Ministry of Municipal Affairs were still fresh in mind. The revision of the *Islands Trust Act* in 1989, however, has established the Islands Trust as a more autonomous institution with greater staff resources. The Trust fund is organized to specifically preserve significant areas and features in the Trust area. The Trust fund is achieving success because of creative initiatives and the support of the public, despite the meagre financial support from the provincial government. Therefore, although a regional district for the island may not be the best option, if the Islands Trust is to succeed as an effective governance vehicle for the Trust area it must continue to evolve structurally and substantively to take on further responsibilities related to the Trust object that can effectively and efficiently be undertaken by the Islands Trust. Responsibilities that are less relevant to the Trust object may be more efficiently and effectively provided by existing regional authorities at points accessible to the islands' transportation links.

Despite these questions concerning the future of the Islands Trust, the experience of the Islands Trust serves as an example of a successful specific form of local governance of a fragile environment. One need only compare the pace and scale of development on Vancouver Island's eastern shore with that of the Gulf Islands to recognize the Trust's accomplishments.

The increased public consciousness of the need for environmental considerations to be taken into account in government decision-making is evidenced in global initiatives such as the United Nations Rio Summit, and in Canadian legislation such as that progressing out of Ontario's Sewell Commission on planning and development reform, and existing in the Yukon and Northwest Territories environmental rights enactments. This increasing recognition of the need for broad environmental initiatives in policy-making, however, does not detract from the need for specific initiatives such as the Islands Trust to provide local communities with the ability to incorporate environmental considerations into policy-making at local and regional levels.

APPENDICES

1. Chronology of Events
2. *Islands Trust Act*, S.B.C. 1974, c. 43
3. *Islands Trust Act*, S.B.C. 1989, c. 68
4. Islands Trust Executive Committee Members and Local Trustees, 1993-1996

APPENDIX 1

Chronology of Events

CHRONOLOGY OF EVENTS

1948

The Lower Mainland Regional Planning Board (LMRPB) is established for the Greater Vancouver region, but the Board's jurisdiction does not include the Gulf Islands.

1951

The Capital Regional Planning Board (CRPB) is established for the Greater Victoria region, but the Board's jurisdiction does not include the Gulf Islands.

1965

Regional districts are established in British Columbia.

1969

Aug. 27 Provincial general election, Social Credit party wins, Premier W.A.C. Bennett, Dan Campbell continues as Minister of Municipal Affairs.

Nov. 6 A ten-acre minimum lot size is imposed on land in the Gulf Islands by the B.C. government under the *Local Services Act*.

1970

The Capital Regional District takes over the planning function from the CRPD, community plans begin to be developed on the Gulf Islands.

1972

Aug. 30 Provincial general election, New Democratic Party wins, Premier David Barrett, James Lorimer appointed as Minister of Municipal Affairs.

1973

Oct. An International Joint Commission report proposes an international park system for Point Roberts, the U.S. San Juan Islands and the Canadian Gulf Islands.

- Feb. 22 The B.C. Legislative Assembly authorizes the Select Standing Committee on Municipal Matters to undertake a study of the governance of the Gulf Islands.
- Sep. 24 The Select Standing Committee on Municipal Matters reports back to the Legislative Assembly and recommends an Islands Trust be established for the Gulf Islands.

1974

The International Joint Commission decides not to recommend adoption of the international park system.

- Jun. 5 The Islands Trust is established by the *Islands Trust Act*, S.B.C. 1974, c. 48.
- Sep. 5 The *Islands Trust Act* is in force, except s. 6(2) [in force July, 1975] and s. 6(3) [subdivision approval].

1975

- June 26 The Islands Trust fund is established by the *Islands Trust Amendment Act, 1975*, but remains unproclaimed until March, 1987.
- Dec. 11 Provincial general election, Social Credit Party wins, Premier Bill Bennett, Hugh Curtis appointed as Minister of Municipal Affairs.

1977

- Sep. 1 The *Islands Trust Amendment Act, 1977* transfers the powers of land use regulation and planning from the seven regional districts in the Trust area to the Islands Trust; the method of selecting general trustees is changed from provincial appointment to indirect election; the power to zone to protect significant areas is granted to the Islands Trust; the Trust gains the power to impose a property tax.

1978

- Dec. 5 Bill Vander Zalm is appointed as Minister of Municipal Affairs.

1979

- May 10 Provincial general election, Social Credit Party wins second consecutive election, Premier Bill Bennett, Bill Vander Zalm continues as Minister of Municipal Affairs.

1981

- May 22 The B.C. Court of Appeal, in *Seaview Land Estates Ltd. v. South*, affirms that subdivision plans must comply with bylaws, the approving officer has no power to approve a non-conforming subdivision plan.
- Nov. 10 The B.C. Court of Appeal, in *Islands Trust v. Pinchin Holdings Ltd.*, grants an injunction sought by the Islands Trust to prevent a hotel owner from building dock at Bennett Bay, Mayne Island.

The B.C. government validates the supplementary letters patent of the Capital Regional District to authorize the CRD to build the Ganges sewer project without a public referendum; NDP leader Robert Skelly is ejected from the Legislature during debate on the validating legislation. The sewer contractor's pipe is burned in an act of arson.

1982

- Jul. 27 *Bill 72--the Land Use Act* is given second reading, s. 190 proposes to abolish the Islands Trust.
- Jul. 29 The Legislative Assembly adjourns, *Bill 72* dies on the order paper, Minister of Municipal Affairs Bill Vander Zalm calls his cabinet colleagues "gutless" for not supporting *Bill 72*.
- Aug. 10 Premier Bill Bennett shuffles his Cabinet, Bill Vander Zalm changes portfolios from Ministry of Municipal Affairs to Ministry of Education, Jack Heinrich is appointed as Minister of Municipal Affairs.

1983

- Apr. 1 Bill Vander Zalm resigns as Minister of Education to take a "sabbatical". Vander Zalm returns to contest and win the Social Credit party leadership in August, 1986.
- May 5 Provincial general election, Social Credit Party wins a third consecutive election, Premier Bill Bennett, Jack Heinrich continues as Minister of Municipal Affairs.

- May 26 Bill Ritchie is appointed as Minister of Municipal Affairs.
- Jul. 7 The provincial government introduces its "restraint package" of 26 bills.
- Oct. 21 *Bill 9, the Municipal Amendment Act, 1983*, is enacted, regional plans are cancelled, the power of regional districts to establish regional plans is repealed; the *Miscellaneous Statutes Amendment Act*, repeals the power of regional planning from the Islands Trust and repeals the Trust's power to designate areas of special interest for protective zoning.

1984

- May 17 In *Gambier Island Preservation Society v. Islands Trust*, the Preservation Society sought to compel the Islands Trust to obtain judicial determination of the legal status of mining activities on Gambier Island. The B.C. Supreme Court decides that the Islands Trust had done all it could do in opposing the mining activities and attempting to influence the provincial government to stop the mining.
- May 29 The provincial government amends B.C. Reg. 75/78, the *Bare Land Strata Regulations*, and thereby removes the requirement that a strata plan subdivision comply with the official community plan. After the amendment a strata plan must only comply with zoning bylaws.

1985

- May 24 The *Islands Trust Amendment Act, 1985* transfers the Islands Trust staff to the Ministry of Municipal Affairs, the minister has the power to control the hiring and duties of Islands Trust staff.
- Dec. 2 The *Municipal Amendment Act, 1985*, makes the provisions of approval of subdivision applications under the *Land Title Act* consistent with the strata plan regulations amended in 1984 under the *Condominium Act*. A subdivision proposal does not have to conform to a community plan, only to zoning bylaws.

