c.1

THE ISLANDS TRUST:
AN INSTITUTIONAL EXPERIMENT IN THE MANAGEMENT OF SCARCE NATURAL AND SOCIAL RESOURCES

by

LAURA KATHRYN PORCHER

B.Sc., The University of Victoria, 1977

A THESIS SUBMITTED IN PARTIAL FULFILMENT OF

THE REQUIREMENTS FOR THE DEGREE OF

MASTER OF SCIENCE

in

THE FACULTY OF GRADUATE STUDIES

Resource Management Sciences

We accept this thesis as conforming

to the required standard

THE UNIVERSITY OF BRITISH COLUMBIA

July 1980

© Laura Kathryn Porcher, 1980

In presenting this thesis in partial fulfilment of the requirements for an advanced degree at the University of British Columbia, I agree that the Library shall make it freely available for reference and study. I further agree that permission for extensive copying of this thesis for scholarly purposes may be granted by the Head of my Department or by his representatives. It is understood that copying or publication of this thesis for financial gain shall not be allowed without my written permission.

Department of Resource Management Sciences

The University of British Columbia
2075 Wesbrook Place
Vancouver, Canada
V6T 1W5

Date August 26, 1980

ABSTRACT

This thesis examines the Islands Trust as an institutional experiment in environmental management. Evaluation is made of the performance of the Islands Trust and the overall institutional system, on the basis of objectives stated prior to and following the inception of the Trust. Public choice theory proves useful in explaining the behavior of the three principle categories of actors in the institutional system: voters, bureaucrats, and politicians. The objectives of the study are 1) to examine the extent to which the Trust has fulfilled the intent of the Islands Trust Act, and 2) to discover the factors which have contributed to this degree of success or failure.

Initially a study is made of the legal and historical setting of resource management, both in Canada generally and specifically in the trust area. The evolution of the Islands Trust is described.

An examination of the intent of the Islands Trust provides the basis on which evaluation is made. Intent is derived from the Report of the Select Standing Committee on Municipal Matters which recommended instituting the Trust in 1973, the Legislative Debates from 1973 to 1979, and the policy statement of the Islands Trust in 1975. Summarizing these three sources, the Trust was intended 1) to act as the mechanism of coordination and control of island development, 2) to ensure orderly

development of the islands, 3) to offer significant local control while protecting the provincial interests in the scenic beauty, rural atmosphere, and recreational amenities of the trust area.

Empirical analysis is made of three major problem areas in island development: Crown land, subdivision, and forestry. For each of these broad issues, statistics describing the problems, decision-making procedures, Islands Trust involvement, and Islands Trust relations with other agencies are examined. Case studies are used extensively. Islands Trust files, attendance at Islands Trust meetings, and discussions with islanders and government agencies are the main data sources.

Public choice theory suggests why the institutional system operates as it does. The theory makes two fundamental assumptions: 1) all people act rationally, and 2) all people act in their own selfish interests. The thesis makes an implicit assumption in its definition of vested interests that economic interests and interests in holding power as an end (rather than as a means to an end) are particularly strong motivators of behavior. Under these assumptions a model is built, describing the behavior of voters, bureaucrats, and politicians.

Empirically it is found that the Islands Trust has few powers with which to fulfill its mandate. Regarding the three main intents of the Trust, results were as follows:

1. No single mechanism of control of island development exists. Other government agencies are reluctant to cooperate with

Trust objectives, and to submit to the coordinating role of the Trust.

2. Development has become much more orderly, but some environmental and social problems persist, over which the Trust has minimal control.

3. Since the Trust has little authority, there is little local control. Provincial interests are protected with a conservationist tendency.

The Islands Trust has achieved success in fulfilling its mandate, to the extent that it has been given powers to do so.

Several theoretical conclusions are suggested. Trustees may be interested in protecting the island environments because 1) they wish to get re-elected and the majority of their electorates want the islands protected, and 2) the power of the Trust itself is derived from fulfilling the Trust mandate. People with vested interests, particularly property rights, tend to disproportionately influence decisions. Pressure from people with vested interests tends to cause politicians to pressure bureaucrats to bend rules. Bureaucrats are eager to promote their agency's mandate, and tend to adapt their programs to the interests of their clientele.

The thesis has important implications with respect to democracy, environmental protection, and integrated resource management. It appears that further decentralization of power

may lead to positive results with respect to coordination and integrated resource management, environmental protection, and local control.

TABLE OF CONTENTS

Abstract ii

List of Tables xi

List of Appendices xii

Acknowledgements xiii

Chapter I Introduction 1

Chapter II Methodology 12

A. Grasping the Intent of the Islands Trust Act 12

B. A Scheme to Estimate the Success of the Islands Trust 13

C. A Theory to Explain How the Decision-Making System Functions 16

Chapter III Historical Perspective of the Islands Trust 18

A. Jurisdictional and Legal Framework of Environmental Management in Canada 18

B. History of Resource and Settlement Management of the Islands Prior to the Islands Trust 24

C. Events Leading to the Establishment of the Islands Trust 28

D. Brief Description of Original Structure and Powers of the Islands Trust 29

E. Some Limitations of the Original Islands Trust Legislation 33

F. Evolution of Islands Trust Structure and Powers 35

G. Role of the Regional Plan in the Trust Area 39

Chapter IV Intent of the Islands Trust 43

A. According to the Select Standing Committee on Municipal Matters 43

B. According to Hansard (1973 to 1979) 47

C. According to "The Policy of the Islands Trust," August, 1975 59

D. Discussion 62

1. General 62

2. What is "Preserve and Protect"? 62

3. Intent of Local vs. Provincial Control 64

4. Basis for Evaluation of Islands Trust Performance 65

Chapter V Public Choice Theory as it Relates to the Islands Trust 67

A. General Assumptions 67

B. Public Choice Theory 69

C. Basic Concepts of the Model 71

1. Public good 71

2. Power 72

3. Interests 72

4. Property Rights 74

5. Property 75

6. Representative Council 76

7. The State 77

8. Bureaucracy 78

D. A Model From Public Choice Theory 78

E. Summary 98

Chapter VI Crown Land 102

A. Introduction-Crown Land Base 102

B. Jurisdictions, Mandates, and Policies Involved with Crown Land 106

1. Ministry of Lands, Parks and Housing Act 106

2. Land Act 108

a. Highlights of the Land Act 108

b. Land Amendment Act 109

c. Procedures 110

3. Islands Trust Act and Policy 111

C. Interaction of Islands Trust with Land Management Branch from Islands Trust Inception to Case Study ... 115

D. Bennett Bay Marina Case Study 123

E. Discussion of the Bennett Bay Marina Case 148

F. Theoretical Significance of Bennett Bay Marina Case Study 155

G. Relations of the Islands Trust and the Land Management Branch Since the Case 160

H. Agreement between the Islands Trust and the Ministry of Lands, Parks, and Housing 169

1. Highlights of the Agreement 169

2. Discussion of the Agreement 171

Chapter VII Subdivision 177

A. Introduction 177

1. History of Subdivision Activity on the Islands ... 177

2. Subdivision Control Prior to and Under the Islands Trust 178

B. Indications of the Trust's Performance with Respect to Orderly Development 181

1. The Subdivision Problem 181

a. Rate of Creation of New Lots 181

b. Evidence of Density-related Water Shortages and Sewage Disposal Problems 186

c. Evidence of Social Dissatisfaction 187

2. "Improvement" of Island Lots 188

3. Conclusion 191

C. Subdivision Approval Procedure 192

1. The "Standard Procedure" 192

2. Potential Problems and Peculiarities of the "Standard Procedure" 196

a. Role of the Islands Trust in the Procedure ... 196

b. Impact of Mandates on Personnel 200

c. Potential Confusion of the Applicant 200

3. Case Study: Denman Island Subdivision 201

4. Discussion of Denman Island Subdivision Case 223

5. Theoretical Significance of the Denman Island Subdivision Case 228

6. Fate of Islands Trust Recommendations 231

D. Conclusion 233

Chapter VIII Forestry 237

A. Introduction 237

1. Tenure of Forest Land 237

a. Taxation Tree Farms 237

b. Other Private Land 238

c. Crown Land 240

B. Interests in Forest Values 241

1. Values Provided by Forest Land 241

2. The Interests of the Islands Trust 242

3. The Interests of the Landowner 242

4. The Conflict of Interests 243

C. Potential Problems of Island Logging 244

1. Aesthetics and Recreation Problems 244

2. Water Problems 245

3. Alleviation of Problems Through Forest Management Techniques 245

D. How the Islands Trust has Dealt with Logging on Taxation Tree Farms 246

1. Islands Trust's Interaction with Respect to Management Plans 246

2. Islands Trust's Submission to the Pearse Royal Commission 249

3. Report of the Commission with Respect to Taxation Tree Farms and Forest Management Planning 253

4. Actions Taken by the Trust since the Commission Report 259

5. Possible Future Actions Open to the Trust 262

6. Zoning of Taxation Tree Farms 265

E. How the Islands Trust has Dealt with Logging on Non-Taxation Tree Farm Private Lands 266

1. Actions Taken (or Attempted) by the Islands Trust Prior to October, 1975 267

2. Islands Trust's Submission to the Pearse Royal Commission 268

3. Report of the Commission with Respect to Unregulated Private Lands 269

4. Bowen Island Case Study 273

5. Actions Taken by the Islands Trust Since the Bowen Case 277

6. Case Studies of Logging with Respect to Serious Water Problems 282

F. Conclusion 287

Chapter IX Conclusion 290

A. Fulfillment of Intent 290

1. The Trust to Act as the Single Mechanism of Coordination and Control 290

2. The Trust to Ensure Orderly Development 293

3. The Trust to Afford Significant Local Control, Ensuring Protection of Specified Provincial Interests 295

B. Theoretical Explanation of Results 297

C. Personal Impressions 301

Bibliography 307

Appendices 312

LIST OF TABLES

Table I: Private/Public Choice Models 80

Table II: Crown Land Summary 104

Table III: Progress of Island Planning 179

Table IV: Rate of Subdivision 182

Table V: Subdivision Lots (1977) 185

Table VI: Taxation Tree Farms: Area and Ownership 239

LIST OF APPENDICES

A. Islands Trust Act (1974 Chapter 43) 313

B. Islands Trust Act (1979 RS Chapter 208) 321

C. Letter, March 15, 1979, John Rich to Hon. James R. Chabot 329

D. Agreement Between Ministry of Lands, Parks and Housing and Islands Trust with Respect to Planning and Administration of Crown Land Within the Trust Area 331

E. Letter, June 6, 1979, John Rich to Hon. James R. Chabot 335

F. Letter, July 13, 1979, John Rich to Hon. James R. Chabot 337

G. Memorandum, October 26, 1978, Tony Roberts to Marc Holmes 339

H. Letter, July 8, 1979, Denman Island Bylaw Support Group to Hon. Alex Fraser 342

I. Galiano Island Taxation 350

J. Environment and Land Use Act (1971 Chapter 17) 353

K. Letter, February 9, 1977, Marc Holmes to Hon. J.A. Nielson 355

L. Memorandum, May 1, 1979, A.H. Roberts to General Trustees 356

M. Letter, June 6, 1979, John Rich to Hon. T.M. Waterland .359

ACKNOWLEDGEMENTS

The cooperation of the trustees and staff of the Islands Trust, which made this study possible, is most gratefully appreciated. The guidance and patience of Irving Fox and Patricia Marchak were also essential to this study, and for these I am very thankful. The assistance and encouragement of Paul Tennant, Bob Williams, Andrew Thompson, Bill Lane, Peter Boothroyd, Brahm Wiesman, Bill Rees, and Erik Karlsen are also appreciated. Finally, my deepest gratitude is felt for Alan Chambers whose constant reserve of patience, encouragement, and direction I depended upon. It is he who has most fostered my personal growth through this thesis and has kindled my desire to understand more about the human condition in relation to the natural environment.

Chapter I

INTRODUCTION[1] [2]

The object of this study is to examine an unusual institution established specifically for the protection of natural and social resources of a region. These resources can be considered scarce, as the rationale behind the creation of this institution was that the resources of the region were unique to the province. The study views this institution as an experiment to the above ends, and examines the extent to which the institution has successfully fulfilled the intent of its mandate. The study also makes an attempt to explain how the total institutional system functions to produce the results found in the thesis.

The Gulf and Howe Sound Islands in the Strait of Georgia between the lower mainland of British Columbia and Vancouver Island constitute a highly valuable resource. Their mild climate, relatively low rainfall, geology, and situation in the Strait make them unique to Canada and appealing to a great number of people. The islands combine a wide diversity of human

---

[1]All British Columbia statutes were recently renumbered. The 1979 revised statutes (with the new numbers) took effect May 17, 1980. Unless 1979 statutes are specifically referenced, this thesis consistently uses the former numbers.

[2]An attempt has been made in the thesis to use government department names which were in use at the time referenced, rather than current names.

lifestyles, recreational opportunities, and scenic beauty. The quiet, rural atmosphere of the island communities is considered to be an asset of the islands, especially since much of the lower mainland and southern Vancouver Island is highly developed.

A large subgroup of these islands (from Gabriola Island southward) is considered to be of international importance, so much so that in 1973 a proposal was put forth by the International Joint Commission to make this area into an international park. The objective of the park was to be:

> ... to preserve the existing attractive characteristics of the island archipelago astride the border including the preservation of marine and land-based wildlife, archeological and historic resources, and the maintenance of water quality standards.
> (International Point Roberts Board, 1973)

As over 50% of B.C.'s population lives in centers immediately adjacent to these islands, and many people have actually made the islands their home, the natural and scenic value of the islands has been widely acknowledged.

Demand for use of the islands has dramatically increased over the last two decades. Several reasons account for this increase. The large centers of population nearby, especially Greater Vancouver and Victoria, have had high inmigrations and natural population increases. Greater general affluence has made the possibility of vacationing or owning a summer home a reality for a greater proportion of people. Pressures of living in larger urban centers have increased, resulting in a greater proportion of people seeking recreation outside the cities.

The demand may be beyond the supply capability of the islands, depending on the specific qualities demanded. For example, if the islands were subdivided into lots so small as to satisfy everyone's desire for an island lot, the very amenities of the islands which people are generally seeking, such as a rural atmosphere and interesting lifestyles, would be destroyed. Some areas of the islands may have already reached biophysical limits to the number of people they can accommodate, particularly with respect to water supply and sewage disposal, (e.g. water shortages have recently been experienced in some areas of Pender, Saltspring, and Gabriola Islands). While use of various technologies may help alleviate such problems, many residents feel that 1) the use of some such technologies is not in harmony with their lifestyle, and 2) the higher population which necessitates the use of these technologies interferes with other values of the islands which they wish to protect, such as the quiet rural atmosphere. The problem of high demand pressure, with the resulting danger of overdevelopment, has thus been perceived as a genuine problem on these islands.

The task seems to be to distribute the amenities and resources of the islands to the people of British Columbia, in a manner that does not destroy the very natural and social qualities which people value, and also that is equitable. The equity problem confounds the original problem immensely, as the following examples illustrate:

1. While some landowners may have been relying on subdividing their land for future income, many landowners have been attracted to the islands because of the rural atmosphere and may

feel uncomfortable if their neighbour's land is subdivided into small lots.

2. Original landowners were there first and as such may have a right to enjoy their property as it stands; yet other residents of B.C. may have a right to visit the islands as often as they wish and they expect to be accommodated in some way (e.g. by a campground or rescrt) during their visit.

3. While parks and campgrounds are useful in accommodating large numbers of people, they may detract from some social aspects of community living which local residents now enjoy.

4. The ferry service is a lever which could be operated to diminish the number of people reaching the islands; however, the ferry service to the islands is an extension of the public highway system on which all B.C. residents have a right to travel.

These are a few of the equity issues which illustrate the magnitude of this question of allocating the limited resources of the islands equitably.

In summary, it has been recognized that some control in the development of the islands is important because uncontrolled development leads to degradation of the resources. For example, in a study of the same islands Chambers (1971) found that " ... the sub-division of lots to sizes below two acres may be accompanied by a rather rapid decrease in [perceived environmental] quality." While the best mechanisms of equitable distribution are as yet undetermined, the unavoidable conclusion is that some kind of legislative intervention is required to prevent environmental degradation.

The provincial government has attempted a series of innovations to manage these islands. Prior to 1965, the islands were unorganized territory; their residents received very few local services and had no local planning authority. The major impetus for development came from business interests, with some leadership given by local chambers of commerce; public improvements were usually the result of appeals from commercial lobby groups to various provincial departments such as Highways and Lands, and the B.C. Ferry Authority. Most island residents and property owners had little input into the direction of development of their communities.

In 1965, the B.C. legislature passed legislation providing for the creation of regional districts throughout the province. The Gulf and Howe Sound islands were (and still are) included in seven regional districts. As the islands were non-municipal, they were (and still are) represented by members elected directly from groups of the islands. For example, the southern islands of Galiano, Mayne, North and South Pender, and Saturna, together with their smaller associated islands, are represented by one elected member on the Board of the Capital Regional District. Saltspring Island has its own director on the same Board. Because functions other than responsibility for regional planning and community hospitals were granted individually to regional districts, the types of services which were provided differed among the islands. Most assumed responsibility for building regulations and refuse disposal. However, in most cases sewage disposal continued to be handled by the B.C. Department of Health, and water supply by water improvement

districts administered by the Province. Services provided by the regional districts are paid for by an additional levy on the real property tax.

The regional district structure created both advantages and disadvantages for the islands, as summarized by Glover (1974). Certain benefits were obtained through the provision of specific services. However, communication with regional boards and staff were often difficult due to the remoteness of the islands. In some cases, regional goals appeared to be different from those of island residents, e.g. with respect to minimum lot sizes (Glover and Chataway, 1973). The great number of regional districts involved with the management of the Gulf Islands fostered no overall coordinated planning among the islands; it appears that only one regional district (the Greater Vancouver Regional District) included any of the islands in its regional plan.

In the late 1960's, large-scale subdivisions on North Pender Island (Magic Lake Estates, with 1300 lots) and on Mayne Island generated wide public dissatisfaction, which provoked the Minister of Municipal Affairs in 1969 to impose a "ten-acre freeze" on further subdivision. This was regarded as a temporary measure to give the regional districts time to generate community plans for each of the islands, although no official directive was issued to the regional boards to this effect. The ten-acre freeze was considered to be a move drastic enough to motivate the regional districts to generate community plans. The community plans would supposedly incorporate the views of concerned residents and act as a guideline for more

controlled development of the islands. Efforts to generate community plans occurred on some islands, with the impetus coming either from the regional board member or from the residents themselves. However, this was a slow process and by September, 1972 when the B.C. government changed, not more than four island plans and corresponding zoning bylaws had been generated and approved.

Immediately after the New Democratic Party assumed power, it requested the Select Standing Committee on Municipal Matters composed of members of all four parties of the legislature to examine the question of future development on the islands. This is evidence of the fact that there had been strong political pressure from the province suggesting that the regional districts had not been satisfactorily managing the development of the Gulf Islands. It is possible that the regional districts, once having made the community plans and zoning bylaws, could have more successfully managed the islands to meet public satisfaction. However, rather than suggesting that the regional districts be allowed the opportunity to do so, the Committee recommended that a new institution call the Islands Trust be formed.

