

# FIRST NATIONS HERITAGE SITE PROTECTION BY THE ISLANDS TRUST: OPPORTUNITIES AND LIMITATIONS

by

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## ***Preface***

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The topic of this professional project comes from my academic and personal interest in first nations issues and from a pragmatic decision to select a topic that is also of use to the Islands Trust, my current employer. I have long had a passion for learning about first nations history, culture, and current issues. By kayak, I have visited many first nations historic sites on British Columbia's coast and learned the stories of these places from books, academia, and the first nations people I have met. I find the cultural history of the BC coast fascinating, and I have learned that it is not only a thing of the past; first nations culture is still alive, and these places are important to living people and families, not just to history books and the archaeological record.

During my Masters degree I have interned with the Gulf Islands National Park Reserve on the First Nations Program, working half of the time in the Tsawout First Nation community on the Saanich Peninsula of Vancouver Island conducting background research on first nations protocol agreements. This research will be used to develop a protocol for the discovery of ancient aboriginal human remains between the Gulf Islands National Park Reserve and several first nations who are involved in cooperative management of the Park Reserve. This was an enlightening experience and my learning was much broader than the scope of the research I was hired to conduct. It led me to explore, in another research paper for my Masters degree, how storytelling can be used to promote cross-cultural understanding between first nations and the rest of the population.

When I found myself accepting a position as a land use planner with the Islands Trust before I had graduated or even begun substantial work on my professional project, I

decided to find a project topic that was both relevant to the Islands Trust and aligned with my interests. The timing couldn't have been better, as the Islands Trust was near completion of a protocol on the protection of heritage resources with the Hul'qumi'num Treaty Group, and would be facing challenges to its implementation as there was little precedent for such an agreement. A background report on the tools available to the Islands Trust and local trust committees, and procedures for planners to follow in order to improve the protection of first nations heritage sites would be welcomed, and this is what I set out to produce.

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## **1. Introduction**

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First nations heritage sites include archaeological sites as well as other places of spiritual importance that do not necessarily have any physical marker. Archaeological sites consist of the physical remains of past human activity and are essential to understanding and appreciating the cultural history of British Columbia (BC Archaeology Branch). In the Gulf Islands shell middens are found along much of the coastline and represent the remaining physical record of villages or harvesting camps. Other archaeological sites include but are not limited to petroglyphs, burial caves, rock cairns, and fishing weirs (Cassidy, Acheson, & Claxton, 1975). Coastal areas that are desirable locations for towns and homes today are often the same places that were used by past cultures for their settlements. In the past, few people, developers, governments, or citizens, were concerned about damaging or destroying these sites, and many are lost forever. This damage to archaeological sites continues today; one need only think of Poets Cove on South Pender Island to realize that more needs to be done to prevent the destruction of these sites that can be of high cultural and spiritual importance to first nations people, and also hold the key to a better understanding of the past (McLay, 2004, p. 13). Once lost, they are lost forever.

Protecting archaeological sites is not just about preserving history or adding to the archaeological record, but it is also about maintaining connections to important places for cultures that are very much alive. It is not just about a “culture”, it is about families and individual people, alive today, who have inherited the stories of these places and who remain connected to them as part of their identity (Thom, 2005). Many archaeological or other heritage sites have been destroyed or significantly altered by modern development, and it behooves local governments, who now have the tools

available to identify conflicts between proposed developments and archaeological sites, to do what they can to contribute to their protection.

First nations heritage sites are found across the landscape of North America, and they are particularly concentrated in the Gulf Islands of coastal British Columbia (McLay, 2004). Many of these sites have been destroyed or damaged due to insensitive development and ignorant or careless members of the public, despite their legislated protection. The Islands Trust is the local government for these islands, and is well-positioned to contribute to the improved protection of first nations heritage sites through the development approval and land use planning process. Numerous first nations in the Islands Trust Area have already entered into relationships with the Islands Trust with the aim of working together on issues of mutual interest such as the protection of heritage sites. A significant example is the Hul'qumi'num Treaty Group (HTG) that represents six first nations in the Trust Area and is in the process of developing a protocol agreement with the Islands Trust specifically for the protection of heritage sites.

The Islands Trust planning staff is currently involved in protecting archaeological sites in the Trust Area by alerting landowners to their presence when applications for development are submitted. However, planners are experiencing some uncertainty over what steps are legal requirements or ethically desirable, and what specific procedures should be followed when processing applications, preparing staff reports, and communicating with landowners and first nations in order to protect archaeological sites. There is concern over an added workload for already busy planning staff, that applications will take longer to process, and that there is a lack of clear direction, procedures, and resources. With the Islands Trust – Hul'qumi'num Treaty Group protocol nearing completion, there remain uncertainties about how it will be

implemented. This report addresses these issues and aims to contribute to a detailed understanding of how policy might be implemented at the operational level.

## **1.1 Purpose and Audience**

This report has two goals:

1. To identify existing processes and policies concerning protection of first nations heritage sites in the Gulf Islands in the Islands Trust, first nations and other governments.
2. To identify options for improving processes and policies effecting protection of first nations heritage sites in the Trust Area.

This report is primarily aimed at Islands Trust planning staff. Other staff, trustees, and first nations could also benefit from this report and its explanation of the opportunities within and limitations to the Islands Trust's legislated authority.

## **1.2 Literature**

The literature on the topic addressed in this report ranges from the technical, such as the use of Geographic Information Systems (GIS) in archaeology potential modelling and archaeological surveys of the region, to more conceptual ethnographic studies of the Coast Salish people.

A 1974-1975 regional archaeological survey of the southern Gulf Islands (Cassidy et al., 1975) provides a substantial contribution to the archaeological record of the area although numerous excavations in specific locations had occurred previously (McLay, 2004). It is these surveys that make up the identified archaeological sites in the provincial archaeological database that local government staff can access to aid in



planning activities. In recognition that there are many archaeological sites that have not been identified by archaeological survey, GIS modelling has been used around the world by archaeologists, first nations and government agencies to locate areas with high potential to contain archaeological sites (BC Archaeology Branch). Wheatley & Gillings (2002) provide an overview of the use of GIS in archaeological interpretation and address its role in archaeological resource management. In short, the use of this spatial technology as a tool for locating archaeological sites comes from the understanding that places likely to have been used by past peoples can be predicted based on landscape features. For example, our ethnographic understanding is that settlements were located next to resource harvesting sites such shellfish beds, and GIS data for elevation and beach materials can be used to pinpoint locations with features indicating conditions suitable for shellfish habitat. The Provincial Archaeology Database is able to accept areas identified to have high archaeological potential, and data from a recently developed archaeological potential model for Hul'qumi'num traditional territory will be added to the database. This database is accessible to local governments through an online application known as the "Remote Access to Archaeological Data" (RAAD).

This report is about not only protecting archaeological sites but also other first nations heritage sites that are sacred and culturally important but may have no associated archaeological evidence. Miller's (1998) classification of Coast Salish sacred sites includes such landscape features as bedrock outcroppings, mountain tops, creeks, caves and boulders. These sites are important for spiritual reasons, falling into eight classifications according to Miller (1998): transformer sites, spirit residences, ceremonial areas, traditional landmarks, questing/powersites, legendary/mythological sites, burials, or other (such as astronomical sites, medicine pools, or springs). Other ethnological sources that I have found particularly useful for better understanding the importance of

these heritage sites to first nations people and their culture today include Suttles (1987) *Coast Salish Essays*, and Thom's (2005) investigation of the nature of indigenous peoples' connection to the land and the importance of places associated with spirit powers, with a focus on the Hul'qumi'num people of Vancouver Island and the Gulf Islands.

The challenge of conveying the idea and importance of sacred sites to a non-Aboriginal society has been addressed by both Miller (1998) in relation to using this information in a court of law and Thom (2005) as it applies to modern-day treaty settlement. King (2008) investigates the role of local governments in the protection of archaeological sites through surveys and interviews with local government representatives and first nations in the Fraser Valley. Her results show that the two groups have diverging perspectives, but King asserts that "local governments are in a position to act as bridges between the publics they represent and the management of archaeological heritage" (p. iii).

### **1.3 Methods**

The information in this report regarding the tools available to local governments for the protection of first nations heritage sites was gathered through analysis of relevant provincial legislation, Islands Trust policy and staff reports, and local trust committee bylaws. In order to assist me in better understanding this information, I consulted a number of individuals in the Islands Trust, the BC Archaeology Branch and the BC Ministry of Community Development who had worked in some way on the use of legislated tools to protect archaeological sites. Background information in this report was gathered from written sources in the literature.

Evaluation of the possible tools for protecting archaeological sites by the Islands Trust was made using five criteria (table 1). For each criterion, a ranking of low, moderate, high, or variable was given.

**Table I: Example evaluation of tools for protecting archaeological sites**

<b>Criteria</b>	<b>Ranking</b>
Ability to make a substantial improvement in heritage site conservation	X
Likelihood of public acceptance	X
Enforceability	X
Need for more baseline information	X
Cost to local government	X

These criteria are relative measures with the exception of the need for more baseline information which refers primarily to the need or absence of a need for archaeological potential modelling data. Cost has been measured using a basic estimation of costs to the local government such as compensation to land owners, mapping, and staff time. Likelihood of public acceptance focuses on acceptance by the local citizens including those landowners who may be directly impacted. In many cases these two publics could have differing levels of acceptance, which will be noted in the evaluation of that tool.

Finally, the case studies of other British Columbia local government initiatives to protect archaeological sites were developed by consulting written reports and by informal interviews with the local government staff.

#### **1.4 Structure of this Report**

The next two chapters are designed to address each of the two goals of the report respectively. Chapter 2 discusses the current policies and processes available for protecting heritage sites in the Trust Area, and includes background information on the provincial legislation that governs heritage site protection as well as Islands Trust policy.

Chapter 3 describes and evaluates the tools available to the Islands Trust to improve its ability to protect first nations heritage sites, as legislated primarily through the *Local Government Act*. Three case study examples of other local governments in British Columbia who have taken steps to improve their ability to protect heritage sites are described.

The concluding chapter 4 suggests how the Islands Trust could approach improved protection of heritage sites in the short, medium and long term.

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## ***2. Current Policies and Processes for Protecting Heritage Sites in the Trust Area***

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### **2.1 History and Organization of the Islands Trust**

The Islands Trust is a unique land use planning agency and federation of independent local governments in the Gulf Islands of British Columbia (Islands Trust, 2008a). It was established in 1974 when the provincial government enacted the *Islands Trust Act* giving the Islands Trust a special conservation-oriented responsibility in recognition of the significance and sensitivity of the Gulf Islands' environment, reflected in its mandate:

...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 British Columbia (Islands Trust Council, 2002)

The Islands Trust Area covers the islands and waters between southern Vancouver Island and the mainland, including Howe Sound and as far north as Comox (Figure 1).

The Trust Area comprises 13 major islands and more than 450 smaller islands. The population of the Trust Area is approximately 25,000 people.



**Figure 1. The Islands Trust Area** (Islands Trust Council, 2002)

The mandate does not specifically address the protection of archaeological sites, which is an unfortunate oversight according to archaeologist McLay:

Despite the government of British Columbia's awareness during the formative years of the Islands Trust Act that the southern Gulf Islands represents one of the most well-known and densest concentrations of recorded archaeological sites in the province, the conservation of archaeological heritage has never been a part of the Islands Trust's unique stewardship mandate. (2004)

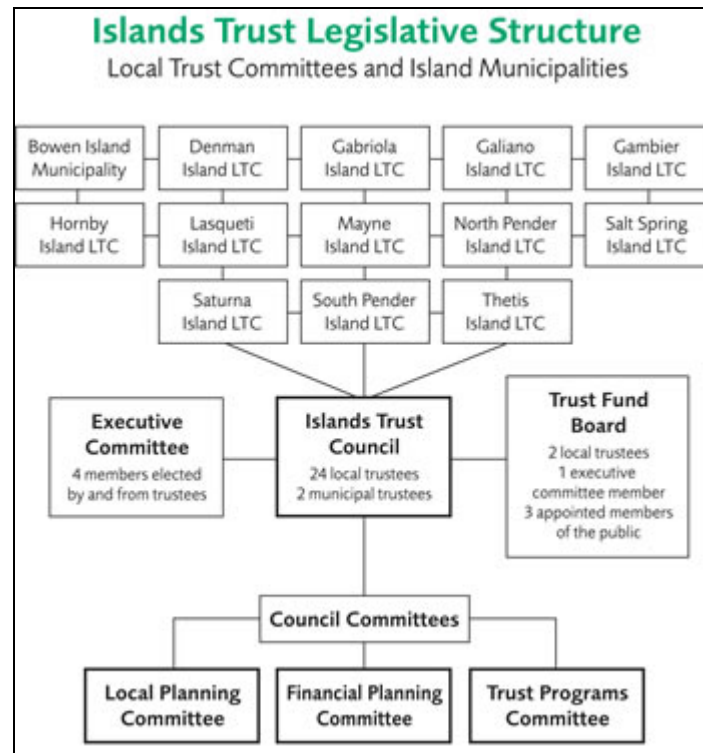
The Islands Trust Policy Statement does, however, have policies relating to heritage conservation, and individual local trust committees have sections in their official community plans that address the protection of archaeological sites, which will be further discussed in a later section of this report.

In total there are 26 trustees who form the Islands Trust Council which makes decisions about overall policy, staff resources, and budget (Figure 2). An Executive Committee is made up of the chair and three vice chairs that are elected by all trustees.