1986

- Aug. Premier Bill Bennett resigns. At the Whistler leadership convention, Bill Vander Zalm wins the leadership of the Social Credit party.
- Oct. 22 Provincial general election, Social Credit Party wins fourth consecutive election, Premier Bill Vander Zalm, Rita Johnston continues as Minister of Municipal Affairs.

1987

- Mar. 24 The Trust Fund provisions of the *Islands Trust Act* are proclaimed. The Islands Trust may receive gifts of land and money, but the provincial government makes a regulation requiring the minister's signature for any payment over \$100.
- May 22 Minister of Municipal Affairs Rita Johnston orders the Select Standing Committee to undertake a review of the Islands Trust.

1989

- Jul. 12 *Bill 78--the Islands Trust Act, 1989*, is introduced to the Legislature.
- Nov. 1 Premier Bill Vander Zalm shuffles Cabinet, Rita Johnston moves from Ministry of Municipal Affairs to Ministry of Highways, Lyle Hanson is appointed as Minister of Municipal Affairs.

1990

- Apr. 1 The *Islands Trust Act, 1989*, comes into force.

1991

- Apr. 1 Premier Bill Vander Zalm resigns due to conflicts of interest. Rita Johnston is elected as interim leader of the Social Credit party.
- Apr. 15 Graham Bruce is appointed as Minister of Municipal Affairs.
- Oct. 17 Provincial general election, New Democratic Party under leader Michael Harcourt wins, Robin Blencoe is appointed as Minister of Municipal Affairs.

1993

- Mar. Saturna Island trustees pass a resolution without a meeting accepting \$32,000 from a land developer for the island's Community Club in lieu of park land.
- May The draft Islands Trust policy statement is released.
- Jul. 30 In *MacMillan Bloedel Ltd. v. Galiano Island Trust Committee*, the B.C. Supreme Court declares a bylaw of the Galiano Island Trust committee to be void for illegality in attempting to prevent MacMillan Bloedel from selling its land for residential use and for attempting to restrict the use of the land for forest harvesting.
- Sep. 15 Darlene Marzari is appointed Minister of Municipal Affairs.
- Nov. The GVRD amalgamates its electoral areas B and C, Bowen Island (formerly electoral area C) is amalgamated in electoral C with other mainland areas of the Lower Mainland that had previously been electoral area B.

1994

- Jun. 11 The Islands Trust policy statement is adopted.
- Jul. 8 The *Islands Trust Act* is amended as the *Municipal Affairs Amendment Act* and the *Heritage Conservation Statutes Amendment Act* are proclaimed.

APPENDIX 2

Islands Trust Act, S.B.C. 1974, c. 43

CHAPTER 43

Islands Trust Act

[Assented to 5th June, 1974.]

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Interpre-
tation.

- I. In this Act, unless the context otherwise requires,
- “designated island” means an island designated in schedule B under this Act or from time to time under the regulations;
- “general affairs” means matters relating to the object of the trust and affecting
- (i) more than one designated island; or
 - (ii) one or more islands, other than designated islands, situated within the trust area,
- but does not include local affairs;
- “general trustee” means a general trustee appointed under section 2;
- “island” means all land comprising an island, and includes surrounding land attached to and extending from an island, whether or not water flows over or under it;
- “land” includes Crown land as defined in the *Land Act*;
- “local affairs” means, in respect of a designated island, matters relating to the object of the trust and affecting only the designated island;
- “local trustee” means a local trustee elected under section 4;
- “minister” means that member of the Executive Council charged by order of the Lieutenant-Governor in Council with the administration of this Act;
- “municipality” means a municipality as defined in the *Municipal Act*, and includes a regional district;
- “trust” means the trust established under section 2;
- “trust area” means land situated within the boundaries described in schedule A;
- “trust committee” means
- (i) where a decision, approval, recommendation, or other proceeding is required or permitted under this Act to be made or taken in respect of general affairs, the general trustees; and
 - (ii) where a decision, approval, recommendation, or other proceeding is required or permitted under this Act to be made or taken in respect of the local affairs of a designated island, a committee consisting of not less than two general trustees and one local trustee of the designated island.

Establishment of trust.

2. (1) There is hereby established a trust, to be known as the Islands Trust, consisting of three general trustees, and their successors, who shall be appointed by the Lieutenant-Governor in Council to hold office for a term of two years, but a person may be reappointed for a further term or terms.

(2) The Lieutenant-Governor in Council shall designate one general trustee as chairman and one other general trustee as vice-chairman.

(3) Any two of the general trustees constitute a quorum.

(4) A vacancy in the membership of the trust does not impair the authority of the remaining general trustees to act.

Object of trust.

3. (1) It is the object of the trust to preserve and protect, in co-operation with municipalities and the Government of the Province, the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of the Province generally.

(2) For the purpose of carrying out the object of the trust under subsection (1), the trust committee having jurisdiction shall,

- (a) make recommendations to the Lieutenant-Governor in Council respecting the determination, implementation, and carrying out of policies for the preservation and protection of the trust area and its unique amenities and environment;
- (b) make recommendations to the Lieutenant-Governor in Council respecting the acquisition, use, and disposition by the Crown in right of the Province of land situated within the trust area;
- (c) co-ordinate and assist in the determination, implementation, and carrying out of municipal and Provincial Government policies for the preservation and protection of the trust area and its unique amenities and environment;
- (d) subject to the *Archaeological and Historic Sites Protection Act*, locate and identify archaeological and historical sites within the trust area;
- (e) hear and decide upon any matter relating to general affairs or local affairs, as the case may be, that is required, under this Act, to be heard and decided upon by it;
- (f) prescribe rules and regulations respecting meetings and hearings; and
- (g) carry out such other duties as the Lieutenant-Governor in Council may from time to time direct.

Local trustees.

4. (1) There shall be two local trustees elected for each designated island.

(2) The first election of local trustees after the date this Act comes into force shall be held on such date, and in such manner, as the minister may direct.

(3) Subject to subsection (2), the provisions of the *Municipal Act* respecting the election of electoral area directors under section 772 of that Act apply, with the necessary changes and in so far as they are applicable, to the election of local trustees.

(4) The electoral area director of the regional board of the regional district in which the designated island is situated is entitled to notice of, and to attend and take part in, a meeting or other proceeding of the local trustees of the designated island, but he is not entitled to vote at the meeting or proceeding.

(5) For the purposes of local affairs, any two general trustees and one local trustee constitute a quorum.

General
v. local
affairs.

5. Where doubt exists as to whether a matter relates to general affairs or to local affairs, the chairman of the general trustees, upon application by a local trustee or a general trustee, shall determine whether or not the matter relates to general affairs or to local affairs.

Land use
in trust
area.

6. (1) No municipality shall enter into, pass, or adopt a community plan, regional plan, zoning by-law, land use contract, or other similar plan, by-law, or contract regulating the use or subdivision of land within the trust area, unless the plan, by-law, or contract is approved by the Lieutenant-Governor in Council under this Act or the *Municipal Act* and by the trust committee having jurisdiction in respect of those affairs.

(2) Subject to subsection (5), no person shall construct or enlarge a building or improvement upon land situated within the trust area unless the construction or enlargement is approved by the trust committee having jurisdiction in respect of those affairs.