The observations of the Committee which led to this recommendation are summarized as follows:

1. The islands have the problem of the following special interests: a) local residents, many retired and many who have to earn their living locally; b) large numbers of summer residents and/or visitors; c) large landowners, usually absentee, often corporate and foreign; d) a larger provincial interest of the

general public; e) land developers and speculators; f) Taxation Tree Farm holders.

2. Large subdivisions and over-development are the priority concern.

3. There is a need for increased, supervised public space.

4. Water transportation to the islands is a key factor in determining the extent of future growth on the islands. As such it needs careful control and coordination, which are outside of regional district jurisdiction. Transportation on the islands is also important, and in this respect emphasis should be placed on pedestrian transit, and the islands planned accordingly.

5. There has been a serious lack of coordination and communication between various provincial departments and between the province and regional districts.

6. Emphasis for future development on the islands should be placed on recreation, moderate residential use, and preservation of the rural atmosphere.

7. Waste and garbage disposal and shortage of potable water are other major concerns.

The possibility of forming the islands into one regional district had been considered by the Committee. However, the disadvantages of this notion were, in Glover's words:

1. The available powers would still be limited to those outlined in the Municipal Act unless amendments were made to increase the powers of all regional districts (which from the provincial viewpoint is likely to be politically undesirable).

2. The regional tax base would be inadequate in providing any functions over and above rudimentary services. If a subsidy was provided to the Gulf Islands Regional District the problem of equity would be raised by the other regional districts.

3. The technical capability would be limited to regional staff and the Technical Planning Committee.

4. Co-ordination with provincial departments would likely not improve over the existing situation.

5. Provincial interests would not be directly represented.

6. Some services such as hospitals and ambulence services could not be efficiently provided by a Gulf Islands Regional District due to existing transportation routes.

7. It appears that considerably more time would be required to establish a new regional district than to establish a special purpose Trust Commission. Time is an important factor due to the temporary nature of the ten acre freeze and the increasing demand for lots on the islands.

(Glover, 1974, pp.34-35)

Thus, in 1974, the Islands Trust was established by an act of the B.C. legislature. The mandate of the Islands Trust has been:

> ... to preserve and protect, in cooperation with municipalities and the Government of the Province, the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of the Province generally.
>
> (Section 3[1], Islands Trust Act, 1974)

Six years have now lapsed since the Islands Trust was formed, and no analysis has been made of the effectiveness of this institution in fulfilling its mandate. Legislation promoting preservation of natural and social environments through the institution of a trust is not found elsewhere in Canada; in this respect the Islands Trust can be viewed as an experiment. Given that the original mandate of the Islands Trust is an ambitious one, and that industrialized society will continue to feel an increased need for protection of its less common natural and social environments, it will be valuable to know the degree of success met by the Islands Trust.

The Islands Trust is an interesting object of study for two additional reasons. One of the major intents behind the Trust was to allow local residents greater input with respect to island development. It appears that the Trust constitutes the highest representation per capita in all of Canada, has several powers of other local governments, and also has several responsibilities at the provincial level. In these respects, it appears that the previous distribution of power has been somewhat decentralized. If power has indeed been decentralized, it will be interesting to see the results of such decentralization.

A third reason for studying the Islands Trust is that a major role of the Trust has been to coordinate other agencies affecting resource and settlement management of the islands. Many other regions have demonstrated a need for a coordinating body to integrate resource planning and management.

If the Islands Trust has been successfully fulfilling the explicit mandate of section 3(1) above, and the implicit intent of the legislation, then it may serve as a model for meeting similar objectives in other areas. If, however, the Islands Trust has been unsuccessful, it will be useful to understand the reasons for failure, so that the institutional structure can be modified to better meet society's goals.

The objectives of this study are:

1. to determine the extent to which the Islands Trust and the total institutional system have fulfilled the intent of the Islands Trust Act, and

2. to attempt to understand why the Islands Trust has achieved this degree of success, i.e. why the decision-making systems have operated the way they have.

Chapter II

METHODOLOGY

The problem of determining the extent to which the Islands Trust is fulfilling its mandate poses two fundamental tasks. The first is to understand the explicit and implicit intent of the Islands Trust Act. The second is to devise some way of examining how well the Islands Trust has satisfied this intent.

To try to understand why the system (comprised of people with interests in the islands, politicians of the Islands Trust and the Province, and bureaucrats) has operated the way that it has, some general theory is required.

A. Grasping the Intent of the Islands Trust Act

To assist in discovering the intent of the Islands Trust legislation, two basic studies were made. The first sets the Islands Trust in a historical perspective. An examination was made of the history of resource and settlement management on the islands prior to the Islands Trust. An investigation of the evolution of the Trust completed this historical view.

The second study is addressed more specifically to the intent of the Trust. An examination was made of three separate sources which indicate intent:

1. the 1973 report of the Select Standing Committee on Municipal Matters,

2. the Hansard debates (1973 - 1979), and
3. the Islands Trust Policy Statement of 1975.

These provided the background from which an interpretation of the intent of the Islands Trust Act was drawn.

The historical and legal studies and the study of intent simply lay the foundation for the analysis of the extent to which the Islands Trust has fulfilled its mandate.

B. A Scheme to Estimate the Success of the Islands Trust

The major problems facing the islands can be separated into two categories: 1) issues relating to resources and the natural environment, and 2) issues relating to the settlement and accommodation of people. Even social or community-related problems (e.g. the matter of lifestyles) can usually be traced to issues pertaining to resources or settlement. This classification was therefore adopted for convenience.

A selection of three major problems facing the trust area was made to provide content for evaluating the Trust's success. For each of the three problem areas, an examination was made of data describing the problem, legislation pertaining to the problem, and what the Trust has done (or tried to do) about the problem since inception. In all three areas, the problem involved interaction of the Trust with one or more government agencies. Therefore, to better understand the respective processes of decision-making, and specifically the Trust's role in these processes, it was useful to closely consider one or more case studies for each problem. Finally, the performance of

the Trust was evaluated against the intent of the Islands Trust Act, subject to constraints set by legislation or revealed through the case studies.

The three problems selected for study were: 1) Crown lands, 2) subdivision, and 3) forestry. While subdivision relates to settlement, and forestry relates to resources, Crown land relates to both. Justification of selection of these three problems is necessary, but first it is desirable to explain why a few other alternatives were not chosen.

Water supply and watershed protection are critical problems on several islands. However, these problems are most affected by the number of people demanding water use, which is largely a function of subdivision and building activity. Since subdivision was selected for study, it was felt that the water problem itself could be omitted. Logging also affects water supply and watershed protection but logging, too, was covered.

Another major problem facing the islands can be called "tourism", or "recreation", or "how to provide off-islanders with a recreational experience on the islands without damaging the physical or social environment of the islands." This is a very broad area, encompassing such topics as marinas, public parks, overnight accommodation, and maintenance of an environment which continues to attract people--to name but a few. An entire thesis could be written on this subject. This area was left for future researchers.

A third area not specifically addressed was coastal zone management. While the problem is certainly important, it

relates closely to the management of the foreshore and beyond, which was partly covered in the discussion of Crown lands. It was hoped that the chapter on Crown lands would be of some use to those working on coastal zone management.

A fourth problem not examined was the effect of taxation on island property-owners. It is of major concern that as land prices rise on the islands, taxes increase, and in many cases, island residents (particularly residents on subsistence incomes) are forced off the islands or are forced to subdivide their property to earn extra income and to lower their taxes. The island communities may be slowly changing from diverse varieties of people of all ages and income-brackets to "enclaves for the rich." Equity is a key variable in this problem; should current island residents "get the breaks" (e.g. in the form of lower taxes) simply because they were there first, or should the islands be reserved for only those who can afford to pay the high price of living there--or are there other alternatives? This problem is partly addressed in the subdivision and Crown land chapters, but the role of taxation is not specifically examined. The Trust Council itself has formed a Committee on Taxation which has made an extensive study of legislation on the matter, and is now developing some concepts which aim to help alleviate the situation.

Finally, while ferries are a key to island development, this problem is relatively straightforward in that the B.C. Ferry Corporation obviously has complete control of ferries in the southern area, and the Ministry of Transportation and Highways has control in the northern area. It was hoped that

the relationships between the Trust and other provincial agencies, as revealed through this thesis, could shed some light on the relationship between the Trust and these two agencies.

While justification of the three problem areas may now be quite apparent, a quick summary will be offered in any case. Subdivision was the priority concern of the Select Standing Committee on Municipal Matters which recommended instituting the Trust; a major intent was that the Trust would provide some control in this matter. Crown land offers considerable potential on a few islands, and since it is owned and thus completely controlled by the Crown, it is the most readily malleable land (institutionally speaking) in the trust area. Logging is one of the mainstays of the island economies, and it can severely affect the island environment, depending on how and where it is done. As is probably apparent, there is overlap among these three problems.

Data for the study of the three problems were obtained from the Islands Trust files (which were completely accessible), interviews with key politicians and public servants from various agencies, and attendance at various Islands Trust meetings.

C. A Theory to Explain How the Decision-Making System Functions

A general theory is developed to explain the actions and interactions of various players in the decision-making processes with respect to the trust area. This theory, like any other theory, is based on a set of assumptions, and leads to a set of predictions or inferences. The theory may be appropriate in

certain applications and inappropriate in others; on the other hand, it may be totally wrong. Therefore, certain phenomena may be found which the theory seems to explain well, and others may be found which the theory does not explain at all; alternatively, it may be that the theory explains nothing.

The express purpose of this thesis is not to systematically test the general theory; rather it is to find the extent to which the Trust is fulfilling the intent of its mandate. However, to the extent that the theory is applicable, it may help explain why the provision system is functioning the way it does, i.e. why the Trust has achieved the degree of success or failure found by this thesis.

Chapter III

HISTORICAL PERSPECTIVE OF THE ISLANDS TRUST

The broad purpose of this chapter and the chapter following is to develop a notion of the intent of the Islands Trust. This chapter develops the legal and historical background of the Trust, as a setting for the following chapter which more specifically addresses intent. It includes the general legal setting of resource management, a history of environmental management in the trust area with the events leading to the inception of the Trust, a brief description of the Islands Trust Act and how it evolved, and the role of a regional plan in the trust area.

A. Jurisdictional and Legal Framework of Environmental Management in Canada

There exist two main routes through which control of a resource can be exercised: ownership and legislative authority. The following discussion draws heavily from Thompson and Eddy (1973). In Canada ownership of a resource may be vested with the Crown (either Provincial or Federal), or it may be alienated in whole or in part from the Crown to the private sector or a local government. For the first part of this discussion references to ownership refer only to ownership by the Provincial or Federal Crown, as intended in the Thompson and Eddy paper; implications of private and local government

ownership are discussed immediately following.

Ownership is a result of the constitutional history of Canada. In general, the provinces own provincial resources, and the federal government owns northern and offshore resources.

At the time of writing, it is not certain whether the federal or provincial government owns and has jurisdiction over the Strait of Georgia. In most places along the sea coast, the provincial boundary terminates at the low water mark; the B.C. Crown owns the foreshore (i.e. the land between high and low water mark), while further offshore is federal territory. In a reference in 1976, the British Columbia Court of Appeal ruled that the Strait of Georgia comprises "inland waters" and belongs to British Columbia. The case is now enrolled for appeal with the Supreme Court of Canada. A decision in favour of the federal government will affect such things as the power of the province to zone and lease water in the trust area, and jurisdiction over ferries. Currently several municipalities and regional districts have political boundaries extending out into the Strait; by Order-in-Council the regional districts abut each other along the centre of the Strait. Some have acquired ownership rights through lease of the seabed to 1000 feet seaward. Therefore, they have political and ownership jurisdiction of this water, and can thus zone this coastal area. The Islands Trust may have political boundaries covering all water and the seabed between Vancouver Island and the mainland, and might therefore be able to zone all this water. (This question is more fully discussed later.) All this could change if the Strait is found to be federally owned. Until that

decision is made, it will be assumed (as it has been until now) that the Province of British Columbia has jurisdiction over the bed and water of Georgia Strait.

Legislative authority is a result of the division of powers between the federal and provincial governments through the BNA Act (1867). Section 91 of the BNA Act gives the federal government several legislative powers which may affect environmental management. The first is legislative authority "to make laws for the peace, order and good government of Canada." This is a very broad power which could be used to deal with any "matter of national concern": Munro v. The National Capital Commission (1966) SCR 663. Other powers of the federal government which may significantly affect environmental management include public property (s.91[1A]), regulation of trade and commerce (s.91[2]), navigation and shipping (s.91[10]), sea coast and inland fisheries (s.91[12]), Indians and lands reserved for Indians (s.91[24]), and transportation and communication lines which extend beyond the limits of a province or connect two provinces (s.92[10][a]). Jurisdiction regarding agriculture is shared jointly between the federal and provincial governments.

Section 92 of the BNA Act awards the provinces very wide powers to deal with environmental management. The provinces have exclusive powers over the management and sale of public lands belonging to the province and of the timber and wood thereon (s.92[5]), municipal institutions (s.92[8]), local works and undertakings other than those specifically designated to be under federal control (s.92[10]), property and civil rights

within the province (s.92[13]), and generally all matters of a merely local or private nature in the province (s.92[16]). As the terms of these statements are very broad, the courts have interpreted provincial powers very broadly, enabling provincial legislatures to deal with a vast array of environmental problems (Ince, 1976).

Where both ownership and all aspects of legislative authority coincide in one government, that government has exclusive authority to manage the resource. But where, as is more often the case, the two mechanisms of control are divided between governments, neither government has unilateral control over the resource. This is usually the result of overlaps in legislative authority.

The sense in which legislative power enables a government to exercise jurisdiction over a resource is obvious. Ownership can more indirectly (but equally as effectively) affect the resource through the exercise of conditions on the sales of rights to utilize the resource. Thus, the power to control production or conservation of the resource generally lies with the government owning the resource. Where a government has ownership jurisdiction, it has a "greater responsibility and [a] greater opportunity to provide sound management" (Thompson and Eddy, 1973, p.76) than it does where the resource is privately owned.

One of the responsibilities of government ownership is to allocate the management and use of the resource between public and private sectors. If the private sector is to be involved,

important decisions must be made by the government with respect to: 1) the mechanism to allocate the resource between competing entrepreneurs, and 2) the conditions of transferring rights. The conditions of the transfers (e.g. sales or leases) are particularly important as they provide the base for future management strategies.

As previously noted, various rights to resources may be alienated from the Crown (Provincial or Federal) to private bodies, local governments, and Crown agencies. This occurs mainly through grants, sales, and leases. Each of these mechanisms involves some kind of conveyance which quite clearly states the rights being transferred. Both parties are legally bound. However, the government having legislative jurisdiction retains the power to pass regulatory legislation which may abrogate or in some way affect rights so alienated. Rights may be expropriated by the Crown with or without compensation, depending on whether the new legislation awards compensation, although expropriation without compensation is extremely uncommon.

Herein lies the difference between a) the federal-provincial relationship, and b) the Crown-private body (or local government) relationship, with respect to ownership and legislative jurisdiction. The federal government cannot unilaterally remove ownership rights from the provinces (nor vice versa) through legislative jurisdiction; this can only occur in specific well-defined cases, such as the federal government expropriating land for an airport. Broader issues require the agreement of both parties to a new or amended

constitution. (Admittedly, there exists a large grey area between the "specific purposes" and "general areas requiring constitutional reform", in which there may be considerable doubt as to the legality of expropriation.) However, a government having legislative jurisdiction can remove ownership rights from parties to a conveyance. Thus, while ownership by a provincial or federal government is capable of frustrating the legislative jurisdiction of the other government, ownership by the private sector or local government does not pose such a problem; rights granted by the federal or provincial governments can be withdrawn.

One further note must be made regarding powers of the Crown with respect to resource management. Ince (1976, pp.35-37), describes the situation as follows:

> The activities of governments and their agencies are often a major source of harm to the environment. Yet because of the special legal position of "the Crown", governments are many times able to ignore legislation, which the government itself has created, designed to combat environmental abuse. ...
>
> A longstanding rule of the common law is that the Crown is not bound by statute except by express words or necessary implication. This rule has been adopted at the federal level. ... This means that most federal environmental laws cannot be used against the Crown: the Crown and its agencies can act without fear of violating such statutes. However, a number of federal environmental statutes expressly bind the Crown, [e.g.] section 71 of the <u>Fisheries Act</u>.
>
> British Columbia has abolished the common law rule of Crown immunity from statutes. Section 13 of the <u>Interpretation Act</u> states:
>
> > Unless an enactment otherwise specifically provides every Act, and every enactment made thereunder, is binding on Her Majesty.

> Thus, in B.C. the Crown will be bound by provincial environmental statutes unless specifically exempted. ... However, section 44 of the Laws Declaratory Act serves to exempt the Crown from any statute dealing with the use or development of land (my emphasis). Furthermore, provincial Crown Corporations--such as the B.C. Hydro and Power Authority--often have in their incorporating statutes provisions exempting the Corporation from provincial law.
>
> It should be noted that although an Act may expressly apply to the Crown, the courts have been very reluctant to apply the penal provisions of the Act against the Crown.

Therefore, depending on the particular environmental problem and specific legislation pertaining to that problem, the Crown may be exempt from its own environmental laws, as the B.C. Crown is, for example, with respect to its own land use laws. So also may servants and agents of the Crown be immune (Ince, 1976, p.37).

B. History of Resource and Settlement Management of the Islands Prior to the Islands Trust

Within the trust area, the BNA Act (1867) awards the Province of British Columbia most ownership and legislative jurisdiction over public lands and the resources therein. Exceptions in the trust area involve small tracts of federal public works and property, such as lighthouses and post offices, and federal jurisdictional areas listed above. There is currently much confusion as to whether local airfields are under federal or provincial jurisdiction.

The provinces have delegated a number of their powers acquired under the BNA Act to local governments. In British Columbia, certain powers are delegated to incorporated areas called municipalities, such as cities, towns, and villages,

under the Municipal Act. There are not yet any such incorporated areas within the trust area, although Ganges on Saltspring Island is now considering incorporation.

Certain services such as water supply, fire protection, and power supply have been provided within the trust area by water users' communities, utilities, improvement districts, and specified areas. Some of these organizations have been incorporated and others not. However, these are not cases in which the province has delegated powers or responsibilities; if the local organizations had not formed themselves, the services would simply not have been provided.

In general prior to 1965, the powers delegated to local governments (i.e. to municipalities) included the power to plan and regulate land use within the political boundaries of the local government. Thus, settlement issues such as zoning and subdivision control were handled by some local institutions. However, resource issues outside the municipality, such as those relating to forestry or agriculture, continued to be administered by provincial agencies. This is so even though the resources outside the municipality may have had critical effects on the people living within the population center (e.g. with respect to employment or recreation). Only a minute proportion of the province had any such local government. Therefore, administration and planning of development of the province, including development in the trust area, was very centralized.