There are two locally elected trustees for each local trust area or island municipality. With the addition of an appointed chair from the Executive Committee, each trust area has a local trust committee of three people. Within the Islands Trust Area there are 12 local trust committees and one island municipality, Bowen Island. Each local trust committee has jurisdiction over a major island and surrounding smaller islands and waters.

The Executive Committee guides day-to-day operations and cooperative relations with other levels of government. It also reviews bylaws of the local trust committees and Bowen Island Municipality to ensure consistency with the Islands Trust legislated mandate.

The Islands Trust has offices in Victoria and on Salt Spring and Gabriola Islands staffed by land use and policy planners, mapping specialists, and administrative personnel. The office on Gabriola Island provides services to six local trust committees: Hornby, Denman, Lasqueti, Thetis and Gambier. The office on Salt Spring Islands provides support to that Island only, and the Victoria office supports the remaining local trust committees, in addition to providing head office services to the entire Trust Area.



**Figure 2. Organizational structure of the Islands Trust** (Islands Trust, 2008a)

## 2.2 Heritage Site Protection in the Trust Area

### 2.2.1 Introduction

Archaeological sites are protected under the *Heritage Conservation Act*, and it is illegal to disturb them without a permit. Local governments can be involved in the protection of archaeological sites by integrating their information into planning, such as identifying areas of archaeological potential in official community plans, and by notifying applicants of a conflict with a known archaeological site early in the development approval process.

In 2004, the Archaeology Branch of the BC government made the provincial archaeological database accessible to local governments through the Remote Access to Archaeological Data (RAAD) online application. This has enabled local governments to

identify whether or not a proposed development was in conflict with an identified archaeological site.

The Islands Trust has been engaging with first nations and exploring ways to improve its ability to protect archaeological sites for several years (L. Adams, 2007); At the March 2005 Trust Council meeting staff was requested to report on the Islands Trust's then current processes and policies for protecting archaeological sites. The resulting report (F. Adams, 2005) identified options for improvement and represents an early scoping of possible ways to address the issues which included:

- Education and relationship building;
- Development of best practices for the protection of archaeological sites;
- Use of development approval information bylaws;
- Development of an official community plan policy;
- Down-zoning in areas where archaeological sites are known, and
- Legislative change.

Around the same time, the Hul'qumi'num Treaty Group (HTG) and its member first nations began developing a Memorandum of Understanding (MOU) for heritage site conservation with the provincial government, as well as protocol agreements with local governments including the Islands Trust (L. Adams, 2007). The MOU with the Province was signed in 2007, and the Islands Trust and HTG continue to develop a protocol agreement for heritage site conservation.

In February 2008, an education and training session for Local Planning Services of the Islands Trust was held by the Archaeology Branch and HTG. During this session staff



was given an orientation to the RAAD application and was introduced to an archaeological potential mapping project recently undertaken by HTG for identifying areas of high archaeological potential in their traditional territory.

The protection of archaeological sites in the Trust Area is a work in progress, and remains on the agenda of Trust Council. In the Strategic Plan updated in March 2008, one focus area identified is to “protect archaeological resources from development” (Islands Trust, 2008b). The strategic plan includes goals for completing more agreements with first nations regarding the protection of archaeological resources. To date, a protocol agreement for cooperation exists between the Lyackson First Nation and the Thetis Island Local Trust Committee, and a protocol agreement regarding the protection of first nations archaeological heritage sites between the Islands Trust Council and the Hul’qumi’num Treaty Group is in draft form. Most recently, on December 4, 2008 a protocol agreement between the Snuneymuxw First Nation and the Islands Trust Council was signed. This agreement is for “a government-to-government relationship of mutual respect and cooperation with respect to planning, land use management, and heritage conservation” (Snuneymuxw First Nation & Islands Trust, 2008). By this agreement the parties will establish a working group that will meet regularly to discuss matters of mutual interest.

Although “local government has little jurisdictional power to help address public interests in heritage conservation” (McLay, 2004), there are tools that can be used to contribute to the protection of heritage sites. The Islands Trust has some policy direction regarding the protection of heritage sites, both trust-wide policies of the Islands Trust Council, and policies of individual local trust committees in their official community plans. These are discussed in the next section.

### 2.2.2 Trust Council Policies

The Islands Trust Policy Statement addresses the protection of cultural resources, including First nations heritage and archaeological sites. The Trust Council commits to the following:

*5.6.1 Trust Council holds that the natural and human heritage of the Trust Area — that is the areas and property of natural, historic, cultural, aesthetic, educational or scientific heritage value or character — should be identified, preserved, protected and enhanced (Islands Trust Council, 2002).*

The Trust Council has two directive policies to implement the above commitment:

*5.6.2 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the identification, protection, preservation and enhancement of local heritage.*

*5.6.3 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the preservation and protection of the heritage value and character of historic coastal settlement patterns and remains.*

None of these three policies specifically mention archaeological sites or first nations heritage, but they are probably intended to include them, as all local trust committees' OCPs include mention of archaeological resources and several mention first nations heritage.

### 2.2.3 Local Trust Committee Policies

Official community plans (OCPs) of local trust committees currently include some strategic direction on the protection of archaeological resources. Some objectives are held in common by most of the local trust committees' OCPs. To “protect” the heritage resource is the most common objective, and after that to “identify,” and to “preserve” or

“conserve.” Table 2 below identifies other objectives in OCPs, and which local trust committee has included them in their OCP.

**Table 2. Comparison of OCP objectives in heritage resource sections.**

	Denman	Gabriola	Galiano	Gambier	Hornby	Lasqueti	Mayne	North Pender	Saturna	Salt Spring	South Pender	Thetis
Protect	X	X	X	X	X		X	X	X	X	X	X
Identify		X	X	X			X	X		X	X	X
Preserve / Conserve		X	X	X	X		X	X		X		X
Enhance		X	X	X			X	X		X		
Maintain a record		X		X						X		
Recognize first nations involvement			X			X				X		
Increase public awareness					X		X	X		X	X	X

The Salt Spring Island OCP is the most recent, having been adopted in October, 2008, and is the most comprehensive and accurate in its section on first nations heritage resources. This OCP should be used as an example in reviewing other OCP in the Islands Trust Area. Of the other OCP section on archaeological or heritage resources, there are two significant weaknesses that are discussed in paragraphs that follow:

1. confusion with objectives for protection of settler heritage, and
2. ambiguity regarding jurisdiction of the Islands Trust and other agencies.

These policies fall under a section of the OCP to do with “heritage” resources. This section also includes policies relating to real property representing more recent history of settlement, such as historic houses or other buildings, which are quite different from first

nations archaeological sites that may be buried in the soil and hidden from the casual observer. The BC Archaeology Branch recommends that local governments give archaeological resources a discrete section in the OCP, or a distinct sub-section within the heritage section (BC Archaeology Branch, 2008). The Archaeology Branch provides recommended wording for the archaeology section of an OCP and staff are available to review the content of this section for local governments (see Appendix A) (BC Archaeology Branch, 2008).

The second issue has to do with how the jurisdiction of the Islands Trust is represented in relation to archaeology in an OCP. Current local trust committees' OCPs contain a range of wording for policies that relate to archaeology; some are ambiguous and it is unclear whether they relate to archaeological sites or other heritage resources or both, and others contain misleading information about the jurisdiction of the Islands Trust. For example, policy E.2.2 (d) of the *Saturna Island Official Community Plan* (Bylaw No. 70, 2001) says that the Saturna Local Trust Committee may "require heritage impact assessments for designated heritage features and archaeological sites protected under section 13 of the Heritage Conservation Act". This gives the false impression that the Saturna Island Local Trust Committee can withhold a permit until a heritage impact assessment is conducted, and does not mention that there are requirements under the *Heritage Conservation Act* for a heritage alteration permit from the Province.

The *North Pender Island Official Community Plan* (Bylaw No. 171, 2007) contains a good example of policies for archaeological site protection with more clear and accurate information:

*4.6.4 All development applications shall be reviewed for the presence of known and recorded archaeological sites. Applicants will be notified if the application is*

*within a known, protected archaeological site. Notification may include direction to engage a professional consulting archaeologist to determine if an archaeological impact assessment is necessary to manage development related impacts.*

*4.6.5 Applicants should modify or revise proposed development plans to avoid archaeological site impacts as the best means of preserving archaeological resources. Alteration of a protected archaeological site requires a Provincial Heritage Alteration Permit prior to land altering activities.*

These policies of the North Pender Island OCP commit planners to consulting the RAAD when an application for development is reviewed and ensures that the landowner will be notified if there is a conflict with an archaeological site early in the process. Policy 4.6.5 references the provincial permit that is required if an archaeological site is being altered during development, although titles the permit incorrectly as a heritage alteration permit (which is a different permit that can be issued by a local government pursuant to Part 27 of the *Local Government Act*), but should in fact be a site alteration permit that is issued by the Province pursuant to the *Heritage Conservation Act*. This small error exemplifies the complex yet sometimes seemingly subtle differences between the relevant legislation that need to be well understood in order to use them to their potential for protecting heritage resources.

## **2.3 Heritage Conservation Act**

In British Columbia, archaeological sites are protected by the *Heritage Conservation Act* which provides protection for archaeological sites dated before 1846 on public and private land. Federal lands are not subject to this legislation. The *Act* prohibits the destruction, excavation, or alteration of archaeological sites without a permit. Other first nations heritage sites without material evidence can probably not be protected under the

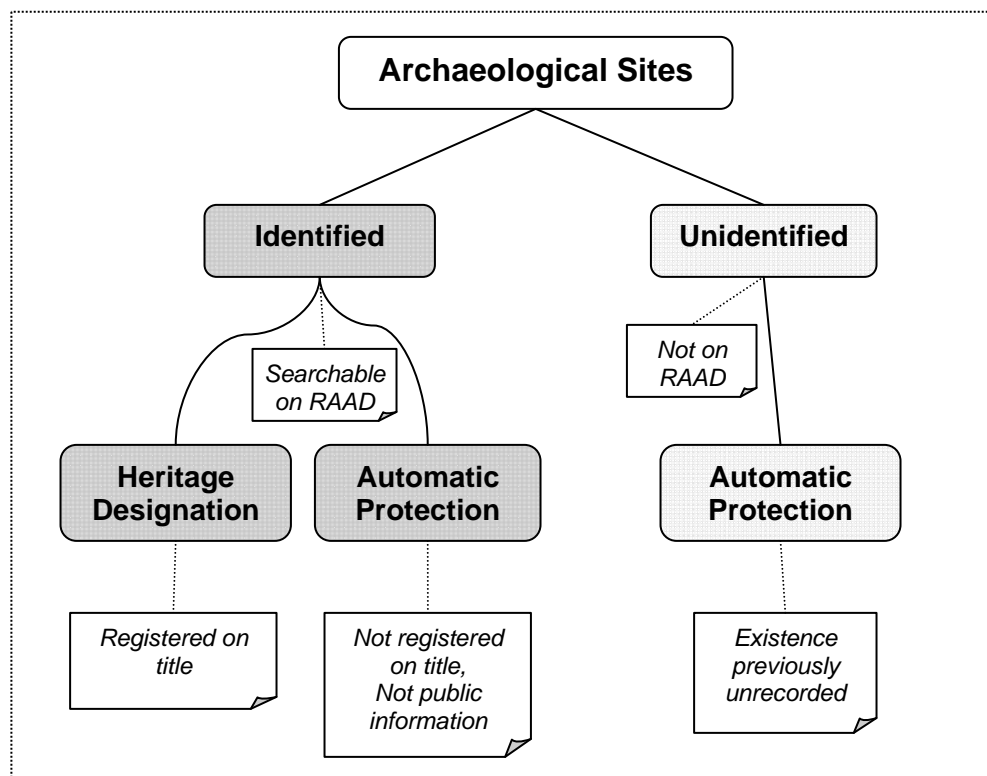
*Act*, but local governments can use other tools that contribute to their protection, discussed later in this report. The *Heritage Conservation Act* is administered by the Province.

There are two mechanisms under the *Heritage Conservation Act* that protect archaeological sites: designation and automatic protection (Figure 3). Land can be designated as a Provincial heritage site, which is then registered on the title. If the designation affects private property and reduces its market value, the owner is entitled to compensation from the Province. Once land is designated as a heritage site, a permit is required for a variety of actions on the property relating to alteration of the site. The requirement of compensation for loss of market value is a significant deterrent to governments designating heritage sites on private land, and the BC Archaeology Branch does not currently consider this a suitable tool for improving protection of archaeological sites (Glaum, 2008).

The vast majority of recorded first nations archaeological sites are not designated as Provincial heritage sites, are therefore not registered on land title, and the owners of the property may be unaware of their existence (BC Archaeology Branch). They are still, however, protected by the *Act*. Unless landowners or developers are alerted to the existence of a site on their property during the permitting process, they may unknowingly damage the site, which could result in delays and costly remediation processes when the site is discovered after development has begun (BC Archaeology Branch).

The *Act* also provides the authority to limit access to archaeological data. Access to archaeological data is restricted in order to protect sites from being desecrated. There are two ways of accessing archaeological data: through data requests made to the

Archaeology Branch, and Internet access to the Remote Access to Archaeological Data (RAAD) online application. Access to RAAD is password protected and permission is limited to first nations governments, federal, provincial and local government agencies with land or resource management functions, and the professional archaeological consulting community (BC Archaeology Branch).



**Figure 3 Archaeological Sites Protected by the *Heritage Conservation Act***

Despite the protection offered by the *Heritage Conservation Act*, archaeological sites continue to be damaged and destroyed by development. Some criticize the provincial government for lack of enforcement of the *Act*, or point a finger at public apathy. McLay (2004) identifies three major gaps in the provincial heritage management system, that have prevented better protection of archaeological sites: “1) Upholding provincial stewardship principles and the *Heritage Conservation Act*; 2) Reconciling First Nations’

aboriginal rights; and 3) Integrating a local government role in provincial heritage management.” It is McLay’s third point that is the topic of this report, and is further explored in the sections that follow.