(3) Subject to subsection (5), no registrar under the *Land Registry Act* shall accept an application for deposit of a plan of subdivision under that Act, the *Real Estate Act*, or the *Strata Titles Act*, all or part of which consists of land situated within the trust area, unless the plan is approved by the trust committee having jurisdiction in respect of those affairs.

(4) The Crown in right of the Province, or an agency of the Crown as defined in the *Public Service Labour Relations Act*, shall not develop or dispose of land situated within the trust area unless the Crown or the Crown agency first gives notice of the development or disposition to the general trustees.

(5) A trust committee may, in granting approval under subsection (1), or upon application at any time, order that subsections (2) and (3) do not apply, or do not apply subject to such terms and conditions as the trust committee may prescribe, to land in respect of which a by-law or land use contract referred to in subsection (1) is approved by the trust committee and the Lieutenant-Governor in Council.

(6) For the purposes of this section, the general trustees shall act as the trust committee in respect of islands other than designated islands.

Approval
procedures.

7. (1) An application for approval by a trust committee under section 6 (1), (2), or (3) shall be made to the chairman of the general trustees, and shall be accompanied by such information as the Lieutenant-Governor in Council may prescribe.

(2) Upon receipt of an application under subsection (1), the chairman of the general trustees shall determine whether the application relates to general affairs or to local affairs, or to both general and local affairs, and shall refer the application to the trust committee that, in his opinion, has jurisdiction in respect of the affairs to which the application relates.

(3) Where a trust committee is of the opinion that the approval of an application under section 6 (1), (2), or (3) is contrary to the object of the trust, it may refuse to approve the application.

(4) The trust committee may approve the application, or may approve it subject to such terms and conditions as the trust committee considers necessary or advisable.

Appeals

8. Where

- (a) a general trustee or local trustee is dissatisfied with a determination of the chairman under section 5; or
- (b) an applicant under section 6 (1), (2), or (3) is dissatisfied with a refusal by a trust committee to approve an application, or with an approval subject to terms and conditions,

he may appeal the determination or refusal to the minister.

Manager
and
employees.

9. (1) Notwithstanding the *Public Service Act*, the Lieutenant-Governor in Council may appoint a person as manager of the trust, and may fix the remuneration and other expenses to be paid to him for his services as manager.

(2) A manager under subsection (1) shall be appointed during pleasure and shall be responsible to the general trustees for the administration of the general affairs of the trust and for such other duties as the Lieutenant-Governor in Council may prescribe.

(3) Subject to the *Public Service Act*, the general trustees may appoint such employees as they consider necessary for the general affairs of the trust, and may designate the title, office, and responsibilities of an employee.

(4) Notwithstanding the *Public Service Act*, but subject to the approval of the minister, the general trustees may engage and retain such persons as they consider necessary as consultants, experts, or specialists, and may fix their remuneration.

(5) The Lieutenant-Governor in Council may direct that the *Public Service Act* or the *Public Service Superannuation Act*, or both of them, applies to a general trustee, the manager appointed under subsection (1), or a person engaged and retained under subsection (4).

Trustees
not to
acquire
land.

10. No general or local trustee shall, while he is a trustee, and during the period of two years after the date he ceases to be a trustee, acquire an interest in land situated within the trust area unless he has the approval of the minister.

Regulations.

11. For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant-Governor in Council may make such regulations and orders as are ancillary thereto and not inconsistent therewith; and every regulation shall be deemed to be part of this Act and has the force of law, and without limiting the generality of the foregoing, the Lieutenant-Governor in Council may make regulations and orders

- (a) respecting the distinction between general and local affairs;
- (b) exempting land or buildings, or classes of land or buildings, from the provisions of section 6 (2) and (3); and
- (c) amending schedule B.

Appropriation.

12. Upon the requisition of the minister, the Minister of Finance shall pay out of the Consolidated Revenue Fund, or out of the Revenue Surplus Appropriation Account of the Consolidated Revenue Fund, or partly from the Consolidated Revenue Fund and partly from the Revenue Surplus Appropriation Account, such sums as may be required from time to time to carry out the purposes of this Act, up to the thirty-first day of March, 1975, and thereafter shall pay out of those funds, or any of them, such sums as may be authorized by an Act of the Legislature for those purposes.

Commencement.

13. (1) This Act, excepting this section and the title, comes into force on a date to be fixed by the Lieutenant-Governor by his Proclamation, and he may fix different dates for the coming into force of the several provisions.

(2) This section and the title come into force on Royal Assent.

SCHEDULES

SCHEDULE A

All the land, except land situated within a reserve as defined in the *Indian Act* (Canada), on all the islands situated in the Strait of Georgia, Howe Sound, and Haro Strait lying to the south of a line commencing at the most easterly corner of Lot 140, Comox District being a point on the high water mark of Vancouver Island on the easterly shore thereof; thence south 70° east in a straight line to the point of intersection with the middle line of Sabine Channel; thence in a general southeasterly direction along said middle line and passing to the northeast of Jervis, Paul, and Jedediah Islands and continuing southeasterly along the southeasterly prolongation of the aforesaid middle line of Sabine Channel to the point of intersection with a straight line drawn from the most southerly extremity of Young Point (Lasqueti Island) to the most southerly southwest corner of Lot 6274, Group 1, New Westminster District; thence northeasterly along said line to the most southerly southwest corner of Lot 6274 and north of a line commencing at the northwest corner of Section 74A, Lake District being a point on the highwater mark of the Saanich Peninsula on the easterly shore thereof; thence east to the point of intersection with the easterly boundary of the Province of British Columbia, save and except therefrom the above described area, those islands lying within the boundaries of the City of Vancouver and the District Municipalities of Delta and Richmond.

SCHEDULE B

Bowen Island
Denman Island
Gabriola Island
Galiano Island
Gambier Island
Hornby Island
Lasqueti Island

Mayne Island
North Pender Island
Saltspring Island
Saturna Island
South Pender Island
Thetis Island

APPENDIX 3

Islands Trust Act, S.B.C. 1989, c. 68

1989

ISLANDS TRUST

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PART 1

ORGANIZATION OF THE TRUST

Interpretation**1. In this Act**

- “executive committee” means the committee referred to in section 18 (1);
- “island” means all land comprising an island, and includes surrounding land attached to and extending from an island, whether or not water flows over or under it;
- “local trust area” means
- (a) an island designated in Schedule B, or
 - (b) an island or group of islands in the trust area that is designated as a local trust area by regulation,
- and includes those islands, if any, within boundaries surrounding an island or group of islands referred to in paragraphs (a) and (b) that may be specified by regulation, but does not include land within a municipality, all or part of which is within the trust area;
- “local trust committee” means, in respect of each local trust area, the committee referred to in section 21 (2);
- “local trustee” means a trustee elected under section 6 from a local trust area;
- “municipal trustee” means a trustee appointed under section 7;
- “secretary” means the person appointed under section 15 (1) (a);
- “trust” means the Islands Trust continued under section 2 (1);
- “trust area” means land situated within the boundaries described in Schedule A;
- “trust council” means the Islands Trust Council referred to in section 5;
- “trust fund” means the Islands Trust Fund continued under section 2 (2);
- “trust fund board” means the board referred to in section 36 (1);
- “trust policy statement” means the Islands Trust Policy Statement adopted under section 13 (1);
- “trustee” means a local trustee, a municipal trustee and a trustee of the trust fund, or any of them, as the context requires.

1989-68-1.

Continuation of trust and trust fund

2. (1) The trust known as the Islands Trust is continued.
- (2) The trust fund known as the Islands Trust Fund is continued for the purpose of carrying out the object of the trust.
- (3) The trustees of the trust are the local trustees, the municipal trustees and the trustees of the trust fund.