In 1965, the British Columbia government instituted regional districts throughout the province. The following

reasons have been put forth:

1. Less than one per cent of the area of B.C. was within organized municipalities in 1965. People living in the remainder of the province (about 250,000 in number) had no government representation closer than their MLA and the Provincial Cabinet. Provincial administration was felt to be too small to deal with the vast territory (Tindal, 1977).
2. Inequities resulted as people moved into the unorganized area to avoid municipal taxes and then demanded municipal services, particularly with respect tc hospitals.
3. Poor land use and uncontrolled sprawl were evident, indicating a need for regional planning.
4. The provincial government wished to impose metropolitan governments on the large urban centers of Greater Vancouver and Victoria (Tennant, 1973).

British Columbia was partitioned into 28 regional districts on the basis of informal economic regions or 'trading areas' (Tennant, 1973).

Except for two mandatory functions, regional districts were not initially delegated explicit powers. Rather, they were offered a "smorgasboard" of functions; they could select from a wide range of offerings. The two mandatory functions were regional planning, and administration and planning of community hospitals. Other functions available for use outside municipalities (i.e. in unorganized territory) include: preparation of settlement plans, supply of water, waste removal, establishment of parks, holding and management of lands granted by the Crown to be used for recreation, regulation of tree

cutting outside Tree Farm Licences and forest reserves, establishment of "local communities" of 500 people or less to be administered by local community commissions, establishment of a Technical Planning Commission to advise on planning matters, establishment of Advisory Planning Commissions, and establishment and enforcement of building regulations. Thus, settlement issues were emphasized much more strongly than resource issues. The procedure for acquiring these functions requires that the Lieutenant-Governor in Council, upon recommendation of the Minister of Municipal Affairs, issue letters patent which assign specific functions. This method of encouraging or imposing some degree of regional development planning on British Columbia, and particularly on the burgeoning regions of Greater Vanccuver and Greater Victoria, has been termed "The Strategy of Gentle Imposition" by Tennant (1973).

All the land on the islands of the trust area is unorganized territory. Thus, except on the small tracts of land under federal jurisdiction, B.C. Crown land (which constituted about 20% of the land in the trust area in 1974), Crown corporation land, and land in Taxation Tree Farms (which constituted about 15% of the land in the trust area), the seven regional districts covering the trust area were responsible for planning land use on the islands. While they had the option of being responsible for many issues relating to settlement, they controlled few (if any) issues relating to resources. B.C. Lands Service was responsible for use and alienation of Crown land; B.C. Forest Service was responsible for approval of management plans for timbered lands in Taxation Tree Farms;

B.C. Ferry Authority was responsible for transportation to and from the islands; B.C. Department of Highways was responsible for some ferries as well as roads and subdivision approval; B.C. Department of Recreation and Conservation was responsible for provincial parks; B.C. Department of Mines and Petroleum Resources was responsible for mineral exploration, leasing, and extraction--to name a few of the other jurisdictions affecting resource management on the islands.

C. Events Leading to the Establishment of the Islands Trust

The specific events leading to the formation of the Islands Trust were described in the first chapter. As mentioned, regional districts benefitted the Gulf and Howe Sound Islands with the provision of certain services, such as hospitals and building regulations. However, some regional districts created new problems such as the imposition of regional goals which were more urban-oriented than desired by the island residents, and some seemed ineffective at solving older problems such as communication and land use regulation. The ten-acre freeze was imposed in 1969 as a drastic measure to halt rampant, unplanned subdivision activity and to encourage the regional districts to formulate community plans for the islands.

The all-party Select Standing Committee on Municipal Matters effectively elucidated many of the problems experienced by the Gulf and Howe Sound Islands. (It must be noted, however, that this committee had time only to examine the islands which are now in the Islands Trust area. It did not manage to see the more northern islands such as Texada, Savory, Cortez and Quadra,

which may well have experienced--and still may be experiencing--problems similar to those in the trust area.) These problems are fully discussed in the next chapter on the intent of the Trust.

The committee felt that the regional districts were well-adapted to "carry on the usual functions such as hospitals, local improvements, special projects, etc.", but not geared to carry out all the requirements needed over the longer term. The committee specified these requirements to be the placement of emphasis on recreation, moderate residential use, and preservation of the rural atmosphere.

Following this report, legislation was drafted to institute a trust with jurisdiction over the islands within the area visited by the Standing Committee. The Islands Trust concept was generally well-received by islanders and provincial MLA's. However, it was not highly appreciated by some regional districts. Those regional districts that had made sincere attempts and some progress toward the formation of community plans for the islands felt the Trust was unnecessary.

D. Brief Description of Original Structure and Powers of the Islands Trust

The structure of the proposed Islands Trust was not as well received as the Trust concept itself. The Trust was to consist of three general trustees appointed by Cabinet (one of whom would be the chairman), and 26 local trustees, two elected from each of 13 designated islands. The term of office for all

trustees was two years. It was the duty of the three general trustees to represent the provincial interest in the islands. The trust chairman was to decide which issues relating to the object of the trust, were general affairs (i.e. affecting more than one designated island or one or more non-designated islands), and which were local affairs (i.e. affecting only one designated island). General affairs were to be handled by the general trust committee, consisting of the three general trustees. Local affairs were to be handled by the local trust committee for the respective island, consisting of the three appointees and the two locally elected trustees. The informal body of all 29 trustees, now called the Islands Trust Council, is a non-legal body which was not assigned any procedures or functions. However, the Trust Council formulated its own procedures and meets quarterly to discuss matters of general concern. The Council makes recommendations to the General Trust.

Many MLA's, regional directors, and local residents complained that since the three appointees of the province could outvote the two local representatives, the provincial interest would be too strong and the local interest given second priority again. It was felt by some that local control was being eroded. It was also noted that the Trust did not include any members from the regional districts, provincial government departments, or Crown corporations, although it was intended to coordinate all of these bodies with respect to the islands. Representatives of islands where community plans had already been developed felt apprehensive about the Trust; they did not

want to have to change the community plans on account of the Trust.

The argument which government MLA's presented in favour of this structure was that two votes out of five gave the islands much greater input than they currently had under the regional district structure (e.g. islands in the Capital Regional District have two votes out of forty-seven). Another rebuttal of the complaint of lack of local representativeness was that the Islands Trust was not given any initiating powers anyway; it could only make approvals and recommendations. It was also argued that there existed a very large provincial interest in the islands which needed to be represented, since such a large proportion of the British Columbia population lived adjacent to the islands, and since the islands were unique to B.C. Another suggestion was that the general trustees would bring to the islands an overview of development on all the islands, thus sharing answers to problems experienced by more than one island. (See the chapter on "Intent of the Islands Trust" for a more complete description of the arguments.)

The original powers of the Islands Trust were fairly limited. The initial legislation gave the Trust no powers to systematically plan or regulate development on the islands. This jurisdiction, through community plans and zoning and subdivision bylaws, remained with the regional districts, along with all other previous responsibilities of the regional districts. It was hoped that the regional districts would continue to encourage local communities to draw up their own community plans. (It must be noted that the regional districts

were still not legally cbligated to produce community plans or bylaws for the islands.) The Islands Trust was to encourage and assist in the process of community planning, and to draw expert advice from government departments when required. The Trust was to "coordinate the activities of the different departments of government and the Crown corporations as they [dealt] with the islands" (Honourable James Lorimer, Hansard, May 21, 1974), but was given no special powers with which to do so.

The Trust duties included:

1. making recommendations to Cabinet regarding formation and implementation of policies to preserve and protect the trust area,
2. coordinating and assisting in forming and implementing these policies,
3. making recommendations to Cabinet regarding acquisition, use, and disposition cf Crown land in the trust area, and
4. locating and identifying heritage sites in the trust area.

Regarding land use in the trust area, the role of the trust was largely as a vetoing agency, as follows:

1. community plans, regional plans, zoning and subdivision bylaws, land-use contracts, etc. formed by regional districts to regulate use cr subdivision of land within the trust area had to be approved by Cabinet and the appropriate Trust committee;
2. construction or enlargement of buildings and improvements in the trust area had to be approved by the appropriate Trust committee; and
3. the Provincial Crown was not to develop or dispose of land in the trust area without giving nctice of the development or

disposition to the general trustees.

Thus, the Islands Trust was in effect a "watch dog" agency with respect to the settlement issues handled by the regional districts. While the Trust could not initiate plans, bylaws, or land-use contracts, it could refuse approval if these were not in keeping with the Trust's objective of preserving and protecting the trust area. The public sentiment at the time was against the Trust having initiating power if this would require rewriting community plans.

E. Some Limitations of the Original Islands Trust Legislation

Neither the Islands Trust nor the regional districts had the power to approve subdivision plans in the trust area. This power lay with a person authorized by Order-in-Council. The Municipal Act specified that the approving officer "shall give due regard to and take cognizance of any official community plan when dealing with [subdivision applications]" (s.711[3]). Thus, interpretation of the community plan was left to the discretion of the approving officer. The Land Registry Act specified that "the approving officer may refuse to approve the subdivision if it does not conform to the respective bylaws of ... the regional district regulating the subdivision of land" (s. 94, my emphasis). Thus, it appears that the subdivision approving officer was not obligated to refuse an application which did not comply with the community plan or zoning or subdivision bylaws of an island.

One section of the Islands Trust Act which would have given

the Trust a larger hand in the regulation of subdivision development, but which is still not proclaimed is section 6(3). This states:

> ... no registrar under the Land Titles Act [formerly the Land Registry Act] shall accept an application for deposit of a plan of subdivision ... [including strata plans] ... within the trust area; unless the plan is approved by the trust committee having jurisdiction ...

This section could have been used by the Islands Trust to make certain that new subdivisions met with the Trust's interpretation of community plans and bylaws. It could have also been used, perhaps, where a proposal met with bylaws but was not considered to be in accordance with the Trust's objective of preserving and protecting the environment.

With respect to Crown land (including foreshore), the role of the Islands Trust was weak. The Crown agency responsible for Crown lands had only to notify the Trust of its intention to develop, subdivide, lease, log, or dispose of Crown land. However, zoning and subdivision bylaws were applicable to Crown lands.

With respect to other resources, the role of the Trust was also weak. Forest lands in Taxation Tree Farms were completely handled by the B.C. Assessment Authority, the B.C. Forest Service and the logging companies owning the forest land; no provision existed whereby the Islands Trust had to be consulted regarding the use of forest lands. (It is noted that neither did regional districts nor municipalities have any control over Taxation Tree Farms.) Furthermore, logging activity on private lands not under Taxation Tree Farm tenure, were almost totally unregulated by <u>any</u> agency.

The Islands Trust was not given the power to raise money. It was totally funded by the provincial budget. This meant that the provincial interest was strongly represented, not only by the three provincial appointees, but also by control of the amount of funds available to the Islands Trust and of the purposes for which this money was to be used. This has been viewed by some as undemocratic.

F. Evolution of Islands Trust Structure and Powers

The original Islands Trust Act was explained in the previous section. In 1975, an Amendment Act was passed for the basic purpose of creating an "Islands Trust Fund" which the Islands Trust would administer "for the purpose of carrying out the objects of the trust" (s.2A, Islands Trust Act). The fund was to be comprised of gifts and grants from provincial and federal governments or agencies, and from private donors. The Amendment Act provided that the Trust constitute a corporation (s.2[5], Islands Trust Act), so that it could purchase and hold real property.

The capability of purchasing land would have been useful for the protection of certain areas such as community watersheds, the provision of certain public services such as public beach accesses and parks, as well as for the implementation of positive planning techniques.

Although this Amendment Act was passed in 1975, the key

section regarding the Islands Trust Fund (i.e. section 2A) has still not been proclaimed. In 1979 the section incorporating the Trust was proclaimed, but not with the intention of giving the Trust the power to hold land; rather to remove liability from the trustees in case of damages resulting from court cases. (The fact that the Trust did not exist as a legal entity prior to 1979 must have been an oversight.) Now that the Trust is a corporation, it would appear that it legally has the power to hold land, since there is nothing proclaimed in the Islands Trust Act to the contrary, and the right to hold land is probably a common law right of a corporation. (However, the Islands Trust is not under this impression; the Trust believes it cannot hold land.)

In 1977, another Amendment Act was passed which changed the fundamental structure of the Trust and gave it additional responsibilities. The structure was changed such that the chairman and two vice-chairmen (i.e. the general trustees), are now elected by and from among the local trustees, rather than appointed by the provincial Cabinet. Specifically, the general trustees were to be "elected ... by the local trustees from among their number as soon as practicable after the general election of the local trustees" (s. 2[1], Islands Trust Act).

The other major change brought about by this Amendment Act was that the Islands Trust was given responsibility for community and regional planning in the trust area, and this function was removed from the seven respective regional districts. Specifically, the powers transferred pertained to the appointment of Advisory Planning Commissions and the

preparation and enforcement of settlement or community plans, zoning bylaws, subdivision bylaws and regional plans. The existing plans and bylaws of the regional districts were to be adopted by the Trust, but could be repealed or amended by the Trust. Plans and bylaws (and amendments) still had to be approved by the Minister of Municipal Affairs, as they did under the regional districts.

A significant section added to the Islands Trust Act stated:

> Where a regional plan [of the trust area] includes ... areas ... designated as having special importance in securing and maintaining the objects of the trust by reason of their
>
> a) scenic value, or
> b) recreational potential, or
> c) natural or scientific interest, or
> d) delicate ecological characteristics,
>
> those areas shall, on approval of the regional plan by the minister ... be under the jurisdiction of the general trustees for the purpose of adopting special protective zoning and subdivision by-laws or regulations.
>
> (s.6[7], Islands Trust Act)

This reinforced the notion of the trust area itself being a regional entity, requiring regional planning and attaining regional goals. This notion was not entirely well-received by islanders because many view their island as the only meaningful planning unit; the special protection of certain areas by the general trustees was resented by some as paternalistic and imposing of outside objectives. Nevertheless, it was generally agreed that this sort of imposition of regional goals (i.e. imposition, by other trustees of goals pertaining strictly to the islands) was better than the former imposition of regional goals by the regional districts.

The addition of two other sections to the Islands Trust Act provided that: 1) regional boards could not adopt bylaws, undertake work, or issue permits, contrary to trust bylaws; and 2) if the Trust advised a regional board that it proposed to adopt or amend a zoning bylaw or community plan, the regional board could withhold a building permit for up to ninety days, if there was some doubt as to whether it would comply with the new plan or bylaw.

For the purposes of the Land Commission Act, the Trust was to take over the role of the regional districts with respect to the trust area.

Finally, reference was made in the 1977 Amendment Act to the power of the Trust to hold land. Section 2(6), which was enacted in 1975 but not proclaimed, namely:

> The trust has all the power and capacity of a natural person of full capacity in carrying out its objects.

was repealed and the following was substituted:

> The corporation ... may, with prior approval of the minister, accept, hold and dispose of real property; but shall not, without prior approval of the minister, incur liabilities or borrow money.

Thus, it was evident that the legislature was still considering enabling the Trust to hold land, although it was reluctant to allow the Trust to do so without Ministerial approval, or to borrow money for such a purpose. At the time of writing, the major sections pertaining to this power are still not proclaimed, but the Trust may in fact have the power to hold land simply because it is a corporation (as mentioned previously).

G. Role of the Regional Plan in the Trust Area

The history of land-use planning on the islands has not accorded with the optimal planning procedure as inferred from the Municipal Act. According to the Municipal Act, land-use planning in regional districts should follow the following procedure:

1. A regional plan is to be prepared (s. 795[1]).
2. A regional plan may be designated as an official regional plan (s.796[1]).
3. Following the adoption of an official regional plan, official settlement plans are to be prepared (s.796A[1]). Settlement plans are not to contradict the official regional plans (s.797[1]).
4. Official settlement plans are to form the basis for the preparation of land use regulatory bylaws (s.796B[1]). These zoning and subdivision bylaws must comply with the official settlement plan and the official regional plan (s.796A[7] and s.797[1]).

Thus, in the procedure as legislated, the regional plan gives rise to community (or settlement) plans, which give rise to zoning and subdivision bylaws.

In the case of the trust area, it appears that only the Greater Vancouver Regional District included any trust islands in a regional plan. Community plans were prompted by the ten-acre freeze, but were not created within the framework of a regional plan.

As of November, 1978 all of the designated islands had

adopted community plans, and the Islands Trust is now in the process of developing a regional plan.

It has been argued that the islands of the trust area do not form a regional unit. First, the islands are very different from each other. Examples of differences include: 1) Saltspring is much more highly developed than any of the other islands, with Ganges being the center of commerce for many of the islands, and 2) islands with a greater proportion of small lots seem to have a greater proportion of seasonal residents. Another possible, but as yet speculative, difference is that the northern islands of Denman, Hornby, Lasqueti, and Gabriola may have attracted quite a different group of residents with respect to philosophies and lifestyles than the southern and Howe Sound islands. As a result of inter-island differences some islanders would resent having values of other islands being forced upon them.

Second, most islands have stronger economic and social links with the mainland or Vancouver Island that with other islands of the trust area. For this reason, it has been argued that each island forms a better regional unit, with respect to regional planning considerations, as a part of its regional district than as a part of the trust area. However, the other side of the argument is that most islanders in the trust area probably have more in common, with respect to problems and values, with other islanders than with the neighbouring urban components of their regional districts.

Given these two realities, a regional plan for the trust

area presumably would not attempt to diminish the variety of values held in the trust area, nor would it attempt to unify the trust area as an economic region. Rather it would strive to create policy regarding common problems among the islands, and would identify special areas of each island which are significant to the region as a whole. A regional plan drawn up by the Islands Trust would probably reflect more serious conservationist policies for the islands than would regional plans generated by the regional districts. (Possible reasons for this will be discussed throughout the thesis.)

There may exist a problem of imposing regional aspirations on individual islands, even though the general conservationist motives of the Trust may be regarded as basically agreeable. If the Trust identifies certain features of the trust area as regionally significant with respect to such things as recreational potential (e.g. swimming beaches or campsites), industrial potential, or scenic value, and tries to impose special restrictions on the use and development of those areas, islanders may choose to defend their existing community plan if it disagrees with the regional objectives of the Trust. It may prove difficult to overlay a set of regional objectives onto independent island units which have now developed community plans.

One would expect that in spite of this potential difficulty, the Trust will attempt to have the community plans rewritten such that they become consistent with the regional plan. However, it appears that the Trust does not intent to rewrite the community plans; further amendments to the existing

plans will simply be made to comply with the regional plan. If the new regional plan is found to be in agreement with the existing community plans, one must question the value of developing a regional plan. It appears that the rationale of the regional plan is to "outline broad policies for the future use of the Trust Area"; "to draw together common goals and look at the whole Trust Area from a wider perspective [than Official Community Plans and Zoning and Subdivision By-laws]" (John Rich, Chairman, "A Regional Plan for the Islands Trust Area," 1980).

In summary, the development of the islands may have proceeded quite differently if the Islands Trust had been given the planning function and had been required to generate a regional plan for the islands in 1974, to form the basis of the community plans (i.e. the procedure normally required elsewhere in the province). However, the Islands Trust now has the advantage of having learned over the past six years about the existing and potential problems facing the islands and about resources requiring specific protection. It is expected that the Trust will reflect this knowledge in the regional plan, future community plans, and future zoning and subdivision bylaws.