## **2.4 Heritage Site Protection under other Jurisdictions within the Islands**

### **Trust Area**

Local trust committees have jurisdiction over local trust areas, but do not have jurisdiction over the federal, provincial, and regional district lands in the same area. As first nations heritage sites do not follow contemporary political boundaries, it may be useful to consider the heritage site protection provided by other jurisdictions in the Gulf Islands.

Federal lands in the Gulf Islands consist of Federal Crown Land, Indian Reserves and the Gulf Islands National Park Reserve. With the exception of Parks Canada, there is no Federal legislative framework to protect heritage sites on federal lands (Burley, 1994). Surprisingly, this means that heritage sites on private land have better legal protection than on most federal lands as a result of Provincial legislation.

The Gulf Islands National Park Reserve is located in the southern Gulf Islands. It covers 35 square kilometers of islands, islets and intertidal areas, and borders Islands Trust jurisdiction in many places (Parks Canada, 2008). Parks Canada has its own policies and guidelines to protect archaeological and heritage resources that are specific to protected areas where development does not usually occur beyond basic visitor services and trails (Parks Canada, 2006). Gulf Islands National Park Reserve staff is developing protocol agreements regarding human remains and heritage resources with several first nations groups who have territory in the Park Reserve.



Lands under provincial jurisdiction include provincial Crown lands, roads, and provincial parks. The *Heritage Conservation Act* applies to these lands, as it also does to private lands in British Columbia held in fee simple. The *Heritage Conservation Act* also applies to lands under the jurisdiction of regional districts, such as regional parks.

Local trust committees and Islands Trust staff can contribute to the protection of first nations heritage sites but it is important to recognize that not all lands in the Gulf Islands are within their jurisdiction. In addition to the provincial, federal and municipal jurisdictions, first nations traditional territories present another layer of governance, which is discussed in the next section.

## **2.5 First Nations Governance**

There are 24 first nations with territorial interest in the Trust Area, (summarized in Appendix D), many of which overlap with each other. Each first nation may have its own approach to heritage site preservation and not all first nations may seek the same relationship with the Islands Trust. Some individual local trust committees have protocol agreements for cooperation with local first nations. Some first nations are in the BC Treaty process, some have historic Douglas Treaties, and some both, all of which may influence the nature of relationship they seek with the Islands Trust.

A first nation, which could also be known as a band or tribe, typically has both a hereditary chief (some first nations have more than one hereditary chief) and an elected chief and council, in addition to elders who are leaders in the community. The traditional authority rests with hereditary chiefs, and the legal authority under the *Indian Act* rest with the chief and council. There may be staff members providing support to the elected

officials who have a term of only two years. Some first nations have formed treaty groups such as the Hul'qumi'num Treaty Group, comprised of six first nations with a common language and culture, who are in the current BC treaty process. The Sencot'en C'A,I, Newell represents four first nations of common language and culture who have an historic Douglas Treaty, and the Te'Mexw Treaty Association represents four different first nations with historic Douglas Treaties but who have also chosen to enter the modern treaty process. The members of these treaty groups are also listed in Appendix D. Alliances of individual first nations such as these may function for specific purposes and in some cases it may be appropriate for staff to contact the alliance with referrals, but in others it is appropriate to directly contact the individual first nation. Islands Trust staff need to understand whom to contact under what circumstances, to ensure a good working relationship, and to ensure that referrals are reaching the correct people.

The conventional way in which a first nation contributes its voice to land use planning decisions in the Trust Area is through the referral process. The Islands Trust is transitioning from referring very little to first nations, to developing protocols and procedures for referring most bylaws and applications. The 2004 Supreme Court of Canada rulings in *Haida First Nation v. BC* and *Taku River Tlingit First Nation v. the BC Government* provided a clearer understanding of the rights and responsibilities of the governments and the necessity to consult and accommodate first nations interests. The court reaffirmed that negotiating in good faith is the best means to reach long-term solutions and further defined what constitutes proper consultation and accommodation ("*Haida Nation v. British Columbia (Minister of Forests)*," 2004; "*Taku River Tlingit v. British Columbia (Project Assessment Director)*," 2004).

The BC Provincial Government has been improving its efforts at consultation with first nations in response to the court decisions described above, and is developing a consultation and accommodation framework with the First Nations Leadership Council (Ministry of Aboriginal Relations and Reconciliation, 2008). The Islands Trust (and regional districts) is required to have official community plan bylaws approved by the Minister of Community Development, unlike other local governments who are not required to have this provincial approval of bylaws. What this means operationally is that more effort is required by the Islands Trust when referring proposed bylaws to first nations. In the past, proposed bylaws were sent to a first nation to them for comment, requesting a response within 30 days, and if no response is received it is assumed they have no interest and the bylaw proceeds. For proposed bylaws that require ministerial approval, the Islands Trust is now following up referrals with phone calls when no response is received, and is sometimes extending the time beyond 30 days. First nations typically do not have the capacity to respond to the volume of referrals they are receiving from numerous agencies, an issue which has not been adequately addressed by the Islands Trust nor other referral agencies now struggling to comply with heightened requirements for consultation and accommodation.

There remain uncertainties about referring to first nations the applications for development that are in conflict with archaeological sites. If the applicant is required by the BC Archaeology Branch to undertake an archaeological impact assessment, part of this process involves consulting with relevant first nations. Considering that first nations typically receive more referrals than they can respond to anyway, perhaps it is not productive to send duplicate referrals. However, in the interests of relationship-building and making decisions to best protect the heritage site, first nations should be notified once a staff member has determined there is a conflict with an archaeological site.

These uncertainties could be addressed and clarified by a protocol agreement between a first nation or a group of first nations and a local trust committee or committees.

Questions such as the length of time for a referral response, to whom these should be addressed, which first nations have interest in particular areas, dispute resolution procedures, and others, could all be addressed in such a protocol. Protocol agreements are discussed further in the next section.

## **2.6 Protocol Agreements with First Nations**

Trust Council or a local trust committee can enter into agreements with other agencies or organizations at a political level. There are numerous protocol agreements of these kinds such as those between Trust Council and regional districts regarding provisions of services, or between Trust Council and the provincial ministry responsible for Crown lands regarding the referral process.

Many first nations have entered into protocol agreements with different levels of government, and two such agreements exist between the Islands Trust Council and a first nation; a protocol agreement with the Lyackson First Nation adopted in 2000 is a protocol for cooperation in the Thetis Island Local Planning Area and the Lyackson Traditional Territory, and a protocol agreement with the Snuneymuxw First Nation signed on December 4, 2008. The latter agreement is for “a government-to-government relationship of mutual respect and cooperation with respect to planning, land use management, and heritage conservation” (Snuneymuxw First Nation & Islands Trust, 2008).

The Hul'qumi'num Treaty Group has been particularly active in advancing the protection of heritage resources in their traditional territory. In 2007, the Hul'qumi'num Treaty Group, its six member First Nations and the Province of British Columbia signed a *Memorandum of Understanding: First Nation Heritage Site Conservation in Hul'qumi'num Tumuhw*<sup>1</sup>. This MOU covers the roles of all parties in relation to the *Heritage Conservation Act*, as well as the development and implementation of an archaeological potential model for the Hul'qumi'num tumuhw. The protocol also requires that, in order to prevent conflicts or overlaps between jurisdictions the Archaeology Branch is given the opportunity to comment on future agreements with local governments concerning heritage conservation. The Archaeology Branch also commits to continued support of local governments' use of the RAAD online application in identifying potential conflicts between land use development and archaeological sites.

The Hul'qumi'num Treaty Group and its six member first nations have been working to develop a "*Protocol Agreement Regarding the Protection of First Nation Archaeological Heritage Sites*" with the Islands Trust Council (Appendix B). This protocol has approval in principle from all local trust committees in the HTG territory, and is under review by the HTG's six member first nations. It has, however, already received attention of the media who call it a "landmark agreement" that could become a template for other local government – first nation agreements (Shore, 2008). The agreement commits local trust committees within the Hul'qumi'num tumuhw to proactively considering first nations heritage sites in both short term and long term planning activities.

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<sup>1</sup> Means the geographic area described in the Hul'qumi'num Treaty Group's Statement-of-Intent Core Territory as part of the BC Treaty process.

The HTG – Islands Trust protocol agreement also commits planners to consulting the RAAD online application when applications for development are received to check for conflicts with archaeological sites or mapped areas with potential for archaeological sites and notify the HTG and HTG member first nations if any are found. This triggers a series of other responsibilities related to referral to the first nation and BC Archaeology Branch, including waiting for a response before proceeding with the application.

Through the protocol agreement with HTG, the Islands Trust is also endeavouring to improve protection of cultural sites with no archaeological evidence. Protecting these sites may be just as important to first nations communities as protecting archaeological sites (Miller, 1998; Thom, 2005). Since the protection of these heritage sites is a new undertaking by the Islands Trust there is much to learn about how this protection can be implemented. It is hoped that the protocol approach developed with HTG can be expanded to the entire Trust Area in the future.

For long-range planning, local trust committees that will be signatories of the protocol agreement with HTG must consider including objectives and policies for identification and protection of heritage sites in OCPs and integrating the protection of these sites in their land use bylaws. There are a number of tools that the Islands Trust can use to achieve this protection, and they are discussed in the next section of this report.

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### ***3. Opportunities for Heritage Site Conservation by the Islands Trust***

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Local governments have limited legislative authority to protect archaeological sites, a responsibility that resides primarily with the Province. The *Local Government Act* provides local governments with some authority for the protection of heritage sites, but archaeological sites are not the focus of this legislation. Still, there are numerous ways in which local governments can contribute to archaeological site protection, typically by implementing processes and mechanisms to identify conflicts between archaeological sites and proposed developments early in the process. The ability to protect other first nations heritage sites that have no associated archaeological resources is not clearly defined in legislation but is an aim of the HTG protocol.

Local government is often the first agency to become aware of planned development through applications or referrals that they receive, and are well positioned to provide early notification of a conflict with a first nations heritage site to landowners. Early notification can avoid a long and costly process that could ensue when an archaeological site is discovered once development or land alteration has already begun. It gives landowners and developers the opportunity to revise plans to avoid an archaeological site before development begins. The costs of disturbing an archaeological site once development has begun and managing the unplanned impacts to the site are more than just financial. The situation could also result in poor relations with the landowner, negative media coverage, or community conflict, not to mention the implications of damaging the archaeological site that may be of important historical and spiritual significance to first nations people (BC Archaeology Branch). In the case of non-archaeological heritage sites, if a first nation makes information available to a local

government locating these places, the local government can ensure that the conflict is identified early on, and that the first nation is notified and consulted with.

In the development of the Islands Trust – HTG protocol in consultation with the BC Archaeology Branch, several ways in which local governments can better protect heritage sites have been considered. Many of these options are not currently being explored more widely, and the present focus is on the use of heritage conservation areas to offer protection for areas with high archaeological potential, as well as relying on planning staff to consult the RAAD application and alert landowners to their responsibilities under the *Heritage Conservation Act*, if a conflict with an archaeological site is identified. This section reviews and discusses the options for improving the Islands Trust's ability to contribute to the protection of first nations heritage sites.

### **3.1 Part 26 of the Local Government Act**

Part 26 of the *Local Government Act* gives local governments their authority for planning and land use management. There are five tools in this part of the *Act* that could be used to improve protection of archaeological resources: development permit areas, development approval information, park dedication, subdivision regulations, and setback regulations.

#### **3.1.1 Development Permit Areas**

Pursuant to section 919.1 of the *Local Government Act*, local governments are given the authority to designate development permit areas in an OCP. There are ten different purposes for which a development permit area can be created such as protection of the natural environment, establishment of objectives for form and character, or establishment of objectives for water conservation. For land within a development permit



area, a permit is required prior to subdivision and prior to construction of, addition to, or alteration of a building. For development permit areas meant to protect the natural environment or protect development from hazardous conditions, a permit is also required prior to any land-altering activities. The list of purposes for which a development permit area can be created does not include protection of archaeological or cultural resources however, and change to the legislation would have to occur before one could be used for this purpose.

Still, there has been some interest by the Islands Trust in using development permit areas to protect heritage resources. Data from archaeology potential modeling could be used to establish areas of high archaeological potential to set the boundaries of development permit areas. The location of non-archaeological heritage sites could also be included in a development permit area. Applicants would be required to undertake an archaeological assessment of their property, relevant first nations would be consulted, development would be permitted if there were no heritage resources identified, and the applicant would be instructed to contact the BC Archaeology Branch if archaeological resources were found.

This tool could make a substantial improvement in heritage site conservation, and would be relatively easy to enforce. Even if its purpose is well communicated to the public, it will represent additional time and cost to owners of land in a development permit area which may be opposed by some. The need for more baseline information would vary depending on the local trust area; the HTG has already completed the archaeology potential mapping for their traditional territory, but they are the only first nation in the Trust Area to have done so. There would be a high cost to the local government for mapping if needed, development of bylaws to introduce the development permit areas,

and lobbying of the provincial government for change to the legislation. The public may not be supportive of this high cost if there are other, lower cost tools available.