1989-68-2.

Nov. 15, 1990

1989

ISLANDS TRUST

SBC CHAP. 68
INDEX CHAP. 208.1**Object of trust**

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 the Province generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of the Province.

1989-68-3.

Organization of trust

4. (1) The trust council, executive committee, local trust committees and trust fund board are established for the purpose of carrying out the object of the trust.

(2) The trust council is intended to establish the general policies for carrying out the object of the trust and to be responsible for the financial management of the trust, other than financial management of the trust fund.

(3) The executive committee is intended to carry out the daily business of the trust, to review the activities of the local trust committees and to act as a local trust committee for that part of the trust area that is not within a local trust area or municipality.

(4) The local trust committees are intended to regulate the development and use of land within their local trust area by exercising powers conferred by this Act, including powers that would otherwise belong to the regional district for each area.

(5) The trust fund board is intended to administer the trust fund and to manage the real and personal property assets of the trust fund.

1989-68-4.

PART 2**TRUST COUNCIL****Trust council**

5. The Islands Trust Council shall be comprised of

- (a) the local trustees, and
- (b) the municipal trustees.

1989-68-5.

Local trustees

6. (1) There shall be 2 local trustees elected for each local trust area.

(2) Section 777 of the *Municipal Act*, respecting electoral area directors, applies to

- (a) the holding of elections for local trustees,
- (b) the qualifications for nomination and election as a local trustee, and
- (c) the holding of office by a local trustee.

(3) Where the seat of a local trustee becomes vacant before July 1 in the last year of the term of the local trustee, an election shall be held to fill the vacancy for the balance of the term.

(4) Part 3 of the *Municipal Act* applies to an election under subsection (3).

1989-68-6.

Municipal trustees

7. (1) The council of a municipality within the trust area shall, before January 1 of each year, appoint 2 municipal trustees from among its members.

(2) A municipal trustee appointed under subsection (1) holds office from the date of appointment until the first Monday following the next December 1 or until the appointment of the trustee's successor, whichever is later.

1989-68-7.

Responsibilities of trust council

8. (1) For the purpose of carrying out the object of the trust, the trust council shall
- (a) adopt an annual budget in accordance with section 12,
 - (b) adopt a trust policy statement in accordance with section 13,
 - (c) consider bylaws for approval in accordance with section 14,
 - (d) appoint officers and other employees in accordance with section 15 and auditors in accordance with sections 16 and 41,
 - (e) file an annual report in accordance with section 17, and
 - (f) carry out other duties that the minister or the Lieutenant Governor in Council, by order, directs.

- (2) For the purpose of carrying out the object of the trust, the trust council may,
- (a) subject to approval by the minister, enter into agreements with the Province and agents of the Province respecting the coordination of administrative activities within the trust area,
 - (b) subject to approval by the minister, acquire and dispose of land,
 - (c) coordinate and assist in the determination, implementation and carrying out of municipal, regional and improvement district and Provincial government policies for the preservation and protection of the trust area and its unique amenities and environment,
 - (d) make recommendations to the trust fund board respecting priorities for the acquisition, use and disposition of property by the trust fund board,
 - (e) make recommendations to the Lieutenant Governor in Council respecting the acquisition, use and disposition by the Crown in right of the Province of land situated within the trust area,
 - (f) make recommendations to the Lieutenant Governor in Council respecting the determination, implementation and carrying out of policies for the preservation and protection of the trust area and its unique amenities and environment,
 - (g) locate and identify heritage sites within the trust area, and
 - (h) assign duties to the executive committee and to the local trust committees.

(3) The trust council shall not, without the prior approval of the minister, incur liabilities or borrow money.

1989-68-8.

Delegation of powers

9. 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, delegate its powers under section 8 (1) (d) and (f) and (2) (a) to (g), subject to any restrictions or conditions specified in the bylaw.

1989-68-9

Nov. 3, 1989

Corporate status

- 10.** (1) The trust council constitutes a corporation.
- (2) Subject to subsection (3), the *Company Act* does not apply to the trust council.
- (3) The Lieutenant Governor in Council may, by order, direct that one or more provisions of the *Company Act* apply to the trust council and, where this is done, those provisions apply accordingly.
- (4) The fiscal year of the trust council ends on March 31 of each year.

1989-68-10.

Corporate procedure

- 11.** (1) The following sections of the *Municipal Act* apply to the trust council:
- (a) section 223, respecting the exercise of powers by resolution or bylaw;
 - (b) section 295, respecting the procedure for passing bylaws;
 - (c) section 296, respecting the timing of approval.
- (2) Subject to subsections (4) and (5), a resolution approved in accordance with subsection (3) is as valid as if it had been voted on and passed at a properly called and constituted meeting of the trust council.
- (3) For the purposes of subsection (2), approval of a resolution is given where a majority of the members of the trust council entitled to vote on the resolution inform the secretary of their approval in person or by telephone or other means of telecommunication.
- (4) Subsection (2) does not apply to resolutions
- (a) giving second or third reading to a bylaw, or
 - (b) respecting a decision under section 14 (1) (b) in relation to a bylaw referred to the trust council for approval under section 25 (3) or 34 (3).
- (5) For a resolution giving first reading to or adopting a bylaw under section 9, approval is given where 2/3 of the members of the trust council entitled to vote on the resolution approve the resolution in accordance with subsection (2).

1989-68-11.

Budget

- 12.** (1) The trust council shall, by bylaw, adopt an annual budget for the trust for the next fiscal year on or before March 31 in each year.
- (2) Subject to subsection (6), a bylaw under subsection (1) has no effect until it is approved by the minister.
- (3) The budget shall
- (a) show separately revenues obtained from appropriations, including operating grants and anticipated recoveries from taxes levied under sections 44 and 45, and other sources,
 - (b) show appropriated surpluses of prior years, and
 - (c) set out separately the anticipated expenditure relating to
 - (i) operations of the trust council and of the executive committee, except the operations of the executive committee acting as a local trust committee under section 21 (5),
 - (ii) general operations of the local trust committees, including the operations of the executive committee acting as a local trust committee under section 21 (5) and excluding the operations referred to in subparagraph (iii),

- (iii) operations of a local trust committee that are additional operations not included within the general operations of all the local trust committees under subparagraph (ii), and
 - (iv) administrative operations of the trust fund board.
- (4) A deficit that is incurred in any of the classes of operations referred to in subsection (3) (c) (i) to (iv) shall be carried forward as an expenditure against that class of operations in the next year.
- (5) The limit of the budgeted expenditure for a class of operations referred to in subsection (3) (c) (i) to (iv) is the budgeted revenue for that class.
- (6) Before the annual budget is approved by the minister, an expenditure is not lawful if
- (a) it is not provided for in the proposed annual budget, or
 - (b) the total expenditures under the proposed annual budget would, as a result of the expenditure, exceed 25% of the total proposed annual budget.
- (7) After the annual budget is approved by the minister, an expenditure is not lawful if it is not provided for in the annual budget.

1989-68-12.

Trust policy statement

- 13.** (1) The trust council shall, by bylaw, adopt a trust policy statement applicable to the trust area.
- (2) The trust policy statement
- (a) shall be a general statement of the policies of the trust council to carry out the object of the trust,
 - (b) may establish different policies for different parts of the trust area, and
 - (c) has no effect for the purposes of subsection (3) unless it is approved by the minister.
- (3) A bylaw
- (a) submitted to the executive committee under section 25 (1) or 34 (1), or
 - (b) referred to the trust council under section 25 (3) or 34 (3)
- shall 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.