Chapter IV

INTENT OF THE ISLANDS TRUST

The intent of the Islands Trust can be surmised from a number of different sources. In this chapter an examination is made of three key sources:

1. the September, 1973 report of the Select Standing Committee on Municipal Matters, which recommended the institution of a trust,
2. the Hansard debates through time, from discussion of the above report (September 24,1973) through 1979, and
3. the "Policy Statement of the Islands Trust," 1975.

From this examination, an interpretation is made of the fundamental implicit and explicit intent of the Islands Trust.

A. According to the Select Standing Committee on Municipal Matters

As previously mentioned, the Select Standing Committee on Municipal Matters was requested in 1973 to examine problems of the islands in the Strait of Georgia and make recommendations to the legislature. The terms of reference of the Committee were: "to inquire into the question of future development, including the development of community plans on the Gulf Islands and other such islands in the vicinity as the Committee may consider appropriate" (Hansard, February 22, 1973). The study was to include an examination of the Municipal Act and other Acts

affecting local government, with a view to recommending changes.

The observations of the Committee were summarized in chapter I. As well as settlement problems such as large subdivisions, over-development, shortages of potable water, waste and garbage disposal, and transportation; and resource problems such as the need for more supervised public space, the need for preservation of the rural atmosphere, and the need to satisfy the demand for recreational use of the islands (e.g. more beach accesses, hiking trails, picnic areas, and campgrounds); the Committee pointed out the need for a more coordinated approach to planning and development than was currently offered by regional districts and existing government departments. Water transportation to the islands was felt to be a key to the entire situation, needing careful control and coordination. It was pointed out that this was not within the jurisdiction of regional districts, implying that there should be some form of local input into this important matter handled by the provincial government.

The following three observations from the Committee report deserve quotation:

- One of the major problems encountered by the Committee in its tours, hearings, and public meetings is the fact that there has been, and remains, a very serious lack of co-ordination and communication. In many respects, the islands have fallen victim to ad hoc or "band-aid" activity. There is a need for a co-ordinated jurisdiction to be responsible for planning, zoning, control of land use, transportation, and related matters for all the islands and this jurisdiction would require sufficient funding over and above the current revenue source from local taxation.

- Although regional districts are not geared to carry out all the responsibilities expected of them relative to the future of the Coastal islands of British Columbia, they can well serve the islands for many administrative purposes including hospitals, schools, local improvements, special projects, health, building inspection, etc. ...

- Recognizing the need to ensure continued employment opportunities for some residents of the islands, strictly controlled limited commercial development, light industry, and agricultural activity compatible with the life style of the islands can continue, nonetheless, emphasis for the future development of the islands should be placed on recreation, moderate residential use, and preservation of a rural atmosphere. The Committee was impressed with some instances of desirable land use (by residences, summer camps, a few parks, endowments) but was alarmed at the possession or hoarding of land by resident and absentee owners for high capital gains purposes. It was also distressed by the evidence of considerable subdivision activity in the past, which was undertaken without full determination of its impact on the future of each island. Our belief is that the islands are too important to the people of Canada to be left open to exploitation by real-estate developers and speculators.

(Hansard, September 24, 1973)

The key recommendation of the Committee was as follows:

The Committee recommends that the Provincial Government establish an "Islands Trust" (or commission), as the most appropriate body to be responsible for and to co-ordinate the future of each island within our terms of reference. It must be emphasized most strongly that the trust is to assume the primary responsibility for all Gulf Islands' affairs within Government jurisdiction, including land use, future growth patterns, control of development, industrial, recreational, and commercial activity, as well as parks and open space designations. It is essential that the trust be fully representative of all interests, not only on the islands, but throughout the Province as a whole. While recognizing the rights of the islanders, the Committee suggests that this section of British Columbia is dramatically affected by private and public activity which does not have the same impact in other parts of the Province. The Committee again refers to the fragile nature of these coastal units. Because it is recognized that a variety of Government departments and agencies: Highways, Health, Ferries, Lands and Forests, Parks,

> etc., as well as regional districts and citizen groups on the islands, all have an important role to play in this respect, we emphasize that the proposed trust or commission must not be a separate and (or) remote agency, but rather a fully representative co-ordinating body, whose task it is to bring together each group, agency, or department of Government and to act in the best interests of the islands and their residents, with due regard for the broader and Province-wide interest.

Thus, the intents of the Islands Trust according to the Standing Committee appeared to be:

1. to stand responsible for all aspects of future development of the islands;
2. to coordinate, control, and assume primary responsibility for planning, land use regulation, transportation, commercial and resource development, recreational activity, and parks and open space;
3. to improve communication between island residents, regional districts, and government agencies;
4. to incorporate the Provincial interest in the islands, as well as the local interest, into island planning and development;
5. to ensure that emphasis for future development of the islands be placed on recreation, moderate residential use, and preservation of a rural atmosphere;
6. to discourage explcitive real estate speculation and development;
7. to act as a fully representative coordinating body, bringing together each agency or department of Government.

It was not clear from the report whether it was intended that the Trust should actually be comprised of representatives of all these agencies, or whether it should simply draw upon these

agencies as required and foster interdepartmental communication.

During the presentation of the report to the legislature by Mr. Nunweiler of the Select Standing Committee, remarks were made that the regional districts did not have adequate financing to do what they would have liked to have done for the islands, and that the regional districts were not geared to carry out all their long term responsibilities. It was felt that another vehicle was needed to be able to achieve the placement of future emphasis on recreation, moderate residential use, and preservation of the rural atmosphere. It is still not exactly clear, if the regional districts had been given adequate funding, why they could not have performed the necessary functions.

B. According to Hansard (1973 to 1979)

The legislative debates, as recorded in Hansard, provide an indication of the perceptions of provincial politicians regarding problems on the islands, and regarding the Islands Trust as a potential solution to those problems. For most serious matters pertaining to the structure and functions of the Trust, both sides of the question were raised and discussed. These debates are not discussed in this thesis; only comments which directly relate to intent of the Trust are noted here.

However, an in-depth analysis of the debates suggests that the specific questions raised by the opposition, and the specific replies of the government (throughout this entire period) should not necessarily be taken literally. It is likely

that a considerable amount of political manoeuvering was occurring on both sides of the legislature, and also on some regional boards.

Thus, while the following quotations provide a glimpse of the intent behind the Trust, they should perhaps be taken "with a grain of salt." For the purposes of the thesis, it is assumed that the statements made by the Members of the Legislative Assembly as recorded in Hansard were sincere, and provide a realistic representation of the intent behind the Trust. The thesis will not delve into possible political manoeuvers.

When the Honourable James Lorimer presented the Islands Trust Act to the Legislature for second reading on May 21, 1974 he made several points, paraphrased as follows:

- The voting strength of the islands had been quite small.
- The islands had been somewhat of a nuisance to the regional districts.
- The islanders felt badly neglected by the regional districts and the province.
- Evidence showed that the islands can be ruined very quickly and easily by unfortunate subdivisions and unfortunate developments. <u>It was agreed unanimously that there had to be some mechanism to control this sort of development on the islands</u>.
- The activities of the regional districts would carry on, as the Islands Trust would have no power to implement any action regarding any developments, zoning bylaws, or community plans. It was hoped the regional districts would continue having local community groups draw up their own Community Plans.
- The Trust was to assist the process of drawing up community plans and was to be able to draw expert advice from any provincial department for assistance.

- The Trust was to coordinate activities of the different departments of government and Crown corporations as they dealt with the islands.

- It was not intended for the Trust to have any initiating powers.

From this presentation, it appears that the major intent of the Trust was:

1. to make the islanders feel as if they had a larger role in the determination of island development;
2. to guard against developments which might have significant negative impacts on the islands;
3. to facilitate the community planning process by assisting regional districts and by requesting professional advice from government departments as required;
4. to coordinate all government activities with respect to the islands, so that they were not in conflict with one another.

The following paraphrased statements regarding intent were drawn from the second reading of the Islands Trust Act:

- There is a need for coordination not only between the regional districts and community organizations, but particularly among various government departments and Crown corporations: Hydro, Highways, Ferries, Recreation and Conservation, Municipal Affairs.

  (Hugh Curtis - SC)

- The Islands Trust has been established to work in conjunction with local people and to bring in expert advice when they need it. Most regional districts are now too large and have too many problems to give the islands the kind of attention they deserve. Responding to the question, "If there already exist plans and bylaws, why is an Islands Trust needed?": these islands are so beautiful and such a desirable place that the pressures to have the islanders change their bylaws will increase in years to come. Islanders will have more input than before. For example, representation on the southern islands will change from two votes out of forty-seven, which it is in the Capital Regional District, to two votes out of five. The general trust will bring an overview of development of all the islands; answers to problems may easily be shared among the islands. The islands are unique and special. They need this special protection.

(Karen Sanford - NDP)

- The thrust of the Committee report was to coordinate the planning and development of the islands; not to 'preserve and protect'. This is paternalistic.
(Allen Williams - LIB)

- Responding to the argument that uniqueness is not an excuse for such a precedent: those islands are not the private preserve of the people who live on them; they are loved and cherished by a lot of us. Certainly there are other unique areas, but this one requires special protection. As evidenced on Mudge Island and Mayne Island, the regional districts have not done a good job.
(Rosemary Brown - NDP)

At the end of the second reading, Honourable James Lorimer responded to criticisms of the Islands Trust Act. The following paraphrased statements of intent were among his replies:

- The Islands Trust Act gives the control back to the people on the islands.

- Plans in a few islands, not many, are in place. They will remain in place, and will be the key to development of those particular islands. Other areas will be preparing their own plans in the same way as the ones that have their plans prepared. The trust, I hope, will assist this method, and will assist the regional districts.

- In response to Bill Bennett's claim that the act is an erosion of control which centralizes government; and his suggestion that instead of instituting an Islands Trust the government should give locals a chance to plan for themselves until they fail, in which case the Minister should move in with the Local Services Act (as was done with the imposition of the 10-acre freeeze): true, I can control those islands as Minister under the Local Services Act. What I am trying to do is to give that power to local people, to let them look after their own destinies.

- The trust, I hope, will assist in making arrangements for community plans, developed by the local people on the islands.

When the Islands Trust Act was in the Committee Stage (May

28,1974) the following paraphrased statements of intent were made:

- In response to a question pointing out that the legislation seems to exclude any matter which may affect a designated island and also part of the mainland: the intention is that it only affects the islands, not the mainland.

  (James Lorimer - NDP)

  [Note: This statement is of relevance to such issues as oil tanker traffic.]

- In response to an argument by Hugh Curtis that the Trust should not simply be afforded notice of developments or dispositions by Crown agencies but should have veto power over Crown agencies: section 6(4) is here so that in practice there will be consultation with the trust committee. As a result there should be complete cooperation and coordination between the separate departments, the Crown agencies, and the trust itself. Obviously what will happen is that any Crown agency or any government department will be in consultation with the trust before such actions as a power line or a new highway or whatever are taken.

  (James Lorimer - NDP)

- Referring to the above response: that is a very disappointing answer from the Minister. Promise of consultation and cooperation are empty words. Witness the former government: certain arms of that government and certain Crown agencies nevertheless went ahead and did exactly what they liked. While the Minister's genuine intent is to consult and cooperate, there should be some kind of protection in this section to a much more reliable degree than "give notice".

  (Scott Wallace - PC)

- All members of both sides of the House were in support of the Committee's recommendation that something had to be done in order to look after these unique islands. Yet we find that when the government wishes to deal with those lands, it need not subject itself to the consideration of any trustees.

  (Allen Williams - LIB)

- What has happened in the past has been that departments and Crown agencies have gone into the islands on their own and done whatever particular job they had been intending to do. The Crown agencies and departments should notify the trust before any action is taken, in

order that the trust will now be able to be familiar with the intentions of other agencies and can correlate the activities or have them reviewed or whatever the trust may decide should be done.

(James Lorimer - NDP)

The following statements were made at the Report Stage of the Islands Trust Act (June 4, 1974):

- We want preservation, conservation, and future development of this area which has unique qualities.

(Allen Williams - LIB)

- This bill provides for more representation by the island people than they've ever had before. It provides them with the opportunity for more input than ever before. Everyone wants the 10-acre freeze lifted; everyone wants new direction for the islands and some sort of mechanism to carry that out.

(Carl Liden - NDP)

The Islands Trust Act was passed on third reading on June 4, 1974. The mandate of the Trust was as stated in chapter I.

Summarizing the foregoing statements from second reading through to the passing of the Islands Trust Act, the following intent of the Trust was made apparent:

1. to coordinate the planning and development of the islands, between communities, regional districts, and all government departments and Crown corporations;

2. to be consulted by government departments and Crown corporations regarding their developments and dispositions, so as to coordinate activities between these agencies. Note that it was NOT the intent that the Trust should be able to veto these activities; otherwise the government would have amended section 6(4) when asked repeatedly by all parties of the

opposition to do so;

3. to give islanders more attention and representation than they had received from the regional districts;

4. to give control "back to the people on the islands." "To let them look after their own destinies." (Lorimer)

5. to assist individual islands by generating a perspective of development on all the islands;

6. to protect the islands such that they remain beautiful and special. To direct future development of the islands with a conservationist attitude, to ensure that special amenities are preserved and that the rest of the islands are generally protected from undesirable developments;

7. to assist the regional districts in the development of community plans.

The Islands Trust Amendment Act, 1975 was introduced in mid-1975, after the Trust had been in operation for several months. The following statements regarding the intent of the Trust and of the Amendment Act were made:

> The principle of the bill is to allow the trust to hold lands in its name. At present it is unable to accept gifts of real estate and also personal estates and to hold anything in its name. The provision here allows the trust to be a corporation for the purpose of holding land and it allows the trust to carry on as an individual might do. ... it has the power to buy and sell land as well. However, the basic purpose here and the need at the present time is for power to hold land. ...
>
> [At present an offer of property] probably has to be put into the Department of Lands.
>
> Most people don't want to donate property as a trust to a department of government, they would far rather donate it to a trust in which there would be some control and that the trust would be bound to exercise control of that particular land or personal property in conjunction with the terms of the trust.

(Lorimer - NDP)

The content of the amendment is whether or not it is desirable for the trust to be able to buy and sell land rather than just inherit land by donation. ... [The Minister is misleading. He said] that although he had originally instructed the [drafting] department that the bill should not have the power to buy land, he would probably need that power in a couple of years. So it will remain in the bill. If ... the basic concept of the original legislation ... was to try to bring about the best and optimum orderly development of the Gulf Islands, it seems strange that we might not need the power to acquire or buy land now, but ... that maybe in a year or two that power might be desirable.

... All of us ... voted ... to preserve the islands in their best possible environment... .

(Scott Wallace - PC)

A year ago ... it was felt that there was no need for powers to hold real estate or ... personal property, that it could be held elsewhere. There are a number of areas in government which can hold land. We have found in the past year that people who were prepared to give donations objected to giving them to the government as such or to a department of government. They wanted to give it to the trust. ... The reason [for not needing] the power to buy and sell for about two years is that we had no [cash] offers at present. When we got the offers and had those funds, we could then amend the statute [to] take care of it. ... We have no reason at present for buying and selling land. Need could well arise within a couple of years. ...

The purpose of the fund is to develop and look after the islands, to acquire land for possible park purposes and for wilderness areas. It's also to look after the question of looking into water supplies and make studies in the area. There have been very few studies made up to now, and those have to be done.

(James Lorimer - NDP)

The intent of the Islands Trust Amendment Act, 1975 is evident from the above quotations. However, as mentioned in chapter III, the key section of this act, i.e. section 2A which sets up the Islands Trust Fund, has not yet been proclaimed.

Following the provincial election in November, 1976 the

British Columbia government changed. Party standings changed from NDP - 37, SC - 10, LIB - 5, PC - 2, to SC - 35, NDP - 18, LIB - 1, PC - 1.

The Islands Trust Amendment Act, 1977 was introduced in March, 1977 by the new Minister of Municipal Affairs, Honourable Hugh Curtis, whose riding happened to include the southern Gulf Islands. The original bill provided basically for the transfer of the planning function from the regional districts to the Islands Trust. It did not include provisions for the election (rather than appointment) of general trustees until this bill was amended later in 1977. During presentation of the bill at second reading, the Minister made the following comments:

> ... The reforms ... will simplify planning and regulatory procedures and bring those procedures closer to people and communities served by the Islands Trust.
>
> ... The existing process of developing and administering land-use and planning controls within the Islands Trust area has proven to be slow, unwieldy, and often remote from the people affected by those controls or regulations. ... a main purpose of this bill is to improve the planning and land-use regulation processes. This is to be accomplished by transferring certain powers and responsibilities from the seven currently involved regional districts to the trust itself.
>
> ... The existing three-level system empowers regional districts to adopt land-use regulation and planning bylaws, subject to approval by the trust and by the province. The new proposed two-level system will permit the trust ... to adopt bylaws subject to provincial approval. ... [This will] eliminate the delays and frustrations associated with an additional level of approval [and] also confer a positive planning role on the trust ....
>
> The trust's existing capacity to approve regional district initiates [sic] confines it essentially to a negative approach based cn veto power. ...[This is]

enforced institutional negativism.

> ... Regional districts will continue to ... [provide] a variety of customary services, they will also retain responsibility for adopting and administering building regulations.

> ... The principle that the province as a whole has an interest in preserving and protecting the Islands Trust area is maintained in the continuation of provincial approval of bylaws, provision of financial support and the introduction of a new clause to assist in protecting the prime natural areas designated in regional plans. This latter clause will enable the trust to adopt special protective regulations applicable to designated areas of high recreational, scenic or ecological importance.

> ... [Beneficial results of this amendment will include] greater responsiveness to local circumstances and ... a less cumbersome approval process.

During second reading there was considerable argument about giving provincial appointees this added responsibility. It was felt that local control was being eroded by removing the planning function from elected representatives of the regional districts.

The following were among the comments regarding intent at that time:

> We all agree that there are special circumstances in the island areas of our province, particularly in the Gulf Islands, and that these are the jewels of British Columbia, part of our provincial treasure, and that there should be some special form of administration. But that special form of administration should not be a majority provincial-government-appointed group. ... What [this bill] does is take away even such powers as there are with the locally elected regional district. To me that's wrong .....
>
> (Gordon Gibson - LIB)

> ... <u>How do you do two things--give them local</u>

> autonomy and participation to the greatest extent, and preserve the natural beauty and orderly development of the islands or the degree to which they should be developed? Naturally, that's the essence of what we're debating. ... We're looking at an Act which is intended to be one providing for many, many years, if not decades and a century, of prudent management and preservation of what is unquestionably a very valuable part of British Columbia's natural resources.
>
> (Scott Wallace - PC, my emphasis)

> ... One of the reasons the Islands Trust was formed in the first place was to stop development in the disorderly way that [it] has occurred. Developers must be contained on those beautiful islands. We've seen those islands sold out over the years.
>
> (Dennis Cocke - NDP)

> [The original Islands Trust Act has one flaw:] no authority to do anything positive, constructive, or beneficial for the islands ... .
>
> (Hon. Allen Williams - SC)

The Islands Trust Amendment Act, 1977 was in Committee on August 31, 1977. Prior to this date, the bill was amended to provide for the election of the general trustees from among the local trustees by that group. The Municipal Affairs critic of the NDP, Charles Barber, expressed his party's full support for the amendment. He said that it would provide a form of democratic self-government and local control that did not previously exist. The bill was then passed with full support of the legislature.