**Table 3. Evaluation of Development Permit Areas**

<b>Criteria</b>	<b>Ranking</b>
Ability to make a substantial improvement in heritage site conservation	High
Likelihood of public acceptance	Moderate
Enforceability	High
Need for more baseline information	Variable
Cost to local government	High

Due to the need for legislative change before development permit areas could be used to protect archaeological sites, the current view of the BC Archaeology Branch is that other tools should be explored instead (Glaum, 2008). In particular, heritage conservation areas, discussed in section 3.2.1 of this report, could be implemented in much the same way as a development permit area, and are designed specifically to protect heritage resources.

### 3.1.2 Development Approval Information

Pursuant to section 920.01 of the *Local Government Act*, an official community plan can designate circumstances in which, or areas for which, development approval information can be required. An applicant must provide this information at their own expense. In this way, a local trust committee could require information on impact to archaeological sites before issuing a permit. This required information could be an archaeological impact assessment by a professional consulting archaeologist in areas identified to have high archaeological potential. Or, it could be a site alteration permit from the BC Archaeology Branch in circumstances where there is an identified archaeological site in the vicinity of the subject property.

Without including requirements for development approval information in an official community plan, a local trust committee could still ask for this information, but could not withhold a permit if the applicant does not provide it. A good approach to archaeological site conservation may be to use development approval information in conjunction with another tool such as a development permit area or a heritage conservation area. This way, development applications in areas of high archaeological potential could require an archaeological assessment which would survey the area for archaeological sites, both identified and unidentified.

Development approval information has the potential to make a substantial improvement to archaeological site conservation but it depends on the other tools that are implemented in conjunction with it. It does not appear useful for improving the protection of non-archaeological heritage sites. It would be easily enforced, but only a moderate likelihood of public acceptance is expected due to the requirement of the applicant to provide studies or reports at their own cost. There is a variable need for more baseline information to implement this tool depending on the local trust area and how the requirement for development approval information will be determined. The cost to the local government is also variable, depending on the baseline information needed, but compared to the cost of development permit areas, would likely be moderate.

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**Table 4. Evaluation of Development Approval Information**

<b>Criteria</b>	<b>Ranking</b>
Ability to make a substantial improvement in heritage site conservation	Variable
Likelihood of public acceptance	High
Enforceability	Moderate
Need for more baseline information	Variable
Cost to local government	Moderate

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### 3.1.3 Park Dedication

Heritage sites could be protected from development by designating parkland to include them when park dedication is required in the subdivision process pursuant to section 941 of the *Local Government Act*. While this section of the *Act* gives the landowner the option of providing parkland or cash-in-lieu, it also gives a local government the authority to include policies in OCPs that designate the type and location of future parks, and conditions under which the owner must provide park land as opposed to cash.

If implemented in conjunction with heritage conservation areas and development approval information, the local trust committee would be much better equipped to make informed decisions about the location of parkland to protect archaeological sites, and this could occur in synergy with Provincial requirements for the protection of archaeological sites under the *Heritage Conservation Act*. This tool alone has only a low ability to make a substantial improvement to heritage site conservation because of the infrequency of parkland dedication due to subdivision in the Trust Area. It is moderately to highly enforceable; decisions about the location and nature of parkland can be a negotiation and compromise between a variety of objectives for park dedication, and the protection of heritage sites may not necessarily be the primary objective. A high likelihood of public acceptance is anticipated because it would negatively affect few while benefiting the community. However, a criticism of this tool is that it could take away from acquiring parkland for the purpose of recreation. There is a moderate need for more baseline information, as the strength of this tool would be increased if local governments are aware of the location of non-archaeological heritage sites. A local

government could begin using this tool with minor bylaw amendments that could be completed at little cost.

**Table 5. Evaluation of Park Dedication**

<b>Criteria</b>	<b>Ranking</b>
Ability to make a substantial improvement in heritage site conservation	Low
Likelihood of public acceptance	Moderate – high
Enforceability	High
Need for more baseline information	Moderate
Cost to local government	Low

#### 3.1.4 Subdivision Regulations

Pursuant to section 903 of the *Local Government Act*, a local government can regulate the shape, dimensions and area of all parcels of land that may be created by subdivision. A local trust committee could require that a lot created by subdivision is of such a shape or size that impact to a known heritage site could be avoided when buildings are constructed on the lot. For example, lot configuration could require heritage sites to be in the setback area. Or, a lot could not be created where a heritage site covers more than some percentage of the building envelope. There may be a number of other approaches to tailoring subdivision regulations to contribute to the protection of archaeological sites.

This tool could most effectively be implemented in conjunction with others such as heritage conservation areas. Although the Ministry of Transportation approves subdivisions in the Trust Area and not the Islands Trust, if land is in a heritage conservation area, it cannot be subdivided without a heritage alteration permit regardless.

This tool is likely to have high public acceptance as there would be little impact to the public, but it would not make a substantial contribution to improved heritage site conservation because there are few subdivisions and fewer of those would be in conflict with heritage sites. It would be relatively easily enforced, and the requirement for more baseline information would vary based on existing information. Cost to introduce new subdivision regulations would be low with the greatest expenditure in staff time for research and bylaw amendment.

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**Table 6. Evaluation of Subdivision Regulations**

<b>Criteria</b>	<b>Ranking</b>
Ability to make a substantial improvement in heritage site conservation	Low
Likelihood of public acceptance	High
Enforceability	High
Need for more baseline information	Variable
Cost to local government	Low

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### 3.1.5 Setback Regulations

Section 903 of the *Local Government Act* provides local governments with the authority to set regulations regarding use, density, and the siting and location of buildings and uses on land. A local trust committee could increase required setbacks in areas known to have heritage sites. This could most readily be implemented in setback from the sea regulations as many of the archaeological sites in the Gulf Islands are coastal middens. This change in regulation would be most practical if it was not applied to all shorelines but only those of a type that are likely to contain heritage sites. For example, it may not be practical to impose greater setbacks in areas of bedrock shoreline that have little soil cover, for the purpose of protecting archaeological sites. In order to make informed decisions about where to impose greater setbacks, more information would be required such as a thorough shoreline analysis.

Revising setback regulations to increase setbacks from the sea to avoid coastal archaeological sites could make a moderate improvement in heritage site conservation. It would only affect new structures, not those already built, and would only help protect coastal heritage sites. Depending on the area, there could be a high need for more baseline data in order to determine the areas where the adjusted setback should apply. Owners of the affected properties may be opposed because it represents an additional restriction to where they can build on their property, but good public information about the bylaw amendment would be essential to public acceptance. A moderate cost in staff time and for shoreline analysis would be incurred.

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**Table 7. Evaluation of Setback Regulations**

<b>Criteria</b>	<b>Ranking</b>
Ability to make a substantial improvement in heritage site conservation	Moderate
Likelihood of public acceptance	High
Enforceability	Moderate
Need for more baseline information	Variable
Cost to local government	Moderate

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### **3.2 Part 27 of the *Local Government Act***

Part 27 of the *Local Government Act* gives local governments their authority over heritage conservation. This part of the *Act* is not intended to provide local governments with the authority to protect archaeological sites but is intended more for the protection of historic buildings or other “improvements affixed to the land”. However, the BC Archaeology Branch, the Islands Trust, and the HTG have interpreted this part of the *Act* in such a way that it can be used to protect first nations heritage sites. There are four tools in this part of the *Act* that could be used for this purpose: heritage conservation, areas heritage designation, heritage recognition and community heritage registers.

### 3.2.1 Heritage Conservation Areas

Heritage conservation areas could be created in a similar way to development permit areas, and the current legislation does allow them to be used to protect heritage resources including archaeological sites. Section 970.1 of the *Local Government Act* gives local governments the authority to designate heritage conservation areas in official community plans.

Within a heritage conservation area, a person must not do any of the following without a permit:

- a. subdivide land within the area;
- b. start the construction of a building or structure or an addition to an existing building or structure within the area;
- c. alter a building or structure or land within the area; or
- d. alter a feature that is protected heritage property.

The legislation also allows a local government to specify conditions under which a permit is not required.

In the protocol agreement under development between the Islands Trust and the Hul'qumi'num Treaty Group, local trust committees commit to considering designating heritage conservation areas in their official community plans. Exactly how heritage conservation areas would be determined and administered is unclear and questions remain. For example, what would be the boundaries? Guidelines of the BC Archaeology Branch suggest protecting not more than 10% of the landbase through this tool (Glaum, 2008); if a large percentage of a local trust area has high archaeological potential, could



the tool be used? Would it be possible to identify a subset of the areas of highest potential?

To designate heritage conservation areas in HTG territory, for example, it will be important to work cooperatively with not only the HTG and its member first nations, but also the Archaeology Branch that has existing permitting powers and processes through the *Heritage Conservation Act*. Coordination and further clarification will be required particularly for the permitting process. Section 972 of the *Local Government Act* gives a local government or its delegate the authority to issue a heritage alteration permit. However, the Islands Trust should not create a permitting process that would be redundant with the site alteration permit required by the Province, but should defer to the archaeological expertise of the Archaeology Branch. How these two permitting processes would be integrated remains to be determined.

Heritage conservation areas are a strong tool with high potential to improve heritage site conservation. They would be relatively easy to enforce, and a moderate level of public support is expected although public support would be variable and would be positively influenced by the communication efforts of the Islands Trust. This tool would require much more baseline information that would be costly and could be time-consuming to produce. The archaeology potential model of the HTG is a start, and heritage conservation areas could be implemented within the area covered by their mapping most readily.

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**Table 8. Evaluation of Heritage Conservation Areas**

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<b>Criteria</b>	<b>Ranking</b>
Ability to make a substantial improvement in heritage site conservation	High
Likelihood of public acceptance	High
Enforceability	Moderate
Need for more baseline information	High
Cost to local government	High

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### 3.2.2 Heritage Designation

Local governments are authorized to protect “real property” through heritage designation, by bylaw, under section 967 of the *Local Government Act*. Although “real property” is defined as “buildings, structures, and other improvements affixed to the land,” likely not including archaeological sites, the *Act* also says that a heritage designation bylaw may “apply to landscape features identified in the bylaw,” which could include archaeological sites.

The draft HTG-Islands Trust protocol states that local trust committees will consider using heritage designation where the parties have determined, in consultation with the BC Archaeology Branch, that such designation is appropriate to protect heritage values. However, because the local government must pay compensation to the owner if there is a loss in market value, this is not considered as the primary tool for archaeological site protection.

If compensation was not an issue, this tool could well be used in conjunction with others, but alone would not make a substantial contribution to heritage site conservation. Once a heritage site is designated enforcement is relatively easy. Public acceptance is likely to be high as heritage designation is voluntary and must be with the consent of the property

owner. There is a low need for more baseline information, meaning that little further study or cost would be required before implementation.

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**Table 9. Evaluation of Heritage Designation**

<b>Criteria</b>	<b>Ranking</b>
Ability to make a substantial improvement in heritage site conservation	Low
Likelihood of public acceptance	High
Enforceability	High
Need for more baseline information	Low
Cost to local government	High

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### 3.2.3 Heritage Recognition and Community Heritage Registers

Section 955 of the *Local Government Act* allows a local government to install a plaque or other marker to recognize the heritage value or character of a property. They must only do this with the consent of the property owner. Although the recognition of archaeological sites is not specifically mentioned in the legislation, if a local trust committee wished to install a plaque or other marker to recognize one, they would most certainly need to consult with the relevant first nations and the BC Archaeology Branch.

Section 954 of the *Local Government Act* enables a local government to establish a community heritage register that identifies property the local government considers to be heritage property. This could be used in conjunction with heritage recognition to establish a network of sites throughout the landscape that are both on the register and recognized with a marker.

Neither of these tools are designed to protect first nations heritage sites but were principally meant for buildings or other “improvements affixed to the land”. However, they could be used for first nations heritage sites. The draft protocol agreement with HTG

identifies both of these tools as possible approaches to improve public education and awareness. As with heritage designation, in some cases it may not be appropriate to make the location of archaeological sites public knowledge as this could make them more susceptible to desecration.

This tool should be used in conjunction with others as alone it cannot make a substantial improvement to heritage site conservation. Enforceability is not an issue as designation is voluntary, and does not alter the level of protection the site has under the *Heritage Conservation Act*. There is a high likelihood of public acceptance as designation is voluntary, and a low need for more baseline information. Cost to develop a community heritage register would be low to moderate.

**Table 10. Evaluation of Heritage Recognition and Community Heritage Registers**

<b>Criteria</b>	<b>Ranking</b>
Ability to make a substantial improvement in heritage site conservation	Low
Likelihood of public acceptance	N/A
Enforceability	High
Need for more baseline information	Low
Cost to local government	Low - Moderate

### 3.3 Heritage Conservation Act

The *Heritage Conservation Act* is administered by the Province, but through a cooperative relationship between the Province and the Islands Trust, mechanisms in this *Act* could be used to contribute to first nations heritage site protection at the local level. Heritage designation by the Province could form part of a heritage conservation strategy of the Islands Trust.

### 3.3.1 Heritage Designation

Heritage designation for an archaeological site protected under the *Heritage Conservation Act* means that its location becomes public information, when prior to designation it was confidential. In many cases, giving an archaeological site heritage designation is not desirable due to the increased possibility of desecration. On the other hand, making the public aware of an important site by its designation may result in members of the public becoming stewards of the site and actually reducing the likelihood of damage.

Whether or not heritage designation is appropriate may depend on the type of archaeological or cultural site. For example, designating a little known burial cave compared to a well known petroglyph are quite different situations. The burial cave may be better protected by remaining undesignated. Designating the petroglyph could be a good way to educate the public about its importance and about archaeological sites in general.

## 3.4 Incentives and Public Education

The preceding sections of this chapter have focused on regulatory mechanisms for protecting archaeological sites. Another approach could be based on incentives and public education. Ideally, an integrated approach would involve a combination of regulatory, incentive-based, and public education tools.