1989-68-13.

Approval of bylaws

- 14.** (1) Where a bylaw is referred to the trust council under section 25 (3) or 34 (3), the trust council shall
- (a) consider the bylaw,
 - (b) either
 - (i) approve the bylaw,
 - (ii) return the bylaw to the local trust committee or municipal council, as the case may be, giving reasons for the return and directions as to changes to the bylaw that would be required for approval, or
 - (iii) refuse the bylaw, giving reasons for the refusal,
 - (c) notify the local trust committee or municipal council, as the case may be, of its decision within 2 months from the date on which the secretary received the request under section 25 (3) or 34 (3), and

- (d) as soon as practicable after giving notice of its decision, deliver its decision in writing to the local trust committee or municipal council, including reasons and directions referred to in paragraph (b) (ii) and (iii).
- (2) Where the trust council does not give notice of its decision respecting approval of a bylaw within the time limit established by subsection (1) (c), it shall be deemed to have approved the bylaw.

1989-68-14.

Officers and employees

- 15.** (1) The trust council shall appoint
- (a) a person to the office of secretary,
 - (b) a person to the office of treasurer,
 - (c) persons to any other offices that it has, by bylaw, designated as officer positions, and
 - (d) other employees that it considers necessary to carry out the operations of the trust council, the executive committee, the local trust committees and the trust fund board.
- (2) The same person may be appointed to 2 or more offices.
- (3) The power of appointment under subsection (1) is a power subject to the *Public Service Act*, and employees of the trust council shall be deemed to be employees and the trust council shall be deemed to be an employer in respect of those employees for the purposes of the *Public Service Act*, the *Public Service Labour Relations Act* and the *Pension (Public Service) Act*.
- (4) The trust council may require a bond under the *Bonding Act* from a person appointed under subsection (1).
- (5) The premium for a bond required under subsection (4) shall be paid by the trust council.
- (6) The trust council may, by bylaw, provide the whole or a part of the premium for any or all of the matters set out in section 259 of the *Municipal Act*.

1989-68-15.

Audit

- 16.** (1) The trust council shall appoint an auditor to audit the accounts and transactions of the trust council and the local trust committees.
- (2) Part 8 of the *Municipal Act*, as it applies to the auditing of the accounts and transactions of a municipality, applies to the auditing of the accounts and transactions of the trust council and the local trust committees.
- (3) The auditor shall report to the trust council, to the minister and, in the case of an audit of a local trust committee, to the local trust committee.

1989-68-16.

Annual report

- 17.** The trust council shall prepare and file with the minister annually a report respecting the previous fiscal year that includes
- (a) an audited balance sheet and statement of receipts and expenditures,
 - (b) a report of the operations of the trust council, the executive committee and the local trust committees.

- (c) the annual report of the trust fund board submitted to the trust council under section 42, and
- (d) other particulars required by the minister.

1989-68-17.

PART 3

EXECUTIVE COMMITTEE

Executive committee

18. (1) The executive committee shall be comprised of the chairperson and vice chairpersons elected under this section.

(2) The trust council shall, in accordance with the regulations and as soon as practicable after the election of the local trustees under section 6, elect from among its members a chairperson and 2 vice chairpersons.

(3) A person elected under subsection (2) holds executive office for a term of 3 years or until the person's successor is elected under subsection (2), whichever is later.

(4) Where an executive office becomes vacant before the end of the term of a person elected under subsection (2), an election shall be held to fill the vacancy for the balance of the term.

(5) An election under subsection (4) shall be in accordance with the requirements for an election under subsection (2).

1989-68-18.

Responsibilities of executive committee

19. (1) For the purpose of carrying out the object of the trust, the executive committee shall

- (a) consider bylaws submitted to it for approval under sections 25 (1) and 34 (1),
- (b) act as a local trust committee under section 21 (5) for that part of the trust area that is not within a local trust area or a municipality, and
- (c) carry out other duties that the trust council directs.

(2) The executive committee constitutes a corporation only for the purposes of acting as a local trust committee under section 21 (5).

1989-68-19.

Approval of bylaws

20. (1) Where a bylaw is submitted under section 25 (1) or 34 (1) for approval by the executive committee, the executive committee shall

- (a) consider the bylaw,
- (b) either
 - (i) approve the bylaw,
 - (ii) return the bylaw to the local trust committee or municipal council, as the case may be, giving reasons for the return and directions as to changes to the bylaw that would be required for approval, or
 - (iii) refuse the bylaw, giving reasons for the refusal,

- (c) notify the local trust committee or municipal council, as the case may be, of its decision within one month from the date on which the secretary received the bylaw submitted under section 25 (1) or 34 (1), and
 - (d) as soon as practicable after giving notice of its decision, deliver its decision in writing to the local trust committee or municipal council, including reasons and directions referred to in paragraph (b) (ii) and (iii).
- (2) Where the executive committee does not give notice of its decision respecting approval of a bylaw within the time limit established by subsection (1) (c), it shall be deemed to have approved the bylaw.

1989-68-20.

PART 4

LOCAL TRUST COMMITTEES

Local trust committees

- 21.** (1) For each local trust area there shall be a local trust committee.
- (2) Each local trust committee shall be comprised of
- (a) the local trustees for the local trust area, and
 - (b) the person appointed under subsection (3) (a).
- (3) For each local trust committee, the chairperson of the trust council shall appoint,
- (a) as a member of the local trust committee, a member of the executive committee who is not a local trustee for that local trust area, and
 - (b) where possible, as an alternate member of the local trust committee, another member of the executive committee who is not a local trustee for that local trust area.
- (4) The alternate member of a local trust committee appointed under subsection (3) (b) may, in the absence of the member of the local trust committee appointed under subsection (3) (a), vote and act generally in all matters of the local trust committee in the place of the absent member.
- (5) For that part of the trust area that is not within a local trust area or a municipality, the executive committee shall have all the duties and powers of a local trust committee and, for those purposes, this Act, as it applies to a local trust committee, applies to the executive committee.

1989-68-21.

Responsibilities of local trust committees

- 22.** (1) For the purpose of carrying out the object of the trust, each local trust committee shall
- (a) submit its bylaws to the executive committee in accordance with section 25 (1) and to the minister for the purposes of section 25 (2) (b), and
 - (b) carry out other duties that the trust council directs.
- (2) For the purpose of carrying out the object of the trust, each local trust committee may
- (a) enforce its bylaws in accordance with section 26, and
 - (b) regulate the development and use of land within its local trust area in accordance with sections 27 and 28.
- (3) A local trust committee shall not incur liabilities or borrow money.

1989-68-22.

Corporate status

23. (1) Each local trust committee constitutes a corporation.

(2) Subject to subsection (3), the *Company Act* does not apply to the trust committees.

(3) The Lieutenant Governor in Council may, by order, direct that one or more provisions of the *Company Act* apply to the local trust committees and, where this is done, those provisions apply accordingly.

(4) The fiscal year of each local trust committee ends on March 31 of each year.

1989-68-23.

Corporate procedure

24. (1) The following sections of the *Municipal Act* apply to the local trust committees:

(a) section 223, respecting the exercise of powers by resolution or bylaw;

(b) section 295, respecting the procedure for passing bylaws;

(c) section 296, respecting the timing of approval.

(2) Subject to subsection (4), a resolution approved in accordance with subsection (3) is as valid as if it had been voted on and passed at a properly called and constituted meeting of a local trust committee.