Summarizing intent of the Islands Trust gleaned from a review of legislative debates, the Trust has been intended prior to November, 1977 to:

1. give island residents more attention, representation, and control than they had under the regional districts;
2. make islanders feel that they have a larger role in the

planning and determination of island development;

3. attempt to coordinate all government activities with respect to the islands, so that they were not in conflict with one another;

4. liase between communities, regional districts, government departments, and Crown corporations;

5. facilitate community planning on each island, and draw professional assistance when needed;

6. assist individual islands by bringing a perspective of problems and solutions on other islands;

7. protect the islands such that they remain beautiful and special; direct future development of the islands in an orderly manner and with a conservationist attitude; ensure that the natural beauty, recreational value, or ecological importance of special amenities is preserved, and that the rest of the islands are protected from developments having significant negative impacts.

Since the 1977 Amendment Act took effect, the intent has also included the following:

1. to provide more simple planning and regulatory procedures;

2. to bring planning and regulatory procedures closer to the island communities;

3. for the Trust to adopt a positive planning approach, rather than a negative vetcing approach; for the prudent conservationist attitude of the Trust to to be reflected in imaginative community and regional planning decisions.

4. to provide democratic self-government and local control.

C. <u>According to "The Policy of the Islands Trust," August, 1975</u>.

The policy statement of the Islands Trust dealt with its mandate "to preserve and protect" the islands, and with various specific issues such as community plans and bylaws, carrying capacity, agricultural land, Crown land, forestry, mining, water, foreshore, and recreation.

The statement said that the Trust interprets preservation and protection of the islands to mean:

> ... it must promote policies which will allow future generations the opportunity of deciding how the islands should be maintained or developed.

This would seem to imply that the Trust felt it should discourage policies which permit irreversible actions. The statement continued:

> To accomplish this the Trust will monitor, and where necessary, regulate the rate and extent of development taking place in the Trust area and encourage types of development that will maintain the essentially rural nature of the islands.

Regarding community plans and bylaws, the statement said:

> The Trust considers it desirable that each island community arrive at its own consensus of how it should develop, and the Official Community Plan should ideally be a statement of that consensus. ...
>
> Trust policy, therefore, is to encourage and where necessary aid local island groups in the preparation of plans and by-laws which have community consensus.

Regarding carrying capacity, the statement said:

> The Trust will, in full consultation with local island groups, Regional Districts and other Provincial agencies, determine the desired kind, rate, and extent of growth of population based upon the carrying capacity of the natural and man-made systems of an island or a group of islands.
>
> The carrying capacity of an island will be based upon the capability of natural resources such as soils, water, and vegetation to sustain human activities without irreparable impairment. ... Construction and development should be on a scale commensurate with that of the island concerned.
>
> Where insufficient data on the carrying capacity exists, the Trust will, of necessity adopt a conservative estimate of an island's capacity to accommodate growth. Population levels and distribution will be designed to protect the most vulnerable aspects of island environment and amenities so that the Trust can fulfill its long-term obligations to future generations.

The statement summarized the basic elements of trust policy as follows:

a. Recognition that the islands are a resource of national importance but of finite size, justifying provincial as well as local interest in how they are used and provincial and local regulations for their protection.

b. Provision of as varied recreational opportunity and experience as the islands are able to offer, now and in the future, including a range of holiday accommodation and facilities.

c. Retention of the native flora and fauna and both unique and typical island scenery; and recognition that some areas are too fragile for any intensive use and must be protected by creation of reserves.

d. Establishment of a pattern of land use which will allow needed and reasonable development in the present but which will at the same time preserve land from alienation, so that future generations will have the opportunity to make their own choices and decisions.

e. Development of the islands only in ways which are in sympathy with the landscape and which make the most of each site's natural characteristics.

f. Recognition that the islands are first of all an

existing community of people, and the welfare of those people, and those who join them and come after them, must always be a primary concern of the Trust.

Summarizing the Trust's interpretation of its intent, the Trust felt it should:

1. discourage irreversible actions;

2. monitor and regulate rate and extent of development;

3. encourage development that maintains the rural nature of the environment;

4. encourage and assist in the process of development of plans and bylaws which have community consensus;

5. determine desired kind, rate and extent of population growth, based on carrying capacity of natural and man-made systems;

6. encourage provision of the widest variety of recreational experiences, including a range of holiday accommodation and facilities;

7. encourage policies to retain both unique and typical island scenery;

8. protect fragile areas;

9. encourage policies which permit needed development but which prevent alienation of resources;

10. discourage developments which are not complementary to the natural landscape;

11. afford local communities a primary concern.

D. Discussion

1. General

Throughout the foregoing descriptions of 1) resource and settlement management on the islands prior to the Islands Trust, and of the evolution of the Trust, and 2) the preceding three accounts of the intent of the Trust, the most apparent objective of the Islands Trust legislation was the creation of a mechanism for the control of development in the trust area. Other major objectives included providing islanders more opportunity for input into planning and regulating island development, and coordinating the activities of all government agencies with respect to the islands.

2. What is "Preserve and Protect"?

The notion of "preserving and protecting" the islands was not a well-defined feature of the report of the Select Standing Committee on Municipal Matters nor of the legislative debates. Rather the Committee frowned on unplanned subdivision development and recommended that emphasis for future development be placed on recreation, moderate residential use, and preservation of a rural atmosphere. While the notion of protecting the islands from certain types of development was quite often voiced in the legislative debates, that of preserving the environment was not. Neither concept was explicitly defined; this job was left to the Islands Trust for interpretation.

It seems fair to say that few, if any, Members of the Legislative Assembly intended that the islands be preserved in their 1974 state. Some degree of development seemed to be inevitable and acceptable to most, if not all. However, it was unanimously hoped that the islands would remain beautiful and unique for decades to come, and in that sense preservation was intended. Thus, while the question of preventing all irreversible actions is still debatable, it appears that it was not necessarily intended that all irreversible actions should be prevented. Rather, orderly development appears to be the intent. One place where some notion of preservation of certain amenities is evident is the 1977 Amendment Act, which introduced section 6(7) to the Islands Trust Act. It specified that areas identified in a regional plan as significant with respect to scenic value, recreational potential, natural or scientific interest, or delicate ecological characteristics could be afforded special protective measures by the General Trust.

There was a strong view presented that a conservationist attitude had to be instituted into the management of the islands; it was unanimously agreed that development of the islands required careful planning and management of natural resources and of rural communities to prevent exploitation, destruction, and neglect. The Islands Trust was to strive for the "optimum and orderly development" of the islands.

The Trust's policy statement interpreted "preserve and protect" quite conservatively, which is probably in keeping with the provincial intent of orderly development. The statement also stressed the importance of being responsive to existing

island communities, in whatever interpretations were made.

3. Intent of Local vs. Provincial Control

One thread running throughout the three accounts of intent was the intent to give local residents a greater measure of control of development. More specifically, it appeared that the intent was basically 1) to make the local people feel that they had more control, while 2) ensuring that the provincial interests in the islands (specifically the interests in the scenic beauty, rural atmosphere and recreational opportunities) were protected. There was obviously some concern of provincial legislators that if the islands were given more autonomous local control (as afforded to municipalities), the amenities of the islands might be ruined; it appears that a there was a distrust of the powers of local developers--hence the three provincial appointees.

A look at the mechanisms of control retained by the provincial government furthers an understanding of how much control islanders were actually intended to have. The following are a few readily apparent mechanisms:

1. the general trustees (previouly appointed by the provincial government, now elected by the local trustees) are supposed to represent the provincial interest in the trust area;
2. bylaws of the Trust must be approved by the Minister of Municipal Affairs;
3. the provincial government controls the Islands Trust budget;
4. the Islands Trust cannot veto developments or dispositions of provincial departments or Crown corporations. Neither does

the Islands Trust Act appear to have paramountcy over other provincial legislation.

The implications of these and other mechanisms of provincial control will become more evident throughout the thesis.

4. Basis for Evaluation of Islands Trust Performance

The following summary of intent, as interpreted from the sources studied, will be used as the basis for judgment of the Islands Trust's performance and where applicable the performance of the total institutional system.

1. The Island Trust was to act as the single mechanism of coordination and control of island development (i.e. of planning, land use, transportation, commercial and resource development, recreation, parks, and open space), particularly with respect to the private sector. Where other government departments or Crown corporations planned any changes on the islands, the intent of the system was that there would be consultation with the Trust, cognizance of Trust objectives, and cooperation within the Trust's role as coordinating body.

2. The Islands Trust was to ensure orderly development of the islands with a conservationist attitude, guarding against significant negative impacts on the natural and social environment.

3. The Islands Trust was to afford local communities a significant measure of attention and local control , while

ensuring that provincial interests in the scenic beauty, rural atmosphere, and recreational amenities were protected.

Chapter V

PUBLIC CHOICE THEORY AS IT RELATES TO THE ISLANDS TRUST

The purpose of this chapter is to discuss some general ideas which may provide insights into the behavior of decision-making systems involving the Islands Trust. While the principle focus of the thesis is to examine the Trust's performance with respect to the intent of its mandate, the theory is intended to facilitate an understanding of *why* decision-making systems involving the Trust have performed the way they have. The theory will also provide an analytical framework in the form of a model for examining the decision-making processes. While the theory may or may not be successful in explaining all the findings of the thesis, the thesis is not designed specifically to test the theory. Therefore, the thesis uses the theory where it seems applicable and points out where it seems to be inadequate.

A. General Assumptions

The public outcries on the islands in the early 1970's and the resultant institution of the Islands Trust itself serve as evidence that government intervention was desired to alleviate market imperfections and inadequacies, at least as far as the public of the islands and provincial legislators were concerned. Government intervention is traditionally presumed to accord with "the public interest." However, the public interest is

problematic; there is no single definition, nor any single systematic way of determining what this interest is in any particular example. Several theories exist which propose definitions of the public interest (see Downs [1962], and Steiner [1970]). Most of the theories assume "good people" in government--people who are sensitive to the interests of all individuals and groups in society. This appears to be assumed for both politicians and "public servants."

Public choice theory, on the other hand, does not make this assumption. Under this theory all actors, including voters, bureaucrats, and politicians are assumed 1) to act in their own selfish interests, and 2) to act rationally. Thus no one is assumed to act in the "public interest."

Admittedly these are very large assumptions, and there are many examples where they are inappropriate. Examples abound where people have acted nonrationally and even irrationally. Furthermore, most individuals do have at least some concern for other people and, therefore, are not entirely egoistical in their decisions and behavior. For example, people may reflect some concern for the public interest through their vote, by joining an environmental group, or by foregoing monetary gain in order to better serve others. Ideologies, ethics, and religions commonly provide motivation for people to act in an unselfish way. In many cases, people may derive some psychological benefit from voluntarily sacrificing some of their personal interests in aid of another group's interests. In this sense, the person might still be said to be acting rationally and selfishly; however, if such psychological benefits as may be

derived from altruistic behavior are included within the definition of selfish benefits, the logic becomes confounded. Therefore, while recognizing that such benefits may exist they are excluded from the definition of self-interest used here. Summarizing, while it is recognized that people do sometimes act altruistically, and that some people do more than others, it is assumed that all people are basically self-interested and act accordingly. (This does not, however, imply an absence of ethical or other restraints.)

Another weakness of these assumptions is that there is often a conflict between a person's short-run and long-run self-interest. It may be impossible to predict which time horizon will dominate behavior. However, there are many actions which may be viewed to be not in a person's self-interest at all. Despite its weaknesses (but taking cognizance of them), the theoretical model to be used for the analytical framework of this thesis is drawn from the paradigm of public choice theory.

B. Public Choice Theory

Public choice can be defined as the economic study of non-market decision-making, or simply the application of economics to political science (Mueller, 1976). Public choice is the same general field as social choice, collective choice, and the new political economy, and is sometimes referred to by these other names. The birth of this field of study was in 1951 with Kenneth Arrow's book, Social Choice and Individual Values. Public choice theory is concerned with the mechanisms by which

human societies make decisions about their collective lives (Russell, 1979). The emphasis has been on designing institutions "which would lead self-seeking bureaucrats or politicians to generate public welfare in the same sense that the market leads some self-interested businessmen to produce a social surplus" (Tullock, in Russell, 1979, p.32). Downs (1976) explained the notion of public choice theory well:

> ... It may seem strange to assert that most officials [of the government or bureaucracy] are significantly motivated by self-interest when their social function is to serve the public interest ... .
>
> Although many officials serve the public interest as they perceive it, it does not necessarily follow that they are privately motivated solely or even mainly by a desire to serve the public interest *per se*. If society has created the proper institutional arrangements, their private motives will lead them to act in what they believe to be the public interest, even though these motives, like everyone else's, are partly rooted in their own self-interest. Therefore, whether or not the public interest will in fact be served depends upon how efficiently social institutions are designed to achieve that purpose. Society cannot insure that it will be served merely by assigning scmeone tc serve it. (p.87)

According to Russell (1979), there are two main threads to public choice theory. One involves the study of rules or institutions for arriving at a collective choice or ranking of alternatives on the basis of the choices or preferences of the individuals making up the collective unit. The second inserts *homo economicus* into the world of public choices--as voters, bureaucrats, politicians, etc.--to see whether assumptions of rational self-interested behavior explain events better than traditional views.

The latter is the thread that this thesis attempts to use.

A model is formulated about the behavior of various actors, under the previously mentioned assumptions and others to be made explicit later, drawing from the public choice literature which includes some directly relevant theories as well as empirical studies. Regardless of the extent to which predictions of the model successfully explain the findings of the research, they will be useful in guiding the analysis.

C. Basic Concepts of the Model

Before developing predictions of the model, certain key concepts should be discussed and explicitly defined.

1. Public good

Public goods in the strictest sense are goods which, once made available, cannot be restricted from the free use of everyone. For this thesis, this definition is felt to be too restrictive. A broader more explicit definition put forth by Steiner (1970) will be used:

> Any publicly induced or provided collective good is a public good. A "collective good" in my definition is not necessarily a collective consumption good. Collective goods arise whenever some segment of the public collectively wants and is prepared to pay for a different bundle of goods and services than the unhampered market will produce. A collective good thus requires 1) an appreciable difference in either quantity or quality between it and the alternative the private market would produce, and 2) a viable demand for the difference.
>
> Collective goods may be privately or publicly provided. Co-ops, unions, vigilante organizations, country clubs, carpools, and trade associations are all

> examples of private organizations that arise in response to collective demands for private collective goods or services. When the coordinating mechanism for providing a collective good invokes the powers of the state I define the good as a public good. In this definition there is the requirement that a public good must meet the tests of being a collective good. Public provision by itself does not create public goods. (p. 25)

Under this definition, it is clear for example, that general services (including specific decisions) provided by a government department or agency, whose function is to control public and/or private developments with respect to environmental quality, are public goods--if such a mechanism of control is collectively demanded.

2. Power

Power involves "possession of control, authority or influence over others" (Webster's New Collegiate Dictionary, 1977). In Marchak's words (1979), "Power is the capacity to determine the rules of the game; the right or the ability to enforce decisions" (p. 13).

3. Interests

Interests are feelings which accompany or cause special attention toward some object (which may be tangible or intangible), i.e. concerns. They may be motivators of human behavior, depending on the perceived costs and benefits of taking action. Interests (or more accurately, the objects of interests) lead individuals to improved states of welfare. Welfare in this context refers to everything from basic subsistence requirements such as food and shelter, through

higher requirements such as self-fulfilling employment, environmental quality, leisure time and recreational amenities, to the higher human quest for power--both power to control one's own destiny and power to control the destinies of others.

Economic interests refer specifically to those interests involving material benefits. It must be noted that although power and employment themselves are not material benefits, they can be used in turn to derive material benefits; in this sense, most of the interests mentioned above are economic interests.

Vested interests refer to concerns arising from a stake, investment, or other strong personal commitment in an object (again tangible or intangible). While some people might choose to define vested interests in such a way as to include <u>all</u> interests, for the purposes of this thesis it is desired to distinguish between certain kinds of interests. The term "vested interests" is used here as the vehicle by which this distinction is made. Thus, vested interests are specifically defined to include all economic interests, and the interest in sequestering power as an end in itself. Any interests that lead only to non-material (i.e. psychological) benefits--other that the interest in power as an end--are not included in this definition of vested interests. Thus, for example, one's interest in the environment, shall not be termed a vested interest, unless that particular environmental interest is directly connected with an economic interest (e.g. interest in one's property value), or with an interest in acquiring power as an end.

Vested interests may result from a legal right, title, or share in something (e.g. a title to land, or a share in a business); or from an informal (non-legal) but strong commitment (e.g. to an existing political, economic, or social arrangement; or to an organization such as a department of a bureaucracy). This commitment may, for example, be due to employment with that organization.

The rational pursuit of <u>self-interest</u> can be taken to mean the maximization of personal utility or satisfaction, excluding those psychological benefits derived from benefitting others, but not excluding those psychological benefits derived from having and using power over others.

4. Property Rights

Private property rights are a fundamental element of a capitalist system. They are not, however, a characteristic of every human society. In particular, the concept of "owning" land, and receiving a certain bundle of rights with the title to that land, is something which should not be taken for granted; it is a concept foreign to many other cultures. Various societies have developed varying degrees of acceptance of private property rights, and Canadian society happens to have adopted a system which affords individuals a significant bundle of private property rights.

Private property rights are privileges, basically 1) to do with the property what the owner wishes to do, and 2) to prohibit other people and governments from entering the property

and from determining the uses to which resources of the property shall be put. They are not usually itemized or specified. Rather, their scope begins very wide and all-encompassing, and may be gradually narrowed by the government upon passage of laws regulating the use and disposition of property. It must be stressed that in all capitalist societies, private property rights have the force of law; they are only overridden by expropriation laws or specific regulatory laws, such as nuisance laws or land-use zoning laws. Governments of capitalist societies tend to place a high degree of importance on private property rights, and hesitate infringing on these rights. It is almost as if governments see private property rights as constraints within which they must operate.

Private property rights, however, are more than simply the rights to do with the property what one wishes. They also entitle the owner to a measure of decision-making power and influence which may not be available to non-property owners, or to owners of less valuable property. This power and influence may be direct, as in the case where only landowners are entitled to a right to vote, or indirect, as in the case where large landowners employ others to work on their land (e.g. through agriculture or forestry).

Property rights are one form of vested interests.

5. Property

The kinds of property with which this thesis is most concerned are land and water, and the biological and physical

resources contained or supported in or on the land and water. All types of "real" property, such as land, buildings, and fixed structures, are included in this definition of property, but chattels are not.