Some developers and property owners may only perceive managing the impacts to an archaeological site as an onerous and costly task. Incentives for protecting an archaeological site could help to change this attitude. Incentives could be both monetary and non-monetary. For example, if a development variance permit is required to change

the siting of a building or structure to avoid an archaeological site, the application fee could be waived. Or, an award program could be established to recognize developers and property owners who manage impacts to a heritage site during their development in an exemplary way. The Islands Trust's existing Community Stewardship Awards program is meant to recognize and encourage the actions of individuals and organizations that support the mandate of the Islands Trust. This awards program could be expanded to reward those who are stewards of first nations heritage sites on their property.

Public education is another way of changing the attitude that managing impacts to an archaeological site is nothing more than an onerous task. If the public can better understand the importance and fragility of these cultural resources, they may take on the task of protecting them more enthusiastically especially if the cost to individual property owners is minimized through incentives at the same time.

The draft protocol with HTG contains a section on public education and awareness and identifies three ways in which they can be addressed cooperatively: developing information pamphlets, installing plaques or other markers at archaeological sites, and recognizing archaeological sites on community heritage registers. The draft protocol also has the parties committing to encouraging regional districts within the area to develop complementary mechanisms and support public education within their jurisdictions of park management and building permit approvals.

### **3.5 Case Studies of Initiatives by Other Local Governments in BC**

The steps being taken by the Islands Trust to contribute to the better protection of heritage sites, primarily the development of the protocol agreement with HTG, are unique among local governments in British Columbia. There are a few other local governments who have taken steps to improve their ability to protect heritage sites, however. Three examples are given below: the Corporation of Delta's procedures for protecting archaeological sites from development, the City of Langford's Community Archaeological Assessment fund, and the City of Powell River and their protocol with the Sliammon First Nation.

#### **3.5.1 Corporation of Delta**

The Corporation of Delta has been a leader among local governments in implementing mechanisms to better protect archaeological sites (Glaum, 2008). Their OCP contains an archaeological potential map and policies for requiring archaeological impact assessments, and staff has developed clear procedures for the development application review process when there are archaeological interests.

In a council report dated August 3, 2004, District of Delta staff outlines new procedures for protecting archaeological sites, including a comprehensive flow diagram (Gaudry, 2004). It is the type of clarity in this Delta report that Island Trust staff could benefit from having as a guide to follow, and it is adapted for the Islands Trust in Appendix C.

#### **3.5.2 City of Langford**

The City of Langford has taken a number of initiatives to improve their ability to protect archaeological sites including identification of conflicts between proposed developments

and archaeological sites, development of educational brochures for property owners and developers, requests for archaeological assessments as a condition of rezoning, and the establishment of a Community Archaeological Assessment Fund (Adin, November 5, 2008).

The City of Langford has been collecting amenity contributions in exchange for density bonuses since 2002, beginning by requiring a contribution to an affordable housing fund (Adin, November 5, 2008). Since 2006, amenity contributions for a Community Archaeological Assessment Fund have also been required, in the amount of \$100 per unit in all areas of the city. This fund will be used to conduct archaeological assessments in the City to identify unrecorded archaeological sites or areas of high archaeological potential. Because the Trust Area has few multi-family developments, a local trust committee would probably not want to mirror this particular approach. However, the Islands Trust could look to the information brochures and OCP policies of the City of Langford for an example.

### 3.5.3 Sliammon First Nation and the City of Powell River

The City of Powell River is within the traditional territory of the Sliammon First Nation, and the downtown waterfront area has been built upon an important village site and significant midden. In 2002, development on the waterfront disturbed this midden, an event which served as a catalyst for relationship-building between the Sliammon First Nation and the City of Powell River (Gallagher, 2008). The City of Powell River now has an OCP with detailed direction for managing conflicts with Sliammon heritage sites and a smoothly running referral process according to the City (Sadlikova, August 26, 2008).



The first step in building a working relationship was the signing of a Community Accord in 2003 that recognized each group's distinct authorities and responsibilities, and that all interests are best served by a spirit of cooperation. In 2004, the municipality and Powell River signed the *Protocol Agreement on Culture, Heritage and Economic Development*, setting out specific ways to build and strengthen the government-to-government relationship (City of Powell River, 2005). The City of Powell River revised their OCP in 2005 to contain detailed direction on the protection of first nations archaeological sites. Sliammon involvement in the development of the OCP involved a steering committee comprised of three Council members and the Intergovernmental Coordinator for the Sliammon First Nation.

The Powell River OCP includes a summary of Sliammon history and culture, and a map of the region and its archaeological sites including Sliammon place names. *Part 8: Sliammon & Municipal Relations* includes specific roles and responsibilities of both Powell River staff and the Sliammon, with regards to proposed developments and land use applications. The OCP is "intended to facilitate the implementation of an eventual Sliammon treaty and coordination of first nation, municipal and regional planning efforts" (First Nations Summit & Union of BC Municipalities, 2007). To this effect, the OCP goes beyond the protection of archaeological sites, including efforts to protect areas currently used by the Sliammon for hunting and resources harvesting, and the exercise of their Aboriginal rights.

To better equip planning staff to alert landowners and the Sliammon when a development proposal is in conflict with an archaeological site, the Sliammon First Nation provides the municipality with information about the location of heritage sites or other areas where the Sliammon exercise their Aboriginal rights. If an application does

have a conflict with a Sliammon site, it is referred to the First Nation and the result is typically a covenant for its protection, or the designation of a “no build area” (Sadlikova, August 26, 2008). The vast majority of applications received by the municipality have no conflict with Sliammon sites, and the lands that are part of the Sliammon *Agreement in Principle* are mostly owned by the Crown.

An important part of the success of the referral process is that there is one designated person at Sliammon who responds, and can be relied upon to do so in a timely manner. Another important part of the success is that the number of referrals is small enough to be managed by existing staff, particularly of Sliammon. The City of Powell River is a small part of Sliammon Territory, but the Regional District of Powell River, which covers a much larger part, does not refer applications to Sliammon. If they did, it would likely not be possible for Sliammon to manage them all with current resources.

It is also important to note that the Sliammon are the only first nation with traditional territory in the City of Powell River. Many other local governments, the local trust committees of the Islands Trust being no exception, have numerous first nations’ territories within their jurisdiction. Replicating an OCP such as Powell River’s would require cooperation and agreement among these first nations, and would make the referral process more complex.

Powell River’s small size and urban character is very different from the larger, rural areas of the Islands trust’s local trust committees. The fact that there is only one first nation with traditional territory within the Powell River is also very different from local trust committees, some of which include up to eight first nations in a referral process. However, learning can be gained from the process for protecting archaeological sites

that is set out in the Powell River OCP. In particular, the specific steps in involving Sliammon in applications for development that are in conflict with an archaeological site provide certainty to the process, and the inclusion of a map of identified archaeological sites in the OCP raises awareness of archaeological sites and also adds certainty for property owners.

### **3.6 Discussion of Opportunities**

This section has described a range of opportunities available to the Islands Trust for improving their ability to contribute to the protection of first nations heritage sites. The evaluation of these tools is summarized in table 11 below. Each of these opportunities can be categorized as either regulatory, procedural, incentive-based, educational, or a combination thereof. The emphasis of this section has been on the regulatory tools available and the strengths and weaknesses of each one, but any strategy of the Islands Trust should integrate a combination of approaches.

Of the regulatory tools available to local governments, heritage conservation areas are considered by the BC Archaeology Branch to be the most promising, and are mentioned in the draft HTG – Islands Trust protocol agreement. While a significant amount of baseline information is required in the form of archaeological potential mapping, the ability to make a contribution to heritage site protection is also great. The HTG has completed archaeological potential mapping for their traditional territory, so the local trust committees in that area already have the baseline information needed to implement heritage conservation areas.

Other regulatory tools such as development approval information, park dedication, setbacks and lot configuration of subdivisions could be effective contributors to the

protection of heritage sites at low cost, but alone would make a small contribution. They should be further explored and considered for implementation as part of a broader strategy to improve heritage site protection.

Penalties for damaging a site protected under the *Heritage Conservation Act* require that the person in contravention restore the property at their own cost. However, as contravention of the *Act* is a criminal offence, it must be proved in a court of law. The Province may be unwilling to take a suspected perpetrator to court unless they have a very strong case against them, meaning that very few people are charged (Glaum, September 5, 2008). Lack of enforcement of the *Act* does little to assist local governments in their efforts to improve protection of first nations heritage sites.

Voluntary tools discussed here include heritage designation (both under the *Local Government Act* and the *Heritage Conservation Act*), heritage recognition and a community heritage register. These opportunities could also be made more appealing to the landowner if there are incentives such as a reduction in taxes or public recognition of their contribution to heritage site protection. In order to make landowners aware of these opportunities, public education and outreach are necessary parts of successfully using these tools.

Public education and outreach should be a part of any strategy by the Islands Trust to improve its ability to protect heritage sites, regardless of the specific tools that are focused on. This report only touches briefly on the types of public education that could be used, and this could be further developed in a comprehensive strategy for improving the Islands Trust ability to protect heritage sites.

**Table 11. Summary of Evaluation of Tools to Protect First Nations Heritage Sites**

	Development Permit Areas	Development Approval Information	Park Dedication	Subdivision Regulations	Setback Regulations	Heritage Conservation Areas	Heritage Designation	Heritage Recognition & Community Heritage Registers
Ability to make a substantial improvement in heritage site conservation	High	Var.	Low	Low	Mod.	High	Low	Low
Likelihood of public acceptance	Mod.	High	Mod.– High	High	High	High	High	N/A
Enforceability	High	Mod.	High	High	Mod.	Mod.	High	High
Need for more baseline information	Var.	Var.	Mod.	Var.	Var.	High	Low	Low
Cost to local government	High	Mod.	Low	Low	Mod.	High	High	Low – Mod.

Implementing procedures for Islands Trust staff to check for conflicts with heritage sites could make a significant contribution to their protection, and will be essential to the success of some of the regulatory tools. Some of these procedures are already being followed by planning staff, but a clearly defined, agreed upon, step-by-step process will help to improve the capability to identify conflicts early in the process and to inform the appropriate stakeholders. Appendix C contains a flow chart with a suggested conceptualization of such a process.

Overall, local trust committees and staff should continue to develop good relationships with first nations and work cooperatively to protect archaeological sites. The draft protocol with HTG is a good example of the kind of agreement that can be reached

between the Islands Trust and first nations, and has helped to advance the discussion of protecting archaeological sites in the southern Gulf Islands.

Finally, the protection of those heritage sites that have no archaeological marker will be an ongoing challenge for the Islands Trust, but they are no less valuable to first nations people and culture (Thom, 2005; Miller, 1998). There is no written record of many of these sites, and the oral histories will be relied on for locating them and determining their importance. The Islands Trust could work with first nations to develop an inventory of these sites so that planners can consult this at the same time the RAAD application is checked for conflicts with development proposals, and notify the applicant and relevant first nations if a conflict exists. This information could remain confidential, as a first nation may not want the location of sacred sites to be publicly available. The Islands Trust should remain open and willing to work with interested first nations to incorporate the protection of non-archaeological heritage sites into development application and planning processes.

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## **4. Conclusion**

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This report has aimed to identify existing processes and policies for the protection of first nations heritage sites by the Islands Trust, and to identify options for improvement. The Islands Trust Council prioritized first nations agreements in their last term, and has developed a *Protocol Agreement Regarding the Protection of First Nations Archaeological Heritage Sites* with the HTG that will hopefully soon be signed by all parties. Implementation of this protocol agreement will require Islands Trust staff to formalize existing procedures or develop new ones for checking development applications for conflicts with archaeological sites. It will also require the use of regulatory tools that have not been used before to protect archaeological sites. This report should contribute to an understanding of these tools and their strengths and weaknesses and help prepare Islands Trust staff and trustees for implementing the protocol agreement.

Another aim of this report has been to provide the reader with an appreciation for the importance of protecting first nations heritage sites. Local governments are well-positioned to identify a conflict with a heritage site early in the development application process, and are also well positioned to implement proactive measures to provide better protection. Staff should have a good understanding for the context and rationale behind improved heritage site protection in order to effectively act in the interests of heritage site conservation. The range of content and accuracy in local trust committee OCPs shows that there is an inconsistent understanding of the issue and the role of the Islands Trust. The references in this report offer opportunities for further reading should the reader have a particular interest.

This report provides only a piece in the broader topic of addressing first nations interests by local government, and building relationships with first nations. It is hoped that this report will help to advance these discussions and enable staff to manage development applications that are in conflict with archaeological sites confidently, as well as provide a resource for developing an integrated strategy to improve the Islands Trust ability to contribute to the protection of first nations heritage sites.



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## **Appendix A: Suggested Wording of Official Community Plan Sections on Archaeology, BC Archaeology Branch**

*Taken from BC Archaeology Branch website <http://www.tca.gov.bc.ca/archaeology/>*

### **Official Community Plans (OCP) and Archaeology**

The Archaeology Branch recommends that archaeological resource management be included in OCPs to help land owners and developers understand their responsibilities surrounding provincially protected archaeological sites. Given the rapid pace of development in the province, protected archaeological sites are being accidentally damaged with increasing frequency. This is usually due to a lack of knowledge about archaeological sites and the legislation that protects them. By raising the profile of these sites within OCPs, we can alert people to archaeology at the earliest stages of development planning and avoid or reduce damage to archaeological sites in the future. By managing site damage, we also avoid the potential for increased development costs and delays, negative press, and conflict within the community.