(3) For the purposes of subsection (2), approval of a resolution is given where a majority of the members of the local trust committee entitled to vote on the resolution inform the secretary of their approval in person or by telephone or other means of telecommunication.

(4) Subsection (2) does not apply to resolutions giving second or third reading to a bylaw.

1989-68-24.

Approval requirement for bylaws of local trust committees

25. (1) Each local trust committee shall, before adoption, submit its bylaws to the secretary for approval by the executive committee.

(2) A bylaw of a local trust committee has no effect

(a) in all cases, until it is approved by the executive committee or, on request under subsection (3), by the trust council, and

(b) in the case of a bylaw adopting or amending a community plan, until it is approved by the minister.

(3) Where the executive committee returns or refuses to approve a bylaw submitted to it under subsection (1), the local trust committee may, by request delivered to the secretary, refer the bylaw to the trust council for approval.

1989-68-25.

Enforcement of bylaws

26. For the purposes of enforcing its bylaws and section 29 of this Act, a local trust committee has all the power and authority of a regional district board and sections 294, 306 (1), 308 to 310, 312, 313, 314 (1), 316, 318, 750, 751 and 934.1 to 934.3 of the

Municipal Act, as they apply to a regional district board, apply to the local trust committee.

1989-68-26.

Land use regulation

27. (1) Each local trust committee has, in respect of its local trust area, all the power and authority of a regional district board under

- (a) sections 734 (1) (i), 930.1 and Part 29, except sections 983 to 987 and 990, of the *Municipal Act*,
- (b) the *Agricultural Land Commission Act*, and
- (c) the *Soil Conservation Act*.

(2) For the purposes of subsection (1), the enactments referred to in paragraphs (a) to (c) of that subsection, as they apply to a regional district board, apply to the local trust committees.

(3) Notwithstanding subsection (2), where an owner of land that is being subdivided exercises the option under section 992 (1) (b) to pay money in lieu of providing park land, the money shall be paid to the applicable regional district.

(4) The Crown in right of the Province, or an agency of the Crown as defined in the *Public Service Labour Relations Act*, shall not develop, begin construction on or dispose of land situated within the trust area unless the Crown or the agency of the Crown, as the case may be, first gives notice of the development, construction or disposition to the trust council.

1989-68-27.

Siting and use permits for construction where no building bylaw in force

28. (1) In this section and section 29 "construction" means new construction of a building or structure and includes addition to an existing building or structure, but does not include the repair of an existing building or structure.

(2) For that part of its local trust area that is not subject to a requirement established under Part 21 of the *Municipal Act* that building permits be obtained for construction but is subject to a zoning bylaw or a rural land use bylaw, a local trust committee may, by bylaw,

- (a) require, subject to the regulations, that owners of land within the local trust area obtain siting and use permits in accordance with the bylaw from the local trust committee or a person authorized by the local trust committee to issue the permits before beginning construction on the land, and
- (b) impose application fees for permits referred to in paragraph (a) in order to recover the costs that are related to the permits.

(3) A siting and use permit referred to in subsection (2) (a) shall be refused if the construction to which it relates does not comply with the applicable zoning bylaw or with Part 2 of the applicable rural land use bylaw.

(4) Section 981 of the *Municipal Act* respecting the withholding of building permits applies to the withholding of siting and use permits.

1989-68-28.

Restrictions on construction where no zoning in force

29. Subject to the regulations, no person shall begin construction on land within a local trust area that is not covered by a zoning bylaw or a rural land use bylaw unless the construction is approved by the local trust committee.

1989-68-29.

Subdivision within local trust areas

30. (1) Where an approving officer is appointed under section 77 (1) (a) of the *Land Title Act* in respect of land within the trust area,

- (a) subdivision plans shall be tendered under section 83 of the *Land Title Act* to the person designated by the trust council, and
- (b) the authority of the approving officer under section 87 of the *Land Title Act* respecting regional district bylaws applies to bylaws of the applicable local trust committee.

(2) Each local trust committee has, in respect of its local trust area, all the power and authority of a regional district board under section 9 of the *Condominium Act* and, for those purposes, section 9 of the *Condominium Act* as it applies to a regional district board applies to a local trust committee.

1989-68-30.

Bylaws extend to additional area

31. (1) Subject to subsection (2), where an addition is made to a local trust area, a bylaw of a regional district or a local trust committee, other than the local trust committee for the local trust area to which the addition is made, that was adopted before the addition was made and that applies to the addition

- (a) remains in force to the extent that it applies to that addition, and
- (b) may be repealed, amended or enacted again by the local trust committee for the local trust area to which the addition is made

as if it were a bylaw of the local trust committee to which the addition is made.

(2) The Lieutenant Governor in Council may, by regulation, designate bylaws of the local trust committee for the local trust area to which the addition is made that were adopted before the addition was made as bylaws applicable to an area added to a local trust area and, where this is done, a designated bylaw prevails over a bylaw referred to in subsection (1) in the event of conflict.

1989-68-31.

PART 5**MUNICIPALITIES AND REGIONAL DISTRICTS****No regional district bylaws or permits contrary to bylaws of local trust committees**

32. The board of a regional district, all or part of which is within the trust area, shall not

- (a) adopt a bylaw,
- (b) issue a permit, or
- (c) undertake work

respecting the trust area that is contrary to or at variance with a bylaw of a local trust committee.

1989-68-32.

Nov. 3, 1989

Transfer of authority from regional districts

33. (1) A regional district board shall not exercise within the trust area the power and authority given to a local trust committee under section 27 or 30 (2).

(2) Notwithstanding section 781 of the *Municipal Act*, a regional district director who represents an electoral area that is entirely within the trust area shall not vote on resolutions and bylaws under Part 29 of that Act for which the power and authority have been given to a local trust committee under section 27 (1) (a) of this Act.

1990-60-27.

Approval requirement for municipal bylaws

34. (1) The council of a municipality, all or part of which is within the trust area, shall, before adoption, submit to the secretary for approval by the executive committee

(a) all bylaws adopting a community plan that apply to land within the trust area, and

(b) all bylaws under Part 29 of the *Municipal Act* that apply to land within the trust area to which no official community plan applies.

(2) A bylaw referred to in subsection (1) has no effect until it is approved

(a) by the executive committee,

(b) on request under subsection (3), by the trust council, or

(c) on request under subsection (4), by the minister.

(3) Where the executive committee does not approve a bylaw submitted to it under subsection (1), the municipality may, by request delivered to the secretary, refer the bylaw to the trust council for approval.

(4) Where the trust council returns or refuses to approve a bylaw referred to it under subsection (3), the municipality may submit the bylaw to the minister for approval and, where this is done, section 14 (1) (a) and (b) applies to approval by the minister.

1989-68-34.

Withholding of building permits

35. Where a local trust committee advises a regional district board that it proposes to adopt

(a) a zoning bylaw, or an amendment of it,

(b) a community plan, or an amendment of it, or

(c) a rural land use bylaw, or an amendment of it,

affecting land within the regional district, the board may direct that a building permit be withheld, and, in that case, section 981 of the *Municipal Act* applies to the local trust committee.

1989-68-35.

PART 6**TRUST FUND BOARD****Trust fund board**

36. (1) The board of trustees for the Islands Trust Fund shall be comprised of

(a) the members of the executive committee, and

(b) the persons appointed under subsection (2).

(2) The minister may appoint up to 3 persons to serve at pleasure as members of the trust fund board.