For the purposes of this thesis, property can be partitioned into two groups. The first group shall be called "use" or "subsistence" property. This refers to property actually lived on by the landowner and perhaps (but not necessarily) used to derive an existence for him- or herself and family.

The second group of property shall be called "exchange" property. Here reference is made to property not lived on by the landowners but utilized only to turn an economic rent (which will then be "exchanged" for goods and/or services). This kind of property is usually considered to be commercial or industrial property, although these terms here do not refer to the local zoning of the property.

6. Representative Council

Reference was made previously to the need for government intervention with respect to allocation of resources. It is initially posited that the government consists primarily of a representative council. By representative, two propositions are referred to: 1) that the council is elected, and 2) that its electorate is property owners and residents of the region--not necessarily all the people who could be affected by its decisions (e.g. the people outside the region). It is the task

of the representative council to govern in the "public interest."

7. The State

The remainder of the government shall be called the "state." It is important to note that while the representative council is a governing body and hence part of a state, the term here shall be used to mean the governing bodies outside the representative council, except where specific reference is made to the inclusion of the representative council.

The state consists of governing bodies higher than the council, as well as governing bodies on the same level as the council but which have different electorates. "Higher" means having an electorate broader but including that of the representative council, and having broader powers than the representative council. It is posited that the representative council is delegated powers only through these higher governing bodies. "Same level" means having similar powers to the representative council, and not having the capability of either delegating its powers to the representative council or vice versa.

The higher components of the state set constraints on the powers of the representative council. The lower components of the state may affect the representative council's electorate such that decisions of the representative council are affected.

8. Bureaucracy

The bureaucracy is the group of administrative organizations which is employed by the state and the representative council for the express purposes of 1) implementing, monitoring, and enforcing the policies of the state and the representative council, and 2) advising on matters as requested by the state and on matters which the bureaucracy feels are important.

Employees of the bureaucracy are called public servants. The word bureaucrat is reserved for government officials of the bureaucracy who have a position of relatively great authority in their department.

D. A Model From Public Choice Theory

Now looking closer at public choice theory and stating further assumptions, a model (i.e. a set of postulates and inferences or predictions) is formulated. The inferences of the model might have some relevance to the behavior of the Islands Trust, the behavior of the provincial state, the behavior of the bureaucracy, and the behavior of the total system. Following a general examination of the theory, inferences of the model are summarized in a list. Then the main body of the thesis proceeds with an examination of the Islands Trust in each of the selected problem areas. After each empirical study, an analysis is made, attempting to relate the inferences of the model to the empirical results. Once again, this thesis does not test the model; rather it simply uses the model as one possible set of

explanations for the behaviors found, and as a guide or analytical framework for examining the results.

Recall that the major underlying assumption of the theory and thus, of the model, is that all human beings are rational, self-interested utility maximizers. To get rigorously testable predictions from this assumption, however, one must restrict the arguments of an individual's utility function to a few variables. Mueller, in his comments on Tullock's paper (in Russell, 1979, p.53), puts forth Table I on the following page, contrasting public choice models with private choice models and suggesting some key arguments for utility functions. While this thesis will not deal with each argument in a rigorous manner, these arguments should be considered here as an initial guide for possible explanations of behavior. (Additional and alternative arguments are mentioned subsequently.) Rigorous treatment of each argument is left for subsequent researchers.

A further note is necessary regarding these arguments. Russell (1979) said it well:

> [While] there are obvious reasons for concentrating on income and wealth effects, political decisions also involve issues that cannot be reliably translated into dollars--e.g. war, abortion, [environmental quality, lifestyle]. If people are rationally self-interested about public choices, they will be so about these issues, and leaving them out of our calculations will be very damaging, while bringing them in will be extremely difficult. (p.11)

This problem is related to the problem of including psychological benefits derived from such things as environmental quality or lifestyle in our definition of vested interests; as it is extremely difficult (if not impossible) to measure these benefits, and as it is not certain to what extent they motivate

TABLE I

PRIVATE/PUBLIC CHOICE MODELS

Private Choice Models Actor	Utility Function Arguements
Consumers	Private goods
Factor owners	Income, leisure, risk
Managers of firms	Profits, sales, growth, quiet life

Public Choice Models Actor	Utility Function Arguements
Voters	Public goods, income, wealth
Politicians	Income, ideology
Bureaucrats	Budget size, security

behavior, this thesis distinguishes them from other more commonly considered motivators relating to dollars and power.

The first postulate based on the major underlying assumption is that voters make their decisions on the basis of their own interests, not the public interest. (Mueller suggests that this could be tested on the bases of public goods, income, and wealth.)

A second postulate which directly follows from this same underlying assumption is that politicians are engaged in politics for their own interests rather than the public good. Crain (1977), Crain and Tollison (1976, 1977a,b), and Crain, Deaton, and Tollison (1977) have tested an immense collection of hypotheses which are specialized versions of this general hypothesis, and so far their tests have failed to refute the hypothesis. (The interested reader is referred to these authors for explanations of a large collection of specific patterns of behavior observed in local governments.)

It must be noted that the salary of an elected official is usually lower than his or her opportunity costs. "Thus, getting elected can be only a means to some other end for most politicians, and the need arises to posit some other argument in the politician's utility function, some additional pecuniary or nonpecuniary income." (Mueller, in Russell, p.55). Additional pecuniary income may result, for example, from policies of the politicians which protect or increase the value of property which they own. Non-pecuniary income may be in the form of prestige, status, and power which are derived from holding

public office. (See the Frey models [1976a,b] and the Crain-Tollison model [1976, 1977a,b].)

A corollary of this postulate is that politicians <u>will allocate their time to win votes</u> rather than necessarily to master issues (so that they may continue to stay in power to serve their own interests); that is, politicians will be vote maximizers.

The view of politicians as vote maximizers is quite different from the traditional view of politicians as social welfare maximizers. Models of politician behavior (as vote maximizers) build on Downs (1957). To better understand how a rational vote maximizer would act, a glance at voting behavior is necessary.

The basic economic model of voting behavior hypothesizes that voters decide which candidate to support by comparing the personal benefits expected from the election of each candidate. Candidates compete by offering voters positions on public issues and an amount of facilitation services (Fiorina and Noll, 1978b).

However, the public good aspect of public issues, namely the free rider problem has been shown to have a significant effect on voting behavior.

> Granted the extremely small effect on [the average voter] if he improves the quality of his vote by learning more about the issues, the cost-benefit analysis would almost uniformly indicate that he should not try.
>
> (Tullock, in Russell [1979], p.38)

Therefore, while many people do vote, many are poorly informed

on issues.

Thus, a rational stategy for a politician attempting to maximize votes, is not to master issues but rather to give individual voters a real incentive to vote in his or her favour; i.e. to do direct service to constituents and contributors. This is set forth as a corollary to the previous one. (Empirical studies have supported the rationale for serving contributors; they have found that dollars do buy votes [Mueller, 1976].)

Empirical work in this area by Fiorina and Noll (1978a,b) has supported this vote maximizing hypothesis.

A further point made by Tullock (1979) in this regard is that "constituent work involves a lot of contact with bureaucracy, not with the intent of convincing the bureaucracy to adopt good general principles, but to get them to make exceptions to the principles they are enforcing" (p.40). This notion of politician - bureaucracy interaction (interference!) is used as the next prediction. Restating this corollary: politicians will expend considerable effort in getting the bureaucracy to bend rules for their constituents and contributors.

Before extending public choice theory into bureaucratic behavior, the implications of public choice theory on peoples' behavior in general are probed a bit further. Further implications on how politicians make decisions can be derived.

In Logic of Collective Action, Mancur Olson (1971) develops

a theory of groups and organizations, which falls into the broad category of public choice theory. He argues that even if rational and self-interested people will all benefit by acting as a group to achieve a common objective, they will not act to achieve that group interest--unless the group is small, or unless there is coercion or some other incentive device. Further, he suggests that this holds "even when there is unanimous agreement in a group about the common good and the methods of achieving it" (Olson, 1971, p.2).

Olson's argument stems from certain properties of collective goods and large organizations which make collective action problematic. Since collective goods are available to all whether or not each individual contributes to the attainment of the goods, the rational utility-maximizer will not be inclined to help achieve the group benefit. (He or she will be tempted to take a "free ride.") Two other properties of large groups which, Olson notes, exacerbate this problem are:

> 1) Each individual's contribution will be such a small proportion of the group's resources that he will view it as inconsequential in affecting the outcomes of the group's action: the <u>inconsequentiality</u> problem. 2) The costs of organizing large groups are considerable, creating a hurdle that must be jumped before any of the collective goods can be obtained: the <u>organizing</u> problem.
>
> (Mitchell, in Russell, 1979, pp.89-90)

These properties lead to the conclusion that "however valuable the collective good might be to the group as a whole, it does not offer the individual any incentive to ... bear in any ... way any of the costs of the necessary collective action" (Olson, 1971, pp.50-51).

It is of critical importance that in the above discussion,

reference to the "individual" or "person" means the average person. If anyone has a particularly strong interest (i.e. a vested interest) in a collective good (e.g. in a particular government decision), they will rationally be able to afford expending more energy or resources into the effort to attain that public good (e.g. to make the government decision result in their favour) than the average person.

From this theory, can be derived some postulates and corollaries about the behavior of people with respect to collective goods:

1) Individuals or groups with vested interests in a particular public good can rationally afford to expend more effort and resources into the decision process with respect to that good, than those without vested interests.

1a) Unless people have a vested interest in a particular public good, they will not form a group to collectively take action promoting that good.

1aa) Individuals or groups with vested interests in a particular public good will exert more influence in the decision process with respect to that good than will people without vested interests. (This is a corollary of the above two postulates.)

1ab) Free riding by many individuals brings about the under- or non-provision of certain public goods. (This is a corollary of the above postulates.)

While the postulates would seem to suggest the absence of such phenomena as environmental lobbies, this does not necessarily follow. As Mitchell (in Russell, 1979) points out:

> In a situation where individuals have a high disutility for public bads that they are unable to escape, where they have imperfect information [e.g. if they underestimate the marginal costs and/or overestimate the marginal benefits of contributing], and where the cost of contributing to a lobby is low, the act of contributing is consonant with a rational strategy of seeking to minimize the maximum regret. (p. 121)

It is postulated here that environmental lobbies will only occur under the conditions specified above by Mitchell.

Now the set of postulates derived from Olson, together with another set of assumptions, are probed to generate a more detailed model of politician behavior. Initially reference is made to politicians of a representative council; the effects of the state are overlaid later.

If politicians are vote maximizers, they are more likely to serve the interests of their electorate than of the people outside their electorate. Thus, if the electorate is composed of residents and/or landowners of the region, the model would suggest that the interests of residents and landowners would be served more than interests of other people.

Assume that the more property a landowner has, the more property rights he has. This assumption follows from the frequent case that the greater the size or value of the property, the more options there are for use of the property; unless those options for use are specifically removed by law, the more rights the owner has to put the land to various uses. Since property rights are vested interests by definition, the more property rights an individual has, the more vested interests he or she has (ignoring for now the possibility of having other kinds of vested interests as well).

The greater the property and the more options for use of the property, the more likely the use of the property is to affect other people in some way. The property use may affect the economy of the region, the environment, the population growth, and community life, and so on. Thus, it can be expected that politicians of the representative council will have a greater interest in the use of greater properties.

It is postulated that, subject to an important caveat which follows shortly, the greater the property and hence (from above) the more property rights the owner has, the greater the influence of the owner on decision-makers of the region. This postulate is actually a corollary of Olson's argument that individuals with vested interests can rationally afford to invest more effort into the decision process. (This influence, of course, is constrained by the property rights of all other property owners; as suggested previously, individuals' private property rights are highly regarded by governing bodies, and only in exceptional circumstances could be abrogated through the influence of one other property owner.)

If it is further assumed that "exchange" properties are usually greater in size or value than "use" properties, which is reasonable since most exchange properties are owned by corporations, and most corporations can afford to purchase larger or more valuable properties than can individuals, the corollary follows from above that individual owners of the former generally have more influence on the representative council than individual owners of the latter. (Whether the

group in toto of exchange property would have more influence than the group in toto of owners of use property, would depend roughly on the amount cf property in each group.)

However, while it may be reasonable to postulate that more property rights yield more influence (within the constraints of peoples' private property rights), it is not necessarily reasonable to assume that decisions of the representative council (still ignoring the state) are always in favour of people or ccrporations with relatively large property rights, unless those individuals offer something to the electorate in return. If this were the case, the majority of people of the region (i.e. those not included in this privileged group) would sense that other interests were being favoured over theirs and would likely vote their elected representatives out of power. Hence the need for legitimation on the part of these more powerful individuals or corporations; their interests must be demonstrated to the majority of the electorate to be justified. Examples of legitimation of such interests may include statements of the number of local jobs supported, the contributions made to community projects, the access allowed the public to private lands, and so cn. Thus, restating the previous postulate: provided that 1) there is enough basis for legitimation of the interests of individuals or corporations with greater property rights, and that 2) the demonstration of this basis is carried out to make enough of the rest of the electors feel that their interests, too, are being served by the actions of the former group, the group with greater property rights will usually succeed in influencing the representative

council to make decisions in their favour.

It must be noted, however, that for various reasons this obstacle of legitimation may not be overcome. Certain factors may prevent the group of large property owners from successfully legitimizing their interests to the extent that they succeed in significantly influencing the decision-makers. One such factor is the perceived relative returns from other interests. Depending on the issue in question, this may be defined to mean the perceived benefits of alternative uses of the land owned by this "class"; or the perceived benefits of alternative systems of ownership of this same land; or if the issue affects properties other than those owned by this "class", the perceived benefits of alternative methods of affecting these other lands. If these relative returns of other interests are perceived by the majority of voters to outweigh the returns to the region which are made explicit through the legitimation process, the elected representatives can be expected not to side with the large landowners.

Another factor which may make it difficult for large property owners to legitimize their interests is the ideology or culture of the people of the region. Attitudes may prevail which make it difficult for any one person or corporation to become significantly influential in the region. It is possible that if the majority of people view any one body becoming too powerful, they will not permit its interests to be served, regardless of the benefits they may derive from those interests. (This might more likely occur in smaller less-developed communities than in large highly developed ones because of the

lack of anonimity.)

A somewhat related factor is simply the needs and desires of the people of the region. It may be that there is not very much that a particular body attempting to legitimize its interests could do for a certain population. For example, a population of retired people and/or seasonal residents and visitors may not place a very high value on economic benefits such as employment and wages offered by the legitimizer. They may, on the other hand, place importance on protection of the natural environment, development of low-impact recreational amenities, or provision of health-care services, which may all contrast with the interests of the legitimizer. If such a population is significant in the region, its interests are likely directly represented on the representative council, and thus, it may prove quite difficult for the large property-owner to influence the council in his direction.

Summarizing briefly, if there is a representative council, and if its electorate includes property owners (of both "use" and "exchange" properties) and non-property owners, then the model initially suggests that decisions of the council would reflect the interests of these various groups to the extent that each group is represented on the council. But if the greater the property an owner has, the greater his or her property rights; and if the greater one's property rights, the more effort is exerted into the decision-making process; and if the more effort exerted, the greater one's influence on the decisions of the representative council (subject to the constraints of property rights of others, and disregarding here

the problem of legitimation); and if the property rights (and thus vested interests) of "exchange" interests are generally greater than those of "use" interests; then the model suggests that the representative council will decide in favour of the exchange interests, provided that the owners behind these interests are successful in making the majority of the electorate feel that they personally derive enough benefits from the owners' activities to justify further accommodation of their interests. Effects of involving the state in decisions of the representative council are discussed later.

Public choice theory is now applied to the behavior of bureaucrats. Again, it is assumed that all bureaucrats are rationally self-interested utility maximizers. Drawing from Downs (1967), it is postulated that bureaucrats seek at least to retain, if not to maximize, their power, income, prestige, convenience, and security; rather than to serve the public.

The corollary follows that bureaucrats will strive to ensure the continuation, or further, the enhancement (e.g. enlargement in size or responsibility) of their bureau. Restating this hypothesis more specifically, bureaucrats will take actions which promote increases in the bureau budget and/or staff, bureau status (prestige or regard), and relative power (with respect to other agencies).

Fox (Unit 36: Administrative Behavior and Democratic Decision-Making, 1978) has outlined five major influences responsible for the behavior of an organization, from which two are drawn here. Postulates can be formulated from these as

follows:

1. An individual's perceptions of what is intended by a policy, program, or general law will be affected by that person's experience, and in particular by his or her professional training. (This hypothesis has withstood empirical testing by Sewell [1971].)

2. Each government agency tends to adapt its program to the wishes of the clientele or interest group with which it most frequently interacts.

According to Mueller (in Russell, 1979), the most systematically developed model of bureaucracy is Niskanen's model of the budget-maximizing bureaucrat. One of the significant hypotheses of this model is that the more consolidated a general function is within a single bureau (i.e. the more monopoly power a bureau has), the less inclined bureaucrats will be to compete on an efficiency basis and the more inclined they will be to promote total demand for the service.

Fiorina and Noll (1978b) attempt to explain how excessive bureaucracy can arise and persist in a democracy despite its apparent unpopularity. The part of their model which attempts to account for voter and politician behavior was explained earlier. Their model of bureaucratic behavior is slightly different from Niskanen's 1971 model in that they hypothesize that agencies seek to maximize bureaucratic inputs to the production of public goods (rather than maximizing total expenditures). "For example, an agency which provides transfer payments might seek to increase contact between caseworkers and

clients or the total caseload because both lead to greater bureaucratic input, while being less enthusiastic about proposals to provide across the board increases in payments."

Now that an examination has been made of public choice theory with respect to various system components (voters, politicians, and bureaucrats), the state is finally overlaid and an examination made of what public choice theory suggests about the "system" itself. Since resource management decisions are the product of a system, if one is concerned about a particular resource problem, attention must be given to the system as a whole, rather than simply the performance of a single agency. First it is important to recognize the existence of the full "provision system." This term is taken to mean the full array of agencies (of all government levels), organizations, and individuals which interrelate to produce decisions. Responsibilities and jurisdictions of these components often overlap, sometimes resulting in competition and/or confusion. A discussion follows of first the effects of overlapping jurisdictions, and second the effects of mandates.

While complex relationships may seem unnecessary, costly, and troublesome, they may in fact provide more benefits than costs. Fox (Unit 35: The Nature of "Provision Systems") has stated that "if a single agency does dominate [resource management] decisions it is likely that a pathological institutional condition exists."

Advantages of complex provision systems include:

1. more varied perceptions and values are brought to bear on

the issue, resulting in a broader range of alternatives and a richer set of information being generated;

2. a greater diversity of services are offered;

3. efficiency is increased (because of specialization and competition);

4. innovation is increased (because of competition).

One of the major applications of public choice theory to the design of institutions has been in introducing competition among the providers of public goods--"essentially by rewarding efficiency with that which warms the cockles of the bureaucratic heart: expansion of mission, budget, and power" (Russell, 1979, p.18).