We recommend that the OCP contain a discrete section pertaining to archaeological resource management, or that archaeology be addressed in a distinct subsection within the Heritage section. An OCP section on archaeology should embody the following concepts:

1. Archaeological sites contain unique information about the province's past. These sites are protected by the *Heritage Conservation Act*, and a provincial heritage permit is required before development within a site may take place.

Example OCP wording:

*Part of the plan area's heritage includes archaeological sites—the physical evidence of how and where people lived in the past. For 98% of the time people have lived in this area, no written records were made. Archaeological sites and oral tradition are the only vestiges of this rich history extending back many thousands of years.*

*The plan area contains XX\* recorded archaeological sites and has the potential to contain more. The Province protects these sites, whether known or unrecorded, through the *Heritage Conservation Act*. This protection applies to both private and Crown land and means that you must have a heritage permit to alter or develop within an archaeological site.*

\* Note: The Archaeology Branch can supply these numbers.

2. Local governments can gain online access to the Provincial database of recorded archaeological sites via the Remote Access to Archaeological Data (RAAD) application, and local governments should check for overlaps between these sites and proposed development. If an overlap is identified, the proponent is notified using a standard Provincial notification letter. In the letter, the Province requires that a qualified archaeologist be engaged by the proponent to determine if further archaeological studies

are required prior to development. Information on accessing RAAD can be found here: [http://www.tsa.gov.bc.ca/archaeology/accessing\\_archaeological\\_data/RAAD.htm](http://www.tsa.gov.bc.ca/archaeology/accessing_archaeological_data/RAAD.htm).

Example OCP wording:

*Development permit applicants will be notified if the subject property overlaps with a recorded protected archaeological site. Notification will include direction to engage a professional consulting archaeologist. The archaeologist will determine if an archaeological impact assessment is necessary to manage development related impacts to an archaeological site. Altering a protected archaeological site will require a Provincial Heritage Alteration Permit prior to land altering activities.*

3. Since the legislation also protects unrecorded archaeological sites, we recommend using archaeological potential mapping to identify areas where archaeological sites are likely to occur. Archaeological potential mapping may not have been produced for your area; however, the Archaeology Branch can assist with its development, and funding for local governments to pursue this work is available through the Heritage Branch. Funding information can be found here: [Community Heritage Context Planning - Ministry of Tourism, Sport and the Arts](#) Archaeological potential mapping can be included within the OCP, and if planned development falls within a potential zone, the local government should forward a notification letter to the proponent as described above.

Example OCP wording:

*This Official Community Plan refers to a map showing areas where it is likely that development will encounter protected archaeological sites (Appendix XX). Development permit applicants will be notified if the subject property overlaps with one of these areas. Notification will include direction to engage a professional consulting archaeologist. The archaeologist will determine if an archaeological impact assessment is necessary to manage development related impacts to an archaeological site. Altering a protected archaeological site will require a Provincial Heritage Alteration Permit prior to land altering activities.*

OCPs can be forwarded to the Archaeology Branch for review to ensure the wording suits the needs and goals of the local government.

For additional discussion of these concepts, see the Local Government section of the Archaeology Branch website: [Local Governments - Archaeology - Ministry of Tourism, Sport and the Arts](#)

You can also view the British Columbia Archaeological Resource Management Handbook for Local Governments at:

[http://www.tsa.gov.bc.ca/archaeology/docs/handbook\\_for\\_local\\_governments.pdf](http://www.tsa.gov.bc.ca/archaeology/docs/handbook_for_local_governments.pdf)   
[1675kb]

For further information, please contact the Archaeology Branch at 953-3334.

**Appendix B: Draft Protocol Agreement Regarding The Protection  
Of First Nations Archaeological Heritage Sites Dated June 9,  
2008**

THIS PROTOCOL AGREEMENT (“Agreement”) dated for reference the \_\_\_\_ day of \_\_\_\_\_, 2008

BETWEEN

**THE ISLANDS TRUST COUNCIL**, (‘Trust Council’) acting on its own behalf and on behalf of the Gabriola, Galiano, Mayne, North Pender, South Pender, Salt Spring, Saturna, and Thetis Island *Local Trust Committees* (‘the *Local Trust Committees*’)

AND Hul’qumi’num Treaty Group-member First Nations, being:

**CHEMAINUS FIRST NATION  
COWICHAN TRIBES  
HALALT FIRST NATION  
LAKE COWICHAN FIRST NATION  
LYACKSON FIRST NATION  
PENELAKUT TRIBE**

**AND HUL’QUMI’NUM TREATY GROUP (‘HTG’)**

All collectively known as ‘the parties’ to this Agreement.

WHEREAS:

- A. The HTG was founded in 1993 to jointly negotiate a comprehensive treaty with British Columbia and Canada in the BC Treaty Process and it represents over 6,200 members in six member First Nations: Chemainus First Nation, Cowichan Tribes, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation, and Penelakut Tribe.
- B. The *Hul’qumi’num Mustimuhw* have used and occupied the southern Gulf Islands and assert aboriginal title and rights to their core traditional territory, known as the ‘*Hul’qumi’num tumuhw*’ (shown on Schedule A of this Agreement) includes a part of the trust area designated under the *Islands Trust Act* (shown on Schedule B of this Agreement).
- C. Over 750 recorded *First Nations archaeological heritage sites* exist within the part of the *Hul’qumi’num tumuhw* that is within the trust area and the HTG AOA has identified additional areas that have the potential to contain unrecorded *First Nations archaeological heritage sites*.
- D. The object of the *Islands Trust* is to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of British Columbia generally, in cooperation with municipalities,

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

- E. The *Islands Trust* Council is established under the *Islands Trust Act* to carry out the object of the *Islands Trust*.
- F. The *Islands Trust* Council has adopted an *Islands Trust Policy Statement* pursuant to s. 15 of the *Islands Trust Act* that supports the identification, preservation, protection and enhancement of the human heritage of the trust area, including features and places of archaeological significance, and that directs *Local Trust Committees* to address these matters in their official community plans and regulatory bylaws.
- G. *Local Trust Committees* are established under s.23 of the *Islands Trust Act* and have all the power and authority of a regional district board in relation to planning and land use management and heritage conservation in their local trust area for the purpose of carrying out the object of the trust, subject to s. 29, 30 and s. 31 of the *Islands Trust Act*.
- H. *First Nations archaeological heritage sites* are protected under the *Heritage Conservation Act* and *Local Trust Committees* can use their land use planning and regulatory powers and authority in a manner that complements and contributes to this protection by managing some of the impacts of land development.
- I. Pursuant to s. 9 of the *Islands Trust Act*, and subject to the approval of the Minister responsible, the Islands Trust Council may enter into agreements with First Nations, on its own behalf and on behalf of one or more Local Trust Committees, respecting the coordination of activities for the purpose of carrying out the object of the trust.
- J. The *Local Trust Committees* affected by this Agreement have endorsed it in principle.
- K. The parties acknowledge their mutual interest in cooperating in the coordination of activities to protect *First Nations archaeological heritage sites*.

NOW THEREFORE, the parties agree as follows:

## 1.0 DEFINITIONS

In this Agreement:

“*Archaeology Branch*” means the provincial branch of government in British Columbia responsible for the administration of the *Heritage Conservation Act*.

“*First Nations archaeological heritage site*” means land, including land covered by water, within the *Hul’qumi’num tumuhw* and the *Islands Trust Area* where physical evidence of past human activity is discovered that is protected under the *Heritage Conservation Act*.

“*Heritage Conservation Act*” means the *Heritage Conservation Act, R.S.B.C. 1996, Chapter 187* and all amendments thereto.

“*HTG AOA*” means the Hul’qumi’num Treaty Group Archaeological Overview Assessment available through *RAAD*.

“*Hul’qumi’num Mustimuhw*” means the collective aboriginal people of the Hul’qumi’num Treaty Group member First Nations, including the Chemainus First Nation, Cowichan Tribes, Halalt First Nation, Lake Cowichan First Nation, Lyackson First Nation and Penelakut Tribe.

“*Hul’qumi’num tumuhw*” means the geographic area described in the Hul’qumi’num Treaty Group’s Statement of Intent Core Territory, as shown on Schedule A

“*in writing*” includes emails and electronic documents.

“*Islands Trust*” means the trust established by the *Islands Trust Act*, including the Islands Trust Council, *Local Trust Committees* affected by this Agreement and the officers and employees of the Islands Trust Council.

“*Local Trust Committee*” means a *Local Trust Committee* on whose behalf the *Islands Trust Council* has entered this Agreement.

“*Proposed development*” means a development proposed in an application to a *Local Trust Committee* within the *Hul’qumi’num tumuhw* and includes applications for zoning amendments, development variance permits, temporary commercial or industrial use permits and heritage alteration permits, but does not include applications for development permits, subdivision approval or building permits or any other development that is not subject to an application to a *Local Trust Committee*.

“*RAAD*” means the Remote Access to Archaeological Data application managed by the *Archaeology Branch*.

“*snuw’e’yulh*” means Hul’qumi’num teachings or customary laws.

## **2.0 -- PRINCIPLES**

2.1 The parties adopt the following principles in regards to this Agreement:

- a. The *Hul’qumi’num Mustimuhw* value *First Nations archaeological heritage sites* and recognize their cultural and spiritual significance in their *snuw’e’yulh*.
- b. *First Nations archaeological heritage sites* are unique amenities of value to the residents of the *Islands Trust Area* and all British Columbians due to their historic, cultural, educational, scientific and heritage values and the *Islands Trust* should address their protection during policy development, land use planning and regulatory processes.

- c. The effective conservation of *First Nations archaeological heritage sites* requires cooperative planning and communication among the parties, carried out collaboratively and in coordination with other parties, including other First Nations, regional districts and provincial agencies such as the Ministry of Transportation and the *Archaeology Branch*.
- d. The parties are committed to addressing the protection of *First Nations archaeological heritage sites* through collaborative processes that are carried out in a timely manner and are complementary to effective mechanisms used by the *Archaeology Branch*.
- e. The parties are committed to building government-to-government relations, while awaiting the outcome of treaty negotiations.
- f. The parties respect the relationships that other Coast Salish peoples have with First Nations archaeological heritage sites and are open to developing cooperative and collaborative processes with these First Nations in the future.

### **3.0 - COORDINATION AND COOPERATION**

3.1. The parties agree to schedule regular meetings to review implementation of this Agreement.

3.2 The parties may establish a First Nations Heritage Committee composed of staff and political representatives to identify strategies, develop work programs and options and to develop model bylaws and other planning tools to assist *Local Trust Committees* in realizing the objectives of this Agreement.

3.3 The parties may further formalize their cooperation through the adoption of letters of understanding that outline administrative procedures for specific matters.

3.4 The parties acknowledge that the successful implementation of this Agreement depends upon adequate human and financial resources and agree to seek funding and resources that can be devoted to implementation.

### **4.0 – COMMUNICATION AND INFORMATION SHARING**

#### *Information Note:*

*The preservation and impact management of archaeological sites presents two unique challenges; the locations of some protected sites are not known and the locations of recorded protected sites are not released into the public domain to prevent desecration and looting. To circumvent these challenges, the HTG has developed an initial archaeological overview assessment study (HTG AOA) that identifies and maps areas of archaeological potential. Recorded, protected sites are included within these areas of potential.*

*This preliminary study will continue to undergo refinement and reassessment as resources and information become available.*



*Maps showing archaeological potential areas can be made available to the public as the information is not specific enough to aid in site looting. The mapping may also be included in Official Community Plans either as archaeological potential mapping or as the basis for other land use planning tools that can manage the impacts of development on archaeological sites. Given the fluid nature of the research, the maps of archaeological potential will change over time.*

4.1 The *Islands Trust* will notify and endeavour to work in cooperation with the HTG and HTG-member First Nations to address heritage issues during the review of all major revisions of Official Community Plans and Land Use Bylaws that pertain to the *Hul'qumi'num tumuhw*.

4.2 Known *First Nations archaeological heritage sites* are recorded in the Provincial Archaeological Site Inventory and available to the *Islands Trust* and HTG through RAAD. The *Islands Trust* will access this information and consider it during the development and review of official community plans and land use bylaws that pertain to the *Hul'qumi'num tumuhw*. The *Islands Trust* will also use this information to determine if there is a direct conflict between a recorded, protected archaeological site and a *proposed development* or an activity proposed in a development permit application.

4.3 Areas with the potential to contain *First Nations archaeological heritage sites* that are unrecorded but still protected under the *Heritage Conservation Act* have been mapped as part of the HTG AOA, and this information is available to the *Islands Trust* and HTG through RAAD. The *Islands Trust* will access this information and consider it during the development and review of official community plans and land use bylaws that pertain to the *Hul'qumi'num tumuhw*. The *Islands Trust* will also use this information to determine if there is the potential for a conflict between unrecorded protected archaeological sites and a *proposed development* or an activity proposed in a development permit application.

4.4 HTG or HTG member First Nations may inform the *Islands Trust* about *First Nations archaeological heritage sites* or other sites with First Nations cultural significance that are not recorded by the Provincial Archaeological Site Inventory or predicted in the HTG AOA. Where information about such sites becomes available to the *Islands Trust*, the *Islands Trust* will consider it during the development and review of official community plans and land use bylaws that pertain to the *Hul'qumi'num tumuhw*. The *Islands Trust* will also use this information to determine if there is the potential for conflict between these sites and a *proposed development* or an activity proposed in a development permit application.

4.5 The *Islands Trust* will notify the HTG and HTG member First Nations *in writing* if either a *proposed development* or an activity proposed in a development permit application:

- a. has the potential to be in direct conflict with a known *First Nations archaeological heritage site*,
- b. is in an area that the HTG AOA identifies as having the potential to contain *First Nations archaeological heritage sites*,
- c. has the potential to conflict with other sites described in 4.4, or
- d. is within an area that a *Local Trust Committee* has formally recognized for its First Nations archaeological heritage value by designating the area as a heritage conservation area or as protected heritage property.