Nov. 15, 1990

(3) The minister may require a bond under the *Bonding Act* from a member of the trust fund board.

(4) The premium for a bond required under subsection (3) shall be paid by the trust council.

1989-68-36.

Responsibilities of trust fund board

37. (1) For the purpose of carrying out the object of the trust, the trust fund board shall,

- (a) subject to the regulations, administer the trust fund and manage the property of the trust fund,
- (b) prepare a trust fund plan in accordance with section 40,
- (c) file an annual report in accordance with section 42, and
- (d) carry out any other duties that the minister or Lieutenant Governor in Council, by order, directs.

(2) For the purpose of carrying out the object of the trust, the trust fund board may

- (a) receive money and other property by way of donation, public subscription, devise, bequest or otherwise that is not subject to terms, conditions or trusts that are inconsistent with the object of the trust,
- (b) receive grants from Canada or the Province, or its ministries or agencies, or from any person or association, and
- (c) subject to section 40 (2), acquire, hold and dispose of land and other property.

(3) The trust fund board shall not, without the prior approval of the minister, incur liabilities or borrow money.

1989-68-37.

Corporate status

38. (1) The trust fund board constitutes a corporation that is, for all purposes, an agent of the Crown in right of the Province but may, on behalf of the Crown, carry out its duties and exercise its powers in its own name without reference to the Crown.

(2) Subject to subsection (3), the *Company Act* does not apply to the trust fund board.

(3) The Lieutenant Governor in Council may, by order, direct that one or more provisions of the *Company Act* apply to the trust fund board and, where this is done, those provisions apply accordingly.

(4) The fiscal year of the trust fund board ends on March 31 of each year.

1989-68-38.

Property of the trust fund

39. (1) Property acquired by the trust fund board

- (a) is the property of the Crown in right of the Province,
- (b) may be held in the name of the Crown in right of the Province or in the name of the trust fund board, and
- (c) shall, notwithstanding the *Land Act*, be dealt with by the trust fund board under this Act.

(2) Money of the trust fund shall, unless it is invested under subsection (3), be deposited and kept in a financial institution.

Nov. 15, 1990

(3) Money of the trust fund may, subject to approval by the minister, be invested in securities authorized as trustee investments under the *Trustee Act*.

1989-68-39.

Trust fund plan

40. (1) The trust fund board shall prepare and submit to the minister, at least once every 5 years, a plan for the trust fund respecting

- (a) policies on acquisition, management and disposal of property of the trust fund,
- (b) policies on investment of money of the trust fund,
- (c) goals for major acquisitions of property by the trust fund, and
- (d) other matters as required by the minister.

(2) The trust fund board shall not, without the prior approval of the minister, acquire, hold or dispose of land except in accordance with a trust fund plan under subsection (1) that has been approved by the minister.

1989-68-40.

Audit

41. (1) The minister may appoint an auditor to audit the accounts and transactions of the trust fund board.

(2) Where the minister does not appoint an auditor under subsection (1), the trust council shall appoint an auditor for the trust fund board.

(3) Part 8 of the *Municipal Act*, as it applies to the auditing of the accounts and transactions of a municipality, applies to the auditing of the accounts and transactions of the trust fund board.

(4) The auditor shall report to the trust fund board, the trust council and the minister.

1989-68-41.

Annual report

42. The trust fund board shall prepare and submit to the trust council annually a report respecting the previous fiscal year that includes

- (a) an audited balance sheet and statement of receipts and expenditures,
- (b) a report of the operations of the trust fund board and the management of the assets of the trust fund,
- (c) a schedule of all assets held in trust and their valuation, and
- (d) other particulars required by the minister.

1989-68-42.

PART 7

RECOVERY OF COSTS

Requisitions, apportionment and tax rates

43. (1) In this Part

“converted value of land and improvements” means the net taxable value of land and improvements multiplied by a percentage prescribed for the purposes of this section;

“improvements” means improvements as defined in the *Assessment Act*;
 “local trust area” includes the area for which the executive committee acts as local trust committee under section 21 (5);
 “net taxable value of land and improvements” means the net taxable value of land and improvements for hospital district purposes;
 “property value tax” means a tax on the net taxable value of land and improvements that is levied by means of a variable tax rate system under which individual tax rates are determined and imposed for each class of property prescribed under section 26 of the *Assessment Act*.

(2) On or before April 25 in each year, the minister may deliver requisitions

(a) to the Minister of Finance and Corporate Relations in relation to

(i) the cost of operations of the trust council and the executive committee, except the operations of the executive committee acting as a local trust committee under section 21 (5), and the administrative operations of the trust fund board, and

(ii) the cost of operations of the local trust committees, and

(b) to each municipality within the trust area in relation to

(i) the cost of operations of the trust council and the executive committee, except the operations of the executive committee acting as a local trust committee under section 21 (5), and

(ii) the cost of administrative operations of the trust fund board.

(3) Requisitions

(a) under subsection (2) (a) (i) and (b) shall be for the purpose of recovering part of the amount appropriated by the Legislature to carry out the operations referred to in those provisions, and

(b) under subsection (2) (a) (ii) shall be for the purpose of recovering all of the amount appropriated by the Legislature to carry out the operations referred to in that provision.

(4) Subject to subsection (5), a requisition under subsection (2) (a) (ii) shall be made in respect of all local trust areas.

(5) Where the annual budget sets out anticipated expenditures under section 12 (3) (c) (iii) relating to additional operations of a local trust committee, a special requisition under subsection (2) (a) (ii) may be made in respect of the local trust area.

(6) The amount that is to be recovered by means of requisitions under subsection (2) (a) (i) and (2) (b) shall be apportioned between the municipalities and the local trust areas on the basis of the converted value of land and improvements in the trust area.

(7) The assessment commissioner of the British Columbia Assessment Authority shall, as soon as practicable after the relevant information is available, provide to the secretary and the minister

(a) the net taxable value of land and improvements, and

(b) the converted value of land and improvements

within each local trust area and each municipality, all or part of which is within the trust area.

1989-68-43.

Collection outside municipalities

44. (1) The Minister of Finance and Corporate Relations shall, on receiving a requisition under section 43 (2) (a) (i) or (ii), direct that the amount requisitioned,

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together with any additional sum that minister may direct to cover the costs and outlays of assessment and collection, be recovered by means of a property value tax levied within the part of the trust area in respect of which the requisition is made.

(2) The exemptions in sections 142 to 144 of the *School Act* apply for the purposes of this section.

(3) A tax levied under this section shall be collected under and in accordance with the *Taxation (Rural Area) Act* as if it were a tax imposed under that Act and the provisions of that Act respecting the assessment, levy, collection and recovery of taxes and the addition of penalty and interest on unpaid taxes apply to taxes levied under this section.

1989-68-44; 1989-68-61; 1990-2-17.

Collection in municipalities

45. (1) Subject to subsection (2), where a municipality receives a requisition under section 43 (2) (b), the municipality shall recover the amount requisitioned by means of a property value tax levied within the municipality.

(2) The exemptions in sections 142 to 144 of the *School Act* apply for the purposes of this section.

(3) The amount referred to in subsection (1) is a debt due by the municipality to the Province and shall be paid by the council of the municipality to the Minister of Finance and Corporate Relations on or before August 1 of the current year.

1989-68-45; 1989-68-61; 1990-2-17.

PART 8

GENERAL

Trustees not to acquire land

46. Unless the minister consents, a trustee shall not acquire an interest in land situated within the trust area

- (a) while the person is a trustee, and
- (b) for 2 years after the date the person ceases to be a trustee.