Ostrom (1973) has gone further to say:

> Fragmentation of authority among diverse decision centers with multiple veto capabilities within any one jurisdiction and the development of multiple, overlapping jurisdictions of widely different scales are necessary conditions for maintaining a stable political order which can advance human welfare under rapidly changing conditions. (pp.111-12)

Thus, if this were a normative study, a system involving a complexity of overlaps, duplication, and concurrency <u>might</u> be viewed as a healthy one.

However, as this is a positive study, an attempt is made to extract from this theory some hypotheses which help explain <u>why</u> the system works the way it does. Sproule-Jones (1974) lends some help to this end. He writes:

> Overlapping authority and concurrent powers among a variety of collective agencies affords an opportunity for an individual to obtain a preferred policy from some institutional structure, and for remedies to be found for the imposition of harmful indirect consequences from the preferred policies of other individuals, acting either on their own or through some collective agency.

(pp. 118-19)

Thus, it can be postulated that on issues where there is more than one agency or level of government involved, if an individual does not obtain satisfaction with one agency or level, he or she will attempt to find satisfaction through another of the involved agencies.

Therefore, if a state is overlaid on top of a region and representative council, consideration must be made of more than the decisions of the representative council. Primarily, since the representative council is delegated each of its powers by the state, the interests of the various groups in the region's electorate can only be served by the council to the extent that the council has the legal power to serve them. If it is assumed that the state is reluctant to delegate powers to lower levels, it could be postulated that the higher level of the state is better equipped to serve the interests of the groups of the region than the representative council of the region. Since the various interests are also represented to some extent by the higher level of government, they may also be served by this level, to the extent that this level has retained legal powers to serve them. The logic and theory applied to the representative council applies equally well to this higher level of government, i.e. the interests will be served to the extent that they are represented and to the extent that they can afford to exert influence in decision processes (and legitimize their interests to the larger public).

A corollary which follows is that if an individual has some rights outside the region of the representative council, he may

attempt to have the public interest defined in a wider public forum and to legitimize his interests to this wider public, so that the representative council and residents of the region are subsumed in the larger forum and lose their relative power to influence decisions.

Sproule-Jones (1974) comments on the kinds of instabilities resulting in the system if a good is 1) jointly supplied by two or more agencies or levels, and 2) supplied by a single agency. If a good is jointly supplied, subsequent modifications to the good inevitably involve bargaining costs, as well as any side-payments to take account of holdout strategies played by one or more agencies. The governments or agencies are "naturally inclined to avoid costs, either by the short run solution of making no modifications in existing program or by the longer run solution of adopting a single supplier solution" (p.130). The single supplier solution is unstable because externalities of the good may feed back into the political process and create an incentive for the agency or government incurring negative externalities to reopen the terms under which the existing institutional solution has been settled. Thus neither system is inherently stable.

Finally, the decisions and actions of a representative council may be affected by mandates--mandates of the representative council and mandates of higher level government agencies. Suppose the representative council is assigned a specific mandate over and above its function of giving local representation to the interests of the region. How will this mandate affects its decisions? It is expected that if the

mandate is in conflict with the interests of the majority of the electorate, then the politicians of the representative council would be very hard pressed to both satisfy their mandate and stay in power. If it is assumed that the mandate is not in conflict with the interests of the majority of the electorate, then it would not be expected to be particularly difficult for politicians to carry out the mandate and get re-elected. It might be expected that decisions of the representative council would reflect the mandate more than if no mandate been assigned (i.e. if only the interests of the electorate were to be considered), because if the politicians of the representative council did not consider their mandate, the institution itself (and thus their powers) would be at risk, as both the mandate and the powers are assigned by the state.

In a similar manner, the mandates of high level government agencies can be assumed to affect decisions of bureaucrats and politicians associated with those agencies, in accordance with their attempt to enhance their bureau mission.

Furthermore, the mandate and philosophy of a government department (or representative council) likely has a large influence on the attitudes of people who are attracted to work for the department, and on the attitudes of people actually hired by the department. The philosophy of the department may also tend to "rub off" on employees over time. Thus, it could be postulated that public servants and politicians associated with a particular government department (or representative council) reflect the mandate and philosophy of that department, since that orientation 1) was likely one feature which drew them

to the job, 2) was likely one criterion on which they were hired, and 3) likely became incorporated into their attitude through years of experience with the agency.

E. Summary

In concluding this chapter, the foregoing theory is summarized by a list of the postulates and corollaries of the model thus developed.

Assumptions

1) All individuals act in their own selfish interests.

2) All individuals act rationally.

Postulates and corollaries

1) Voters make their decisions on the basis of their own interests, not the public interest.

2) Politicians are engaged in politics for their own interests rather than the public good.

2a) Politicians will allocate their time to win votes, rather than necessarily to master issues.

2aa) Politicians will more likely serve the interests of their electorate than of other people.

2ab) Politicians are less likely to serve the interests of those in the electorate who neglect to vote.

2ac) Politicians will allocate their time to do direct service to constituents and contributors, rather than to master issues.

2aca) Politicians will expend considerable effort in trying to get the bureaucracy to bend the rules for their constituents and contributors.

3) Individuals or groups with vested interests in a particular public good can rationally afford to expend more effort and resources into the decision process with respect to that good, than those without vested interests.

3a) Unless people have either 1) a vested interest in a particular public good; or 2) a high disutility for an inescapable public bad, imperfect information, and a low cost of contributing to a group; they will not form a group to collectively take action promoting that good.

3aa) Individuals or groups with vested interests in a particular public good will exert more influence in the decision process with respect to that good than will people without vested interests.

3aaa) Since property rights are one form of vested interests, the greater the property and hence the more property rights an owner has, the greater the influence of the owner on the decision-makers of the region, provided that the owner has successfully shown, to the majority of the electorate to which the decision-makers are accountable, that its interests are coincident with their interests.

3aaaa) Assuming that exchange properties are usually greater than use properties, individual owners of exchange properties tend to have more influence on a representative council than individual owners of use properties.

3ab) Free riding by many individuals brings about the under- or non-provision of certain public goods.

4) Bureaucrats will act in their own interests rather than the public interest.

4a) Bureaucrats will seek at least to retain, if not to

maximize, their power, income, prestige, convenience, and security; rather than to serve the public.

4aa) Bureaucrats will act to promote the bureau budget and/or staff, bureau status (prestige or regard), and relative power with respect to other agencies.

4aaa) Each government agency tends to adapt its program to the wishes of the clientele or interest group with which it most frequently interacts.

4aab) The more consolidated a function is within a single bureau (i.e. the more monopoly power a bureau has), the less inclined bureaucrats will be to compete on an efficiency basis and the more inclined they will be to promote total demand for the service.

4aac) Government agencies seek to maximize bureaucratic inputs to the production of public goods.

5) Decisions of politicians and bureaucrats will tend to accord with the mandate of their government body.

5a) An individual's perceptions of what is intended by a policy, program, or general law will be affected by 1) that person's experience, and in particular by his or her professional training, and 2) the mandate which that person is attempting to carry out.

6) On issues where there is more than one agency or level of government involved, if individuals do not obtain satisfaction with one department or level, they will attempt to find satisfaction through another of the involved departments or levels.

6a) If individuals do not achieve satisfaction through their representative council, and if they have some rights outside the

region of the representative council, they may attempt to have the public interest defined in a wider public forum and to legitimate their interests to that wider public, so that the representative council and the residents of the region are subsumed in the larger public forum and lose their relative power to influence decisions.

Chapter VI

CROWN LAND

A. INTRODUCTION - CROWN LAND BASE

Public land is acquired by the Crown and by regional districts through gifts, purchases, and dedications. The Crown can then transfer ownership and/or maintenance and development responsibilities to regional districts but seemingly not to the Islands Trust. The Islands Trust does not believe it has the power to hold land, as section 2A of the Islands Trust Act has not yet been proclaimed. (However, as pointed out earlier, the fact that the Trust is a corporation might enable it to hold land.)

While the total land area in the jurisdiction of the Islands Trust is 404 square kilometres, approximately 20% is Provincial Crown land. Another 5% consists of road rights-of-way, local parks, Federal Government land (excluding extensive Indian Reserves), regional district land, and Crown corporation land (Islands Trust "Regional Plan Background Report" [Draft of February 1980], p.42).

Aside from the land base, another important element of the trust area is the foreshore and (sea) water zone. Until the question of whether the Georgia Strait is under Provincial or Federal jurisdiction is settled, the foreshore and water zone are considered to be Provincial Crown land.

Crown land (not including foreshore or water) is shown by island in Table II. This table shows the uneven distribution of Crown land among the islands. Crown land is most heavily concentrated on Gambier, Bowen, Saltspring, and Lasqueti islands. On only four islands does Crown land comprise more than 15% of the land area. According to the Islands Trust "Regional Plan Background Report" (Draft of February 1980), 75% of the Crown land in the trust area consists of high, steep, inaccessible land on the four islands.

The status of Provincial Crown land can be broken down as follows:

Provincial Parks	2020 hectares (including marine parks)
Ecological Reserves	1050 hectares (including marine reserves)
Other Land	8480 hectares

There are 24 Provincial Parks in the trust area, ranging in size from 1 ha to 480 ha. Facilities offered are quite simple: campsites, picnic sites, and toilets.

At the end of 1978, there were seven Ecological Reserves on the islands in the trust area and one marine reserve in the area. Under the Ecological Reserves Act, the Cabinet can reserve lands that 1) are suitable for research of natural environments, 2) are representative examples of natural ecosystems, 3) serve as examples of ecosystems recovering from man's modification, 4) contain endangered plants and species, or 5) contain unique and rare examples of botanical, zoological or geological phenomena.

TABLE II

CROWN[5] LAND SUMMARY

	Hectares	Acres
Bowen Island	1,838	4,543
Denman Island	383	946
Gabriola Island	243	600
Galiano Island	409	1,010
Gambier Island	3,480	8,600
Hornby Island	806	1,991
Lasqueti Island	1,230	3,040
Mayne Island	32	80
North Pender Island	28	70
Salt Spring Island	1,603	3,960
Saturna Island	465	1,149
South Pender Island	36	88
Thetis Island	0	0
Other Islands	1,000	2,470
Total:	11,553	28,547

Data from: Islands Trust "Regional Plan Background Report" (Draft of February, 1980), p.43, which drew from the Crown Lands Report (adjusted)

---

[5] Excludes Road rights-of-way and Federal Government Land

Crown land may be placed under a variety of restrictions and reserves. Most of the "other" Crown land listed above is under some kind of reserve. Some reserves are provisions of the Land Act whereby Cabinet can restrict Crown land for any purpose in the public interest. Some reserves are made under the Greenbelt Act. However, most of the reserves in the trust area are simply administrative map reserves, which entitle a particular agency to make a recommendation regarding disposition of the land. A study of different types of Crown land in the trust area in December, 1974, found the following categories:

Vacant Crown Land	Conveyed to Highways
Leased Land	Forestry Reserve
Application to Lease	Reserved from Alienation
U.R.E.P.[3] Reserve	Dominion Government Reserve
Highways Reserve	Surveyed Vacant Crown Foreshore
Provincial Park	Application under Escheats Act
Licence of Occupation	Timber Sale
Application to Purchase	Timber Licence
Ecological Reserve	Watershed Reserve
Leased Mineral Claim	Radio Station
Leased Foreshore	Map Reserve for Health Clinic

The Islands Trust has a reserve on the entire trust area, which entitles the Trust to consultation before any interest in land is granted. The reserve may also automatically prohibit any residential use of Crown land in the trust area, but this

---

[3] Use, Recreation, and Enjoyment of the Public

appears to be a very tenuous arrangement, and the Trust is not certain of its implications.

Issues relating to Crown land, which the Islands Trust identified as being important in its Draft Regional Plan Background Report were as follows:

1. What should happen to Crown land and how can its management be supportive of Trust objectives?
2. How does Crown land relate to the need for ... both park and other types of open space?
3. Are Crown lands adequately protected?
4. Is additional land needed and if so how should it be acquired and for what purpose?

The questions relating to the specific purposes to which Crown land should be put will not be dealt with by this chapter. Rather questions relating to overall objectives, management, and decision-making procedures will be addressed.

B. Jurisdictions, Mandates, and Policies Involved with Crown Land

1. Ministry of Lands, Parks and Housing Act

Jurisdiction over Crown lands falls predominantly under the Land Management Branch of the Ministry of Lands, Parks and Housing, which administers Crown lands under the Land Act. The Ministry of Lands, Parks and Housing Act was first introduced in 1979, and it was in that legislation that administration of Crown land, parks, and housing were drawn together from three separate ministries.

The purposes and functions of the Ministry as stated in the Ministry of Lands, Parks and Housing Act are:

a) to administer the Crown land resource of the Province,
b) to encourage outdoor recreation, establish parks and conserve the natural, scenic and historic features of the Province,
c) to undertake programs relating to the provision of housing in the Province, and
d) to administer and enforce safety standards prescribed under section 11 respecting recreational activites and services on Crown land.

This legislation does not set more detailed management objectives for the administration of Crown land.

A "Crown Land Fund", formerly called the "Housing Fund", was established by the Act "to support the development of Crown lands" ("Forum on Lands Parks Housing" Vol. 1 No. 3, July, 1979). "The Act ... [extended] the Minister's power to sell Crown land through whatever means are most efficient and economical." The Minister introducing the legislation said, "Ministry offices, municipalities, and Regional Districts each have a contribution to make. Our objective is to sell land at the lowest possible price and to let everybody know what is for sale."

Thus, the implicit objective behind the Ministry of Lands, Parks and Housing Act appears to be development-oriented, particularly with respect to residential subdivision.

Notwithstanding the Land Act, the Minister is empowered to dispose of Crown land on any terms he considers appropriate, and he may establish procedures regulating Crown land disposition. He may direct to what extent a procedure established under the Ministry of Lands, Parks and Housing Act is to affect an application pending under the Land Act. Also, for the purposes of the Ministry of Lands, Parks and Housing Act, the Minister is

empowered to acquire land, improve Crown land, and assist municipalities to establish parks and to provide outdoor recreation facilities. Thus, the powers of the Minister are very broad with respect to acquisition and disposition of Crown land; even the Land Act itself (except section 47[1]) is subject to Ministerial discretion regarding disposition of Crown land, and procedures.

2. Land Act

a. Highlights of the Land Act

While the Land Act provides some guidance as to administration procedures for Crown land, it does not set forth any policy objectives for Crown land administration. The Minister is empowered to sell or lease Crown land, grant rights-of-way or easements over Crown land, and grant licences of occupation of Crown land. Although not stated in the Land Act, purposes for which Crown leases are issued include: agriculture; grazing; residential; recreational cottage site; small holding; commercial (inland); commercial (waterfront); industrial; removal of gravel, sand, and other materials excluding limestone; limestone quarry; log booming and storage; commercial foreshore; industrial foreshore; private foreshore (dock, float or wharf for lessee's boat); oyster and other molluscs; and community purposes.

The following points are some of the highlights of the Land Act. The Cabinet may reserve Crown land from disposition for any purpose considered to be in the public interest. (Reserves in the trust area were listed earlier in this chapter.) No

Crown lands suitable for timber and pulpwood production are to be disposed of by Crown grant, except where the Minister considers the lands to be required for agricultural settlement and development or other higher economic use. The minister may require an applicant to obtain, at his own expense, feasibility studies, environmental assessments, timber cruises, land valuation appraisals, or other such information regarding applications under the Land Act. No grant of Crown land conveys any right, title, or interest, to minerals, coal, petroleum, or gases found in, upon, or under the land. Notwithstanding any other provisions of the Land Act, the Cabinet may make a Crown grant for a specific public purpose, or to a Crown corporation. Cabinet may prohibit specific uses of Crown land in designated areas. The Minister may delegate any actions required of him to Ministry officials.

b. Land Amendment Act

In 1979 the Land Amendment Act was introduced "to help simplify the provisions of Crown Grants" ("Forum on Lands Parks Housing", Vol. 1 No. 3, July, 1979). The Act also provides for the transfer of Crown land administration between Ministries by Order-in-Council. (This could theoretically provide for the transfer of administration of Crown lands from the Land Management Branch to regional districts or the Islands Trust.) The Minister responsible felt that the new legislation would make Crown land more readily available to B.C. citizens. He qualified this by saying, "We must at the same time be aware that this land is owned by all British Columbians and we have the responsibility to ensure that sales to individuals are in

the general public interest."

The Ministry recently developed a program to help communities provide residential subdivisions. "The prime objective is to provide communities with approximately a three-year stock of residential lots ..." ("Forum on Lands Parks Housing, Vol.1 No.4, Oct., 1979). This corroborates the point made earlier regarding the development orientation of the Ministry of Lands, Parks and Housing, and specifically of the Land Management Branch.

The following quotation yields more of a notion of the role of the Land Management Branch:

> The Land Management Branch ... is responsible under the Land Act for the planning, management and allocation of all unalienated and unreserved Provincial Crown land. ("Unreserved" refers to Crown land that is not held under an Order-in-Council reserve for provincial forests, provincial parks, park reserves, federal reserves, etc.) ... The Land Management Branch has been given the direction and approval of the Minister ... to accelerate planning of Crown land for suitable uses ...
> ("Land Management Branch Planning Strategy," January, 1978, Province of B.C., Ministry of Environment)

The questions remain as to what constitute "suitable uses", and more importantly, how these decisions are made.

c. <u>Procedures</u>

According to an outdated government pamphlet regarding Crown land in B.C., "applications [for purchase, lease, etc.] are reviewed carefully and impartially with the emphasis on land use planning factors. Applications are referred to other resource ministries, to the municipality, or regional district and to federal agencies (in some instances) to ensure that no

conflicts exist. Further study may be necessary if an impact on the environment is anticipated." In the case of the trust area, applications are also referred to the Islands Trust for comment. If conflicts arise between objectives of different resource agencies, the District Land Manager theoretically consults the conflicting agencies to determine what their specific objectives are, and whether their comments are in fact within their jurisdiction. If this does not resolve the conflict, the application is forwarded to the Regional Land Manager, or further to the Executive Committee, or ultimately to the Minister for resolution.

This procedure gives the impression that development of Crown lands is done on an ad hoc basis, application by application. Although the Land Management Branch has developed a new planning section to develop Crown land plans for certain areas, no such plans have been begun for the trust area.

3. Islands Trust Act and Policy

The administration of Crown lands by the Land Management Branch is affected by the jurisdiction of the Islands Trust in the trust area. According to section 3(1) of the Islands Trust Act,

> It is the object of the trust to preserve and protect, in cooperation with municipalities and the Government of the Province, the trust area and its unique amenities and environment ....

For this purpose, the Trust is to make recommendations to Cabinet regarding the acquisition, use, and disposition by the Crown of land (including Crown land) in the trust area

(s.3[2][b]). The trust is also supposed to "coordinate and assist in the determination, implementation and protection of the trust area ..." (s.3[2][c]). Under s.6(4), the Provincial Crown shall nct develop or dispose of land situated in the trust area without first giving notice of the development or disposition to the general trustees. Although "giving notice" is notably weak, in summary the intent of the legislation appears to be that the Trust should play an integral role in the disposition of Crown land in the trust area. It appears that the Trust should make recommendations regarding Crown land that contribute to the preservation and protection of the trust area as a whole; and liase with the Land Management Branch in all dispositions to ascertain that dispositions are made in a well-planned coordinated fashion.