- e. is otherwise identified by *Islands Trust* staff as having the potential to conflict with a *First Nations archaeological heritage site*.

The notification will take place as soon as reasonably possible after *Islands Trust* staff have identified one of the above-noted situations during their analysis of a *proposed development* application or an application for a development permit.

4.6 HTG and HTG-member First Nations will endeavour to review applications referred to them by the *Islands Trust* using available archaeological records, traditional use information and community members' local knowledge and will notify the *Islands Trust* in writing within thirty (30) days if there are any concerns for the protection of recorded or unrecorded *First Nations archaeological heritage sites*.

4.7 When writing staff reports for *Local Trust Committees*, the *Islands Trust* will include information about HTG and HTG-member First Nations concerns for the protection of recorded or unrecorded *First Nations archaeological heritage sites* or other sites described in 4.4, where the HTG and HTG-member First Nations have notified the *Islands Trust* of such concerns as indicated in s. 4.6

4.8 The *Islands Trust* will share the results of archaeological studies it receives, including reports not required under permit by the *Archaeology Branch*, from an applicant that pertains to the *Hul'qumi'num tumuhw* with the HTG and HTG-member First Nations and the parties to this Agreement will identify a repository for this information.

4.9 Any of the parties to this Agreement may request meetings between *Local Trust Committees*, HTG and HTG-member First Nations and/or applicants to address any concerns or to resolve issues regarding the protection of *First Nations archaeological heritage sites* wherever possible.

4.10 The *Islands Trust* will post adopted bylaws on the *Islands Trust* website and on request, will provide HTG and HTG-member First Nations with a copy of approved permits or other formal documents that address the protection of *First Nations archaeological heritage sites*.

4.11 HTG and HTG-member First Nations will endeavour to provide *Local Trust Committees* with a written summary describing any concerns that have been resolved to their satisfaction and any that remain outstanding, together with a summary of the meetings and correspondence that have taken place.

4.12 Neither party is obligated to convey information to another party that is protected from disclosure under the *Freedom of Information and Protection of Privacy Act*, any other legislation protecting information from disclosure, or that is subject to solicitor-client privilege.

## **5.0 – ISLANDS TRUST POLICY STATEMENT**

5.1 The Trust Council will consider including specific objectives and policies in the *Islands Trust Policy Statement* regarding the protection of *First Nations archaeological heritage sites* in the *Islands Trust Area*.

5.2 The Islands Trust Council will work in cooperation with the HTG and HTG-member First Nations when reviewing or amending objectives and policies regarding *First Nations archaeological heritage sites* in the *Islands Trust Policy Statement*.

## **6.0 OFFICIAL COMMUNITY PLANS and HERITAGE DESIGNATION**

6.1 *Local Trust Committees* will consider including objectives and policies respecting the identification and protection of *First Nations archaeological heritage sites* during the development or amendment of their Official Community Plans.

6.2 During the development or amendment of their Official Community Plans, *Local Trust Committees* will consider implementing other options to assist in the protection of *First Nations archaeological heritage sites*. These options may include but are not limited to:

- (a) Designation of ‘heritage conservation areas’ pursuant to s 970.1 of the *Local Government Act* to identify areas with the potential for First Nations archaeological heritage sites and guide development in a manner that integrates with relevant mechanisms used by the *Archaeology Branch*.

- (b) Establishing policies pursuant to s. 941 of the *Local Government Act* that enable a *Local Trust Committee* to require the dedication of parkland to protect *First Nations archaeological heritage sites* during the land subdivision process, where the parties determine, in consultation with the *Archaeology Branch* and the relevant Regional District that would hold such parkland, that dedication may be appropriate and could enhance protection.

6.3 *Local Trust Committees* will consider the designation of *First Nations archaeological heritage sites* pursuant to s. 967 of the *Local Government Act*, where the parties have determined, in consultation with the *Archaeology Branch*, that such designation is appropriate to protect heritage values.

## **7.0 – LAND USE BYLAWS**

7.1 *Local Trust Committees* will consider integrating the protection of *First Nations archaeological heritage sites* into their land use bylaws, by using mechanisms that they determine to be appropriate such as by:

- (a) Establishing subdivision regulations, pursuant to s 903(1) (d) of the *Local Government Act* to regulate the shape, dimensions and area of new lots in a manner that would conserve areas with known *First Nations archaeological heritage sites*, or areas identified in the *HTG AOA* to have a high potential for such sites.
- (b) Establishing regulations regarding use, density and the siting and location of buildings and uses on land pursuant to s. 903(1) of the *Local Government Act* in a manner that would reduce disruption of the land in areas with known *First Nations archaeological heritage sites*, or in areas identified in the *HTG AOA* to have a high potential for such sites.

## 8.0 DEVELOPMENT APPLICATION PROCESSES

8.1 *Local Trust Committees* will consider establishing bylaws and other mechanisms that integrate the identification and protection of *First Nations archaeological heritage sites* into those development application processes that are within their jurisdiction, including:

- (a) applications for amendments to official community plans and land use bylaws,
- (b) applications for permits such as heritage alteration permits, temporary commercial or industrial use permits, or development variance permits,
- (c) decisions about parkland dedication that are made in response to applications referred to the Islands Trust as part of the subdivision approval process.

8.2 *Local Trust Committees* will endeavour to integrate the identification and protection of *First Nations archaeological heritage sites* into those development application processes that are within their jurisdiction, through such mechanisms as:

- (a) developing policies that would require applicants to provide information about *First Nations archaeological heritage sites* prior to *Local Trust Committee* consideration of the application, if the land subject to the application includes a known *First Nations archaeological heritage site* or if the HTG AOA identifies the land as having the potential to contain such sites. This information would normally be furnished by:
  - i) a permitted archaeological inventory or a permitted impact assessment study by a professional archaeologist that identifies, evaluates and provides heritage conservation recommendations for the development proposed within the subject property and
  - ii) a letter from the HTG or HTG-member First Nations stating why, in its expert opinion, further archaeological research or management measures are recommended or not; and
  - iii) a letter from the *Archaeology Branch* stating the archaeological resource management requirements of the Province.
- (b) requiring that parkland be dedicated pursuant to s 941(1) of the Local Government Act during the land subdivision process where the parties, in consultation with the *Archaeology Branch* and the relevant Regional District, have agreed that such dedication would contribute to the protection of a *First Nations archaeological heritage site*.

8.3 Where land subject to a *proposed development* either contains a recorded, protected archaeological site, overlaps with an area of high archaeological potential identified by the HTG AOA or includes areas or features that have been formally recognized by a *Local Trust Committee* for their archaeological significance, the *Islands Trust* will:

- (a) notify the applicant *in writing*,
- (b) inform the applicant *in writing* if the Islands Trust has any prescribed conditions for the approval of their application,
- (c) refer the applicant to the *Archaeology Branch* for additional information about the applicant's responsibilities and duties under the *Heritage Conservation Act*, and

(d) refer the applicant to the HTG and HTG-member First Nations for a list of recommended archaeological consultants and other heritage management advice.

8.4 The parties acknowledge that *Local Trust Committees* cannot withhold development permits for the purposes of protecting *First Nations archaeological heritage sites*, but that all interests are best served if a development permit applicant is aware of constraints related to archaeological heritage sites early in the application process. Therefore, where land subject to a development permit application meets the criteria in s. 8.3, the Islands Trust will:

- (a) notify the *Archaeology Branch* in writing,
- (b) refer the applicant to the Archaeology Branch for additional information about the applicant's responsibilities and duties under the *Heritage Conservation Act*, and
- (c) notify the HTG and HTG-member First Nations in writing.

## 9. – PUBLIC EDUCATION AND AWARENESS

9.1 The parties may cooperate to develop information pamphlets to educate the public and create greater awareness concerning:

- a) the importance of heritage conservation;
- b) the duties and penalties under provincial heritage legislation;
- c) the procedures for heritage conservation in development application processes;
- d) the cultural-sensitivity of First Nations' issues in land development and heritage conservation.

9.2 To recognize the heritage value of *First Nations archaeological heritage sites*, the *Islands Trust* will consider the installation of plaques or other markers pursuant to s 955 of the *Local Government Act*, subject to permission from the owner of the property on which the marker is installed, in consultation with the *Archaeology Branch*, and with the consent of the HTG and HTG-member First Nations and other First Nations with stated interests in the site.

9.3 *Local Trust Committees* will consider recognizing *First Nations archaeological heritage sites* on Community Heritage Registers pursuant to s. 954 of the *Local Government Act* following consultation with the *Archaeology Branch*, and with the consent of the HTG and HTG-member First Nations and other First Nations with stated interests in the site.

9.4 The parties will encourage Regional Districts with jurisdiction within the Islands Trust Area and the *Hul'qumi'num tumuhw* to develop complementary mechanisms to support the education of the public and the protection of *First Nations archaeological heritage sites* as part of their role in development and parkland management, such as during their review of building permit applications and during their management of parkland received through the subdivision process.

## 10 - DISPUTE RESOLUTION

10.1 Where a dispute arises between the *Islands Trust* and either the HTG or an HTG-member First Nation regarding the interpretation or implementation of this Agreement, the

parties will engage in communications conducted in good faith and in an informal and non-adversarial manner in an attempt to resolve specific issues.

10.2 Where a dispute between the *Islands Trust* and either the HTG or an HTG-member First Nation has not been resolved by informal communications, any party may, upon reasonable notice, request a special meeting of the parties to discuss the issues of concern. Where the parties are unable to resolve a dispute by special meeting, any party may request other dispute resolution procedures to assist in achieving consensus.

10.3 The parties shall mutually agree *in writing* to the procedure for carrying out dispute resolution procedures.

10.4 The parties agree to pursue alternate methods of dispute resolution before initiating legal proceedings directed at another party to this Agreement.

## **11 – TERMS OF THE AGREEMENT**

11.1 The parties agree this Agreement will take effect upon the adoption by resolution of the Hul'qumi'num Treaty Group member First Nations Chiefs and Councils, the HTG Board of Directors, and the *Islands Trust* Council and upon approval by the Minister responsible for the *Islands Trust Act* pursuant to s. 9(2) of the *Islands Trust Act*.

11.2 The parties agree this Agreement may be revised by mutual consent.

11.3 Revisions to this Agreement will take effect upon completion of the process outlined in s 11.1 of this Agreement.

11.4 Any party to this Agreement may terminate its involvement in this Agreement by providing to the other parties sixty (60) days notice *in writing*, to be delivered by hand or registered mail.

11.5. Nothing in this Agreement will be construed as to fetter the legislative discretion of any of the parties or the *Local Trust Committees* or, without limiting the generality of the foregoing, to oblige any of the parties or *Local Trust Committees* to adopt any bylaw or resolution or to prevent any of the parties or *Local Trust Committees* from adopting any bylaw or resolution.

11.6 This Agreement does not limit the position of the parties in treaty negotiations or any legal or administrative proceedings.

11.7 This Agreement does not abrogate or derogate, acknowledge or deny any *Hul'qumi'num Mustimuhw* assertion of jurisdiction and authority over the protection or management or *First Nations archaeological heritage sites*.

11.8 The interpretation of terms used in this Agreement will be governed by the interpretation provisions of the *Heritage Conservation Act*, *Islands Trust Act*, the *Local Government Act*, the *Community Charter* and the *Interpretation Act*.

11.9 This Agreement does not abrogate or derogate, acknowledge or deny the aboriginal rights of the *Hul'qumi'num Mustimuhw* or the aboriginal and treaty rights of any other First Nation.

11.10 This Agreement does not affect the rights or responsibilities of the *Islands Trust* to consult, discuss or collaborate with any HTG-member First Nation or with any other First Nation.

11.11 This Agreement applies to land and activities that pertain to both the Islands Trust Area and the *Hul'qumi'num tumuhw*.

11.12 Formal information and notification pertinent to this Agreement shall be delivered to:

**Hul'qumi'num Treaty Group member First Nations and HTG:**

**Hul'qumi'num Treaty Group**

R.R. 1-12611B Trans Canada Hwy.  
Ladysmith, BC V9G 1M5

or to email addresses that the HTG has provided for such purposes.

**Islands Trust Council and Local Trust Committees:**

*Islands Trust*

200 – 1627 Fort Street  
Victoria, BC V8R 1H8

Or to email addresses that the Trust Council has provided for such purposes.