1989-68-46.

Inquiries

47. The Inspector of Municipalities may hold an inquiry respecting the trust council, a local trust committee or the trust fund board, or any part of the business of those corporations, and, for those purposes, section 745 of the *Municipal Act* applies.

1989-68-47.

Report to Legislative Assembly

48. The minister shall lay the report of the trust council under section 17 before the Legislative Assembly directly, if it is then sitting, or within 15 days after the commencement of the first session in the following calendar year, if it is not then sitting.

1989-68-48.

Regulations

49. The Lieutenant Governor in Council may make regulations including regulations

- (a) amending Schedule B,
- (b) designating an island or group of islands as a local trust area,
- (c) specifying boundaries surrounding an island or group of islands for the purpose of including other islands situated within the boundaries as part of a local trust area,
- (d) respecting remuneration and reimbursement for expenses of trustees,
- (e) respecting the election of the executive committee,
- (f) respecting the trust fund and the activities of the trust fund board for the purposes of section 37 (1) (a),
- (g) exempting
 - (i) land or buildings and structures, or both, and
 - (ii) classes of land or buildings and structures, or both
 from the application of siting and use permit requirements under section 28 (2) (a),
- (h) prescribing percentages for the purpose of determining the converted value of land and improvements, as defined in section 43 (1) and, for that purpose, may prescribe different percentages for different classes of property under the *Assessment Act*,
- (i) resolving any conflict between this Act and the *Municipal Act*, and
- (j) making further provisions of the *Municipal Act* apply under this Act.

1989-68-49.

Bylaws continued

50. (1) All bylaws that were adopted under the *Islands Trust Act* as it read before this Act came into force and that were in force at the time this Act came into force

- (a) remain in force, and
- (b) may be repealed, amended or enacted again

as if they had been adopted by the applicable local trust committee.

(2) An official community plan, subdivision bylaw, zoning bylaw or land use contract adopted by a municipality or regional district prior to January 1, 1978

- (a) remains in force to the extent that it applies to land within a local trust area, and

(b) may be repealed, amended or enacted again by the local trust committee as if it had been adopted by the local trust committee.

(3) A bylaw under section 734 (1) (i) or 930.1 of the *Municipal Act*, or under section 930 (1) (d) or (e) of the *Municipal Act* as it read before section 930.1 of that Act came into force, that was adopted by a municipality or regional district before this Act came into force

- (a) remains in force to the extent that it applies to a local trust area, and
- (b) may be repealed, amended or enacted again by the local trust committee

as if it had been adopted by the local trust committee.

1989-68-50.

1989

ISLANDS TRUST

SBC CHAP. 68
INDEX CHAP. 208.1**Transitional — assets**

51. The minister may require the trust, as it was before this Act came into force, to transfer assets of the trust to the trust fund board in accordance with the minister's directions.

1989-68-51.

Transitional — employees

52. (1) The Lieutenant Governor in Council may make orders for the purpose of effecting transfers under subsection (2)

- (a) identifying by name employees of the Ministry of Municipal Affairs, Recreation and Culture assigned to assist the trust under section 13 (1) of the *Islands Trust Act* as it read before this Act came into force as employees to be transferred to the trust council under subsection (2),
- (b) specifying a transfer date, and
- (c) establishing conditions for the transfers that the Lieutenant Governor in Council considers advisable to preserve the rights and benefits of the employees to be transferred.

(2) Notwithstanding section 15 (1) of this Act, on the transfer date specified by an order under subsection (1), the employees named in the order cease to be employees of the Ministry of Municipal Affairs, Recreation and Culture and become employees of the trust council, subject to any conditions established under subsection (1) (c).

1989-68-52.

Transitional — trust policy statement

53. Until a trust policy statement is adopted under section 13, the executive committee shall not approve a bylaw submitted to it under section 25 (1) or 34 (1) that is, in its opinion, contrary to or at variance with the object of the trust.

1989-68-53.

Transitional — zoning bylaws

54. A zoning bylaw or an amendment of a zoning bylaw of a local trust committee

- (a) adopted after this Act comes into force, and
- (b) respecting land that is not covered by an official community plan bylaw approved by the minister after this Act came into force

has no effect until it is approved by the minister.

1989-68-54.

55 to 61. [Repeal, consequential amendments and amendment to this Act consequential to the *School Act*. Spent. 1989-68-55 to 61.]

Commencement

62. (1) This Act, except section 61, comes into force by regulation of the Lieutenant Governor in Council.

(2) Schedules A and B come into force on the day section 1 comes into force.

(3) Section 61 comes into force on the day the *School Act*, introduced as Bill 67 in the same session as this Act was introduced, comes into force.

1989-68-62.

[Note: Act, except section 61, effective April 1, 1990 (B.C. Reg. 414/89); section 61 effective September 1, 1989 (effective date of *School Act*, SBC1989, c. 61) (B.C. Reg. 264/89).]

SCHEDULE A

All the land, except land situated within a reserve as defined in the *Indian Act* (Canada), on all the islands situated in the Strait of Georgia, Howe Sound and Haro Strait lying to the south of a line commencing at the most easterly corner of Lot 140, Comox District, being a point on the high water mark on the easterly shore of Vancouver Island; thence south 70° east in a straight line to the point of intersection with the middle line of Sabine Channel; then in a general southeasterly direction along the middle line and passing to the northeast of Jervis, Paul and Jedediah Islands and continuing southeasterly along the southeasterly prolongation of the middle line of Sabine Channel to the point of intersection with a straight line drawn from the most southerly extremity of Young Point (Lasqueti Island) to the most southerly southwest corner of Lot 6274, Group 1, New Westminster District; then northeasterly along the line to the most southerly southwest corner of Lot 6274 and north of a line commencing at the northwest corner of Section 74A, Lake District, being a point on the high water mark on the easterly shore of the Saanich Peninsula; then east to the point of intersection with the easterly boundary of the Province of British Columbia, excepting from the above described area those islands lying within the boundaries of the City of Vancouver, the City of Nanaimo and the District Municipalities of Delta and Richmond.

1989-68-Sch. A.

SCHEDULE B

Bowen Island.	Hornby Island.	Saltspring Island.
Denman Island.	Lasqueti Island.	Saturna Island.
Gabriola Island.	Mayne Island.	South Pender Island.
Galiano Island.	North Pender Island.	Thetis Island.
Gambier Island.		

1989-68-Sch. B.

APPENDIX 4

Islands Trust Executive Committee Members and
Local Trustees, 1993-1996

**Islands Trust Executive Committee Members and
Local Trustees, 1993-1996**

Executive Committee

Chairperson	Graeme Dinsdale
Vice-Chairperson	Diane Cragg
Vice-Chairperson	Melinda Auerbach

Local Trustees

Bowen Island	Graeme Dinsdale Claus Spiekermann
Denman Island	Rolf Ludvigsen Roxanna Mandryk
Gabriola Island	Julian Guntensperger Susan Yates
Galiano Island	Diane Cragg Elisabeth Boshier
Gambier Island	Ozzie Sexsmith Kim Benson
Hornby Island	George Buyver Ron Emerson
Lasqueti Island	Melinda Auerbach Chris Ferris
Mayne Island	Larry Holbrook Sonja Taiji
North Pender Island	Joy Ridley Vacant at August, 1994
Salt Spring Island	Bob Andrew Grace Byrne
Saturna Island	Harvey Janszen John Money
South Pender Island	Elaine Jacobson Catherine Milsum
Thetis Island	David Essig John Dunfield

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