11.8 The officials of each party who shall be responsible for the notices and the administration of this Agreement are:

**Hul'qumi'num Treaty Group member First Nations and HTG:** the Chief Negotiator  
**Group** Hul'qumi'num Treaty

***Islands Trust Council and Local Trust Committees:*** the Chief Administrative  
Officer of the *Islands Trust*

As evidence of their Agreement to the above terms, the Parties have executed this Agreement as set out below:

Signed this \_\_\_\_ day of \_\_\_\_\_, 2008

**On behalf of the Hul'qumi'num Treaty Group member First Nations:**

\_\_\_\_\_  
Chief Peter Seymour, Chemainus First Nation

\_\_\_\_\_  
Chief Lydia Hwitsum, Cowichan  
Tribes

\_\_\_\_\_  
Chief Robert Thomas, Halalt First Nation

\_\_\_\_\_  
Chief Cyril Livingstone, Lake  
Cowichan First Nation

\_\_\_\_\_  
Chief Richard Thomas, Lyackson First Nation

\_\_\_\_\_  
Chief Lisa Shaver, Penelakut Tribe

**On behalf of the Hul'qumi'num Treaty Group:**

\_\_\_\_\_  
Robert Morales, Chief Negotiator

**On behalf of the *Islands Trust* Council:**

\_\_\_\_\_  
Kim Benson, *Islands Trust* Council Chair

**Endorsed in Principle:**

Local Trust Committee	Date of resolution
Gabriola Island <i>Local Trust Committee</i>	
Galiano Island <i>Local Trust Committee</i>	
Mayne Island <i>Local Trust Committee</i>	
North Pender Island <i>Local Trust Committee</i>	
Salt Spring Island <i>Local Trust Committee</i>	
Saturna Island <i>Local Trust Committee</i>	
South Pender Island <i>Local Trust Committee</i>	
Thetis Island <i>Local Trust Committee</i>	

**Approved by the Minister of Community Services pursuant to s. 9(2) of the *Islands Trust Act*, this \_\_\_\_ day of \_\_\_\_\_, 2008**

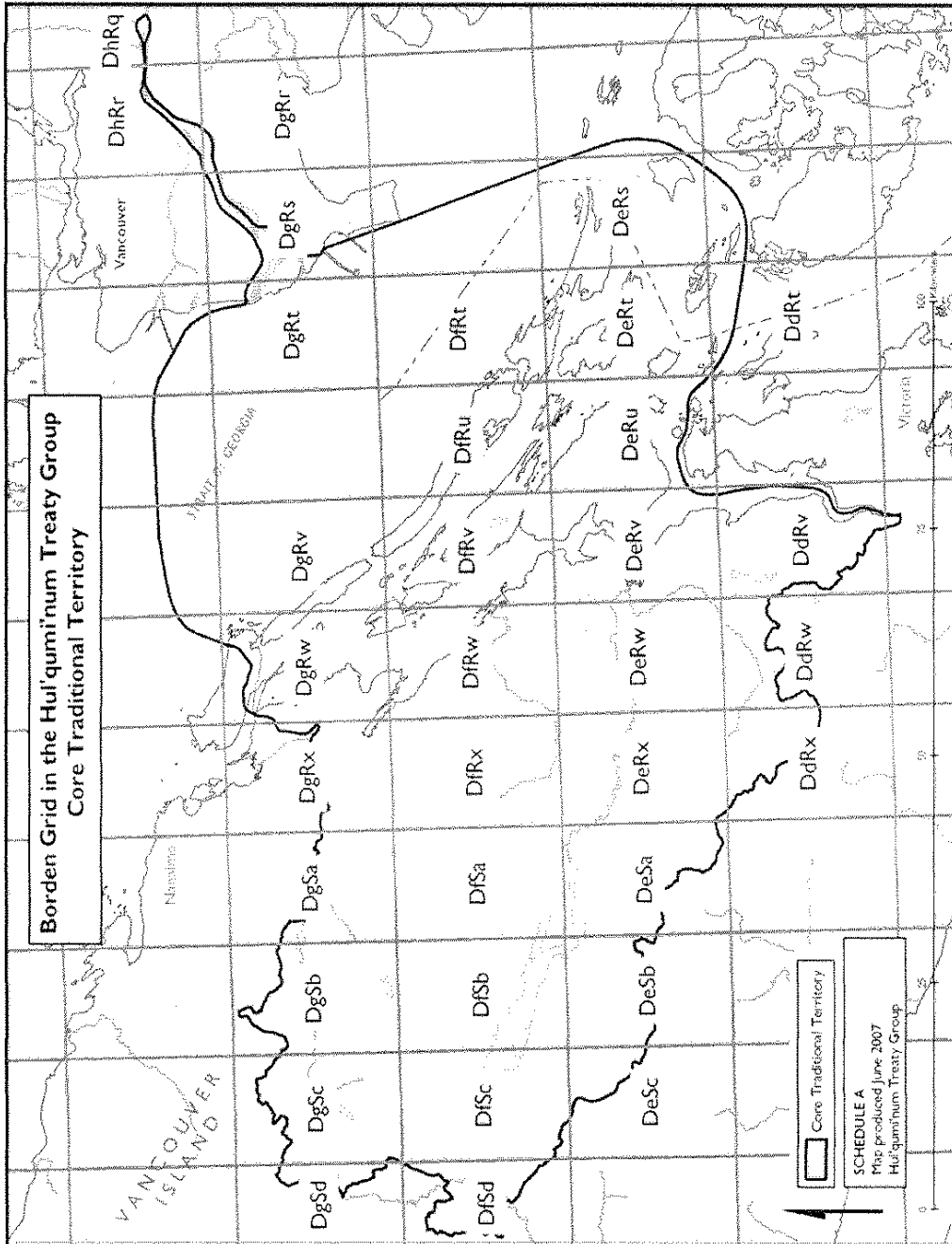


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**The Honourable Ida Chong**  
**Minister of Community Services**

*Hul'qumi'num tumuhw*  
(core traditional territory)

### Illustrating the Borden Grid used to identify archaeological sites

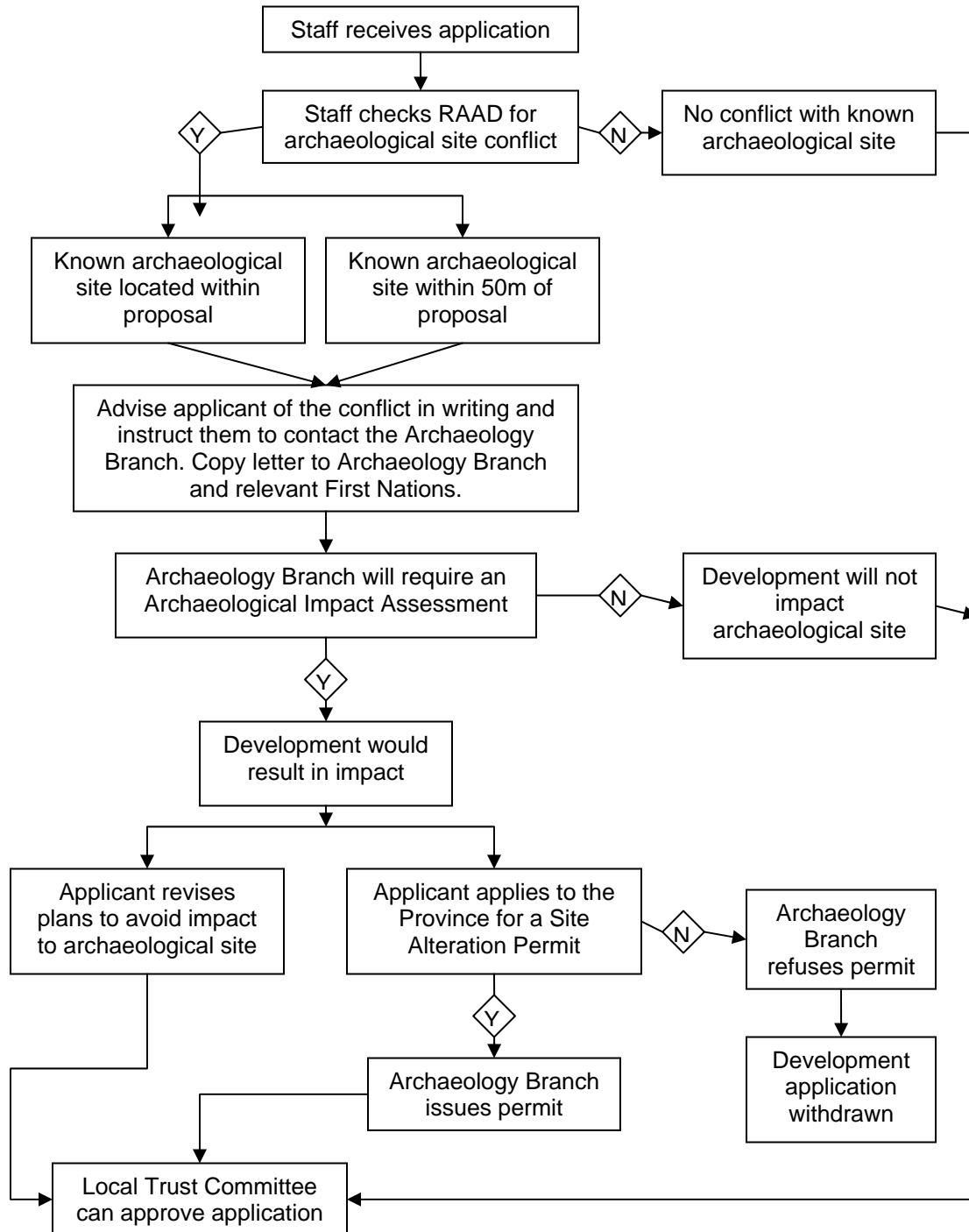


## SCHEDULE B ISLANDS TRUST AREA



## Appendix C: Draft process for reviewing development applications in conflict with archaeological sites

Flow diagram adapted from the Corporation of Delta by the author of this report



## Appendix D: First Nations with Traditional Territory in the Islands Trust Area

Table created by the author of this report with Information from the Department of Indian Affairs and the BC Treaty Commission

	Main community	Modern Treaty Status	Douglas Treaty?	Local Trust Committee(s) <sup>2</sup>
	<b>Sliammon Indian Band</b>	Powell River	Stage 5	Lasqueti, Hornby, Denman
	<b>K'omoks First Nation</b>	Courtenay	Stage 4	Denman, Hornby
	<i>Hamatla Treaty Society<sup>3</sup></i>		<i>Stage 4</i>	<i>Denman, Hornby</i>
	<b>Qualicum Indian Band</b>	Qualicum Beach		Denman, Hornby, Lasqueti
	<b>Snuneymuxw First Nation</b>	Nanaimo	Stage 4	Gabriola
	<i>Hul'qumi'num Treaty Group</i>		<i>Stage 4</i>	<i>Gabriola, Gabriola, Mayne, North Pender, Salt Spring, Saturna, South Pender</i>
Hul'qumi'num Treaty Group	<b>Chemainus First Nation</b>	Ladysmith	Stage 4	Gabriola, Galiano, Mayne, North Pender, Saturna, South Pender, Thetis
	<b>Halalt First Nation</b>	Chemainus		Gabriola, Galiano, Mayne, North Pender, Saturna, South Pender, Thetis
	<b>Lyackson</b>	None <sup>4</sup>		Gabriola, Mayne, North Pender, Saturna, South Pender, Thetis <sup>5</sup>
	<b>Penelakut First Nation</b>	Kuper Island		Gabriola, Mayne, North Pender, Saturna, South Pender, Thetis
	<b>Cowichan Tribes</b>	Duncan		Galiano, Mayne, North Pender, Saturna, South Pender, Thetis

<sup>2</sup> The Local Trust Committees in this column represent those who have sent a referral to the First Nation on at least one occasion.

<sup>3</sup> The Hamatla Treaty Society may no longer have an interest in the Trust Area since the K'omoks First Nation has left the group.

<sup>4</sup> Lyackson's traditional village sites and reserves are on Valdes Island. No Lyackson current live there due to its lack of services and difficult access and are searching for other lands for their community.

<sup>5</sup> There is a protocol agreement with Lyackson First Nation (Islands Trust Council bylaw No. 64) that commits to sending referrals and consultation on other planning activities.

		Main community	Modern Treaty Status	Douglas Treaty?	Local Trust Committee(s) <sup>2</sup>
	<b>Lake Cowichan First Nation</b>	Lake Cowichan			Mayne, North Pender, Saturna, South Pender, Thetis
	<b>Tseycum First Nation</b>	Sidney		Yes	Galiano, Mayne, North Pender North Pender, Saturna, South Pender
	<i>Sencot'en C'A,I, Newell</i>				<i>Mayne, North Pender, Saturna, South Pender</i>
Sencot'en C'A,I, Newell <sup>6</sup>	<b>Tsawout First Nation</b>	Saanichton		Yes	Galiano, Mayne, North Pender North Pender, Saturna, South Pender
	<b>Tsartlip First Nation</b>	Brentwood Bay		Yes	Galiano, Mayne, North Pender North Pender, Saturna, South Pender
	<b>Pauquachin First Nation</b>	Sidney		Yes	Galiano, Mayne North Pender
	<i>Te'Mexw Treaty Association</i>				
Te'Mexw Treaty <sup>7</sup> Association	<b>Nanoose (Snaw-naw-AS) First Nation</b>	North of Nanaimo	Stage 4	Yes	Lasqueti
	<b>Songhees Nation</b>	Esquimalt		Yes	
	<b>T'Sou-ke First Nation</b>	Sooke		Yes	
	<b>Malahat First Nation</b>	Mill Bay		Yes	Salt Spring
	<b>Esquimalt First Nation</b>	Victoria			
	<b>Musqueam Nation</b>	Vancouver	Stage 4		Gambier (Passage Island) <sup>8</sup>
	<b>Tsawwassen First Nation</b>	Delta	Final Agreement		Galiano, Salt Spring, Mayne, North Pender, South Pender, Saturna, South Pender

<sup>6</sup> The Semiahmoo First Nation is also part of the Sencot'en C'A,I, Newell

<sup>7</sup> The Beecher Bay Indian Band is also part of the Te'Mexw Treaty Association

<sup>8</sup> Based on Statement of Intent map

	Main community	Modern Treaty Status	Douglas Treaty?	Local Trust Committee(s) <sup>2</sup>
<b>Sechelt First Nation</b>	Sechelt	Self Governance Agreement of 1986		
<b>Squamish Nation</b>	Squamish	Stage 3		Gambier
<b>Tsleil-Waututh Nation (Burrard Band)</b>	North Vancouver	Stage 4		