Aside from these general duties, the planning function which the Trust received in January, 1978 gives the Trust the power to control Crown lands to some extent through Official Community Plans, and zoning and subdivision bylaws.

Jurisdiction over the foreshore and beyond is very complex. The Islands Trust Act states that the trust area is "all the land ... on all the islands" within an area bounded in part by the high water mark on Vancouver Island and on the mainland. The Act defines island to include land surrounding an island, "whether or not water flows over or under it." It defines land to include Crown land as defined in the Land Act, i.e. "such ungranted Crown or public land or Crown domain ... whether or not any waters flow over or cover the same" (Land Act, s.2).

Thus there appear to be two strong indications that the Trust has jurisdiction over the foreshore and sea bed between Vancouver Island and the mainland. However, if this in fact was the intent of the legislation, it is surprising that the legislation did not make jurisdiction over the sea bed more explicit; i.e. why "all the land ... on all the islands"? It is conceivable that only the foreshore, or the sea bed only to a steep drop-off or continental shelf was intended; or perhaps only above high water mark was intended. While the Trust considers that there is no doubt about its jurisdiction over the foreshore and all the sea bed in the area described, this may in fact be a point of contention.

Furthermore, it is interesting to note that if the Trust's interpretation in this regard is correct, then it would appear that regional districts on the mainland and on Vancouver Island do not have jurisdiction to zone the foreshore and beyond, even if they have leased the bed or water surface from the Crown! In this case, the regional districts might have ownership jurisdiction through lease, but lack administrative jurisdiction (e.g. zoning powers) because under s.3(2)(h) of the Islands Trust Act, powers delegated to the Islands Trust within the trust area are removed from regional districts in that area. It is also noted that whether or not regional districts have such a lease, they have (or had before the Trust acquired the planning function) jurisdiction to regulate the use of the water surface within the regional district, the boundaries of which abut in the center of the Strait, under s.702(1)(b) of the Municipal Act. Thus, it must be determined whether the Trust's

jurisdiction over the sea bed, if such jurisdiction exists, interferes with the regional districts' jurisdiction over the water surface; perhaps the Trust's jurisdiction over the sea bed entitles it to regulate the use of the water surface, in which case this power is removed from the regional districts. (It is noted that federal statutes regarding such things as navigation and fishing would have paramountcy over Islands Trust and regional district regulations.)

In its 1975 policy statement, the Trust made the following statement about Crown land:

> On many islands, Crown Land now provides the only available public open space. Further alienation [i.e. sale or lease] of Crown Land on any island will require careful and individual consideration. In some cases multiple use of the remaining Crown Land on the islands is desirable. In particular, no significant subdivision should take place without careful reference to local community plans and approval by local trust committees. The disposition of Crown Land should be in accordance with the principles of Official Community Plans, and appropriate senior government agencies will be asked to participate in the formation of such plans.
> ("The Policy of the Islands Trust," August, 1975, p.6)

In summary, it appears that the Trust considered decisions regarding disposition of Crown land to be deserving of careful attention, since the many options for its use would affect the rate and kind of development on the islands. The Trust also felt it important that local input through Community Plans and Local Trust Committees should play a key role in decisions regarding Crown land.

This, then, is the jurisdiction and 1975 policy of the Islands Trust. There does not seem to be any overt conflict between the jurisdiction and stated policies of the Islands

Trust and the Land Management Branch. The Trust's mandate is simply more specific than that of the Land Management Branch; while the Land Management Branch is charged with the administration of Crown lands (which as such is a neutral role), the Trust is to coordinate the administration such that the islands are protected. There may, however, be a more subtle difference in philosophy and policy of the two agencies. It appears that the Land Management Branch may not have a neutral philosophy about the administration of Crown land; it appears that it may have quite a positive attitude about making land available to interested people.

The thesis now follows the interactions between the Trust and the Land Management Branch to examine the bases on which decisions have been made, the processes of decision-making (regarding applications under the Land Act), relations between the two agencies, and subsequent changes in policy and procedures.

C. Interaction of Islands Trust with Land Management Branch from Islands Trust Inception to Case Study

The reserve over all Crown land in the trust area was imposed when the Islands Trust Act was passed in 1974. As previously noted, the reserve seems to imply that the Trust will be notified before any interest in land is given, and seemingly that the Land Management Branch will consider no applications for residential purposes. The Trust is supposed to be afforded notification, nevertheless, under section 6(4) of the Islands Trust Act. According to a staff report of the Islands Trust,

the reserve greatly reduced leasing and sale of Crown land in the trust area.

In April of 1977, the Trust was requested by the Land Management Branch to consider whether the reserve should remain or be lifted. The General Trust concluded that the reserve should remain in effect, and "that Crown Land in the trust area should be reviewed for possible inclusion within the proposed Provincial Greenbelt." The Islands Trust communicated this notion to the Director of the Land Management Branch, but nothing further appears to have been done in this regard.

In May, 1977 the Islands Trust Council resolved to form a committee to "report on suggestions for the administration, preservation and protection of public lands within the Trust Area ... ." A staff report then raised the following questions for consideration of the Committee:

1. What Crown land, if any, should be sold or leased, and under what circumstances?
2. What land should be acquired by the Crown, and under what circumstances?
3. What Crown land, if any, should go into Greenbelt [under the Greenbelt Act]?
4. How should small parcels of land, given to the public at the time of subdivision, be maintained?

The report also noted that lands acquired by the public through subdivision plans (by gifts, purchase, or dedication) are often neglected and in need of better maintenance.

The Committee held a meeting with the Regional Land Manager of the Land Management Branch (and his Assistant) in October, 1977. Lands Branch policy regarding the sale and leasing of Crown land was explained. "It was pointed out the Branch is purely administrative and that they do not have the resources to

maintain Crown land. It was also explained that most Crown land leases were in effect lease/purchase agreements to allow the lessor to purchase the land after certain improvements are made."

Regarding Crown foreshore, it was noted that leases are only given with the assent of the upland owner. A licence of occupation allows temporary use of the foreshore. The process of dealing with trespass on Crown foreshore was thought to be very slow and in need of improvement.

One of the trustees reviewed existing studies on coastal zone management in the area, and recommended "that the committee consider the matter with a view to securing Trust involvement in foreshore planning."

It was noted that with Cabinet approval, Crown land could be placed in the Greenbelt, and it was agreed that the Trust should prepare a list of lands to be recommended for the Greenbelt designation.

It was determined that the title to land dedicated at the time of subdivision belonged to the Land Management Branch and could not be transferred to any other agency. There was some question as to whether the Land Management Branch could even permit other agencies to maintain the park sites.

The initiative of the Islands Trust in forming the Committee on Crown Lands, and their meeting with representatives of the Land Management Branch, are steps toward fulfilling the intents of 1) ensuring orderly development and 2) interacting

with and coordinating other government agencies.

Later that year, a legal opinion was secured regarding the development of parks dedicated under Section 112 of the Land Registry Act (now section 107[1] of the Land Title Act [1979]), i.e. land dedicated through subdivisions. It was found that:

> The Land Management Branch is the trustee of such areas [outside of municipalities] on behalf of the public, and that [the Branch is] to ensure that the lands concerned are used only for park purposes. As a matter of policy, [the Branch does] not lease these areas, but [has] no objection to Regional Districts, service organizations or local voluntary groups developing the areas for park purposes. [Thus, there would be] no objection to the Islands Trust arranging for the development and maintenance of any dedicated park areas within its jurisdiction.

The Committee on Crown Lands held a second meeting in March, 1978 with a Senior Planner of the Parks Branch, the Assistant Director of Land Management Policy, and the Assistant Director of Land Management, Regional Management. There does not seem to be any record of what took place at this meeting.

In March, 1978 the Committee presented a report to the Islands Trust Council. The report said that while the Islands Trust 1975 policy on Crown land provided protection at present, further protective measures were needed to preserve these lands for the future. (This comment is interesting, as it begs the question, "protective measures against what or whom?" As the lands are owned and administered by the Crown, one might speculate that this comment means "protective measures against the Land Management Branch"!)

It was noted that varying degrees of protection from alienation are afforded by different land classifications. The

following alternatives and their descriptions were listed: a) Ecological Reserves, b) Class "A" Park, c) Class "B" Park, d) Class "C" Park, e) Greenbelt, and f) U.R.E.P. (Reserve for the Use, Recreation, and Enjoyment of the Public). The Committee concluded,

> A detailed evaluation of Crown Land should be conducted with a view to determining which of the ... classifications would be most suitable for the long term protection of public lands. Of particular interest was the possibility of designating lands as Greenbelt under the Greenbelt Act or as Park under Order-in-Council. (p.4)

Vacant Crown land was regarded by the Committee to have remained unalienated generally because it is inaccessible, or undevelopable. It was noted that if it were not for the Islands Trust reserve on Crown lands in the trust area, this land could be leased and sold, logged and quarried.

The Committee considered land dedicated as park by subdivision plan to be a very special case.

> [This land] cannot be transferred or alienated except by permission of the Registrar of Titles. Many island groups have expressed an interest in maintaining and developing this type of Park land but its special status has thwarted local efforts to gain control of the land. The Committee has directed an inquiry to the Registrar of Titles to determine under what circumstances such "park" land might be transferred to local administration.

Among the final conclusions and recommendations of the Crown Lands Committee were the following:

9.3 The Lands Branch is responsible for most Crown Lands and while the present map reserve has been a protection, further measures are necessary to insure against possible future alienation.

9.4 Parks are desirable when established, administered, maintained, and supervised by the Parks Branch; whereas it is also necessary that the above be done in consultation with the Islands Trust and Local Trust

Committees.

9.5 Until such time as there is adequate protection for Class C Park it is now recommended that steps be initiated to redesignate Crown Lands as either Class A Park, Ecological Reserve, or Greenbelt Reserve, depending upon the physical characteristics of the Lands. Class B and C Park appears undesirable since less protection and more alienation are possible at this time.

9.6 a) The Committee be instructed to explore ways and means of Class C Park designation which provides local control with Class A Park protection from alienation.
b) Lease, subdivision, sale or development for resource extraction from Crown Land not consistent with Community Plans, should definitely be prohibited.

9.7 Acquisition of private lands to improve the recreational value of and access to public lands should be encouraged in consultation with Local Trust Committees and the Islands Trust.

9.8 The Registrar of Titles should be contacted regarding the dedication and maintenance of public lands created through subdivision of private lands.

9.9 The Coastal Zone Management Committee should be supported in its research and its Chairman be encouraged to participate in a pilot project for the Islands Trust Area. ... [This subcommittee had found that the Islands Trust could serve as a valuable liason in the initial coordination of study and implementation of a Coastal Zone Management Program, which could eventually be oriented to the province as a whole; the trust area would serve as a pilot area for the project.]

9.10 ... Those areas which appear to regularly collect refuse could be identified, and some summer students hired to provide a regular clean-up service. The Ministry of Highways might be the agency to provide such a service. [The Land Management Branch was found to have no capability to maintain Crown Land.]

These conclusions and recommendations show that the Trust recognized the need for it to play a role in controlling the disposition of Crown land, as the Land Management Branch had not formulated any conservationist policies regarding alienation in the trust area. (It is noted that the Land Management Branch did not have a mandate or directive to formulate conservationist policies.) Therefore, the Trust had begun to take some positive steps in the directions of coordination and orderly development.

However, as the Islands Trust staff and General Trust

pointed out when reviewing this report one year later, 1) there existed some conflict between recommendations and adopted policies in some community plans (some community plans permitted logging and other resource extraction on Crown lands), 2) the three classifications suggested in 9.5 were perhaps too restrictive for certain desirable uses (and the status should be compatible with the long-term use), and 3) 9.6a would probably require a major amendment to the Parks Act, and Crown lands on the islands would probably not meet the criteria of the Parks Branch for park designation.

It is significant that no one appears to have objected to maintaining Crown land in its present status; perhaps there is no need to change the status to any of the suggested classifications, or any modified classifications. Provided good relations exist between the Islands Trust and the Land Management Branch, and between the Islands Trust and the Parks Branch, presumably these agencies could consult and coordinate with respect to the use of specific sites. This recalls the comment made previously of the possible perceived need to protect Crown lands from the Land Management Branch.

Regarding Land Management Branch policy, reference was made in the Islands Trust Crown Lands Committee report to the "Land Management Branch Planning Strategy," 1978, which had said that the Branch had been given the direction and approval of the Minister (at that time, the Minister of Environment) to accelerate planning of Crown land for suitable uses. It is important to quote the following comment from the Report of the Committee on Crown Lands:

> The Committee's discussions with Lands Branch Officials revealed that they do not consider that Crown Land should be reserved as open space if it has a more desirable alternative use. While it was evident that such an attitude is in conflict with the policies of the Islands Trust and policies expressed in many of our Community Plans, the officials hastened to point out that they have not acted contrary to the advice of the Islands Trust, and could foresee no reason to do so.

This raises the questions of 1) what is a "more desirable alternative use" than open space, 2) how is that use arrived at, and 3) to whom is it more desirable. Certainly, if there are uses which are more desirable to "the residents of the trust area and of the Province generally", then those uses <u>should not</u> conflict with the aims and policies of the Islands Trust. Thus, by this statement the Trust Committee has declared that open space is the best use of Crown land in the trust area, as far as the residents of the trust area and of the Province generally are concerned.

The Community Plans of the islands generally wish the existing Crown land to be preserved in a near-natural state, to provide such things as watershed, public use, public recreation, and limited logging on a multiple use basis. Further alienation for private residential use is discouraged by most, if not all, plans. The emphasis is on long term protection for public benefit. Thus, as is apparent from earlier discussion about the objectives of the Land Management Branch, particularly since it has been moved to the new Ministry with Housing, there may indeed be a conflict in objectives between the Branch and the Trust.

The quotation points out the existence of general feelings

of conflict between the Islands Trust and the Land Management Branch. The "alternative uses" which could lead the Land Management Branch to make a decision contrary to recommendations of the Islands Trust have not been specified. However, a difference in overall philosophy does seem to be apparent.

D. Bennett Bay Marina Case Study

The following case study casts some light on the philosophical differences between the Islands Trust and the Land Management Branch, the working relationship between the two agencies, the relative importance of the Islands Trust in decision-making processes, the complexity and public cost of application procedures, as well as many of the theoretical notions developed in the previous chapter.

In introducing the Bennett Bay Marina case study, a brief capsulation of the case, drawn from an island newspaper, will be helpful:

> [Weldon Pinchin bought the Mayne Inn on Bennett Bay] in November, 1975 with the clear intention of developing it, of adding a dock, and attracting more boating business.
>
> He claims he was told there would be 'absolutely no problem' with his getting zoning permission for a dock and proceeded accordingly.
>
> Unfortunately, his timing was poor. Pinchin, like many speculators caught in the land freeze some years ago, made his investment only to find himself halted by the sudden surge of environmental concern.
>
> Another disruptive factor may have been the administrative changes when the Islands Trust took over from the Capital Regional District in January, 1978. An overall community plan, laying out permissible zoning

for the whole of Mayne Island, was also in the works.

> Gradually, local opinion mounted against the proposed development. A residents' group calling itself the Bennett Bay Preservation Committee launched a successful anti-dock campaign and two public hearings came out against commercial development of any sort or scale in Bennett Bay.
> (Gulf Islands Driftwood, May 23, 1979)

These factors all contributed to the development of a long and sometimes bitter struggle on the part of Mr. Pinchin, Mayne islanders, the Islands Trust, the Land Management Branch, and other government agencies.

Pinchin Holdings Ltd. originally applied for a foreshore lease in April, 1976 intending to operate a public marina adjacent to the Mayne Inn. A technical feasibility study for the marina had been done prior to 1975 (i.e. prior to Pinchin's purchase of the hotel), and upon purchasing the hotel, the new owner had already made the decision to build the dock. Early in 1976, preliminary drilling was done in the bedrock of the bay. Floats were purchased and temporarily anchored in the bay during the spring and summer of 1976 and again in 1977.

In September, 1976 the Land Management Branch issued a memo to the Islands Trust, indicating that the Land Management Branch was considering an application to lease unsurveyed foreshore in Bennett Bay for the purposes of a public marina. The standardized document requested that, as this land was within Islands Trust jurisdiction, the Trust advise whether the proposal conflicted with its planning and management objectives.

The Land Management Branch also circulated copies of the

lease to several other agencies for recommendations. These agencies and their responses (as summarized by an Islands Trust planner in a memo to the Mayne Island Trust Committee on April 11, 1978) were as follows:

1. Federal Ministry of Transport (Navigable Waters Protection Act): No objection to the lease.
2. Federal Ministry of Environment, Fisheries Branch, Habitat Protection Directorate: The proposal would have a minimal effect on fisheries resources providing no dredging or fill is required.
3. Federal Ministry of Environment, Environmental Protection Service: Reply same as Fisheries Branch.
4. Canadian Wildlife Service: The area contains some waterfowl and shorebird populations, and hence the proponent should be required to provide absorptive material to control any spillage of petroleum products.
5. Provincial Fish and Wildlife: The proposal is beyond our jurisdiction; we concur with Federal Fisheries.
6. Capital Regional District: Did not recommend approval until area rezoned. (my emphasis)

It is interesting to note that at the time the Capital Regional District retained the planning function, the CRD gave the same response which one would expect of the Islands Trust now. This raises the question of whether it was advantageous to transfer the planning function from the regional districts to the Islands Trust, or in fact, whether the Islands Trust is needed at all.

The response from the Mayne Island Trust Committee at that time was favourable. The staff report on the lease application had indicated that there was one water lot involved, a size of three acres, for the use of a public marina. It also commented that there was "no conflict" (my emphasis) between the proposed use and trust policy. (Note: The Islands Trust had no marina policy at that time.) While the regional director for Mayne Island, Jim Campbell, had been requested by the Islands Trust to

offer an opinion, no comment had been received from the Capital Regional District. Thus an attempt at coordination seemingly failed. Neither the local trustees nor the general trustees objected to the proposal. The recommendation to the Land Management Branch on October 14, 1976 was as follows:

> The Islands Trust does not object to the granting of this lease. We recommend the applicant be made aware of the need to ensure that the area is appropriately zoned. In addition, we recommend the Lands Branch consider the desirability of having the applicant install and adequately maintain necessary onshore sanitary facilities. (my emphasis)

There is no record of the public (not even property owners on Bennett Bay) being informed of the application, or being involved in the Islands Trust decision. While residents could see some construction activity and the temporary floats in the bay, they were not aware of an application for a commercial marina. This would seem contrary to the intent of the Islands Trust.

On September 6, 1977 the Land Management Branch issued Pinchin Holdings Ltd. a letter of allowance (which is in effect a conditional approval for a lease) for purposes of a marina. A letter of allowance specifies conditions on which a lease will be granted; thus if the applicant is certain that he can meet those conditions, he can feel assured of obtaining a lease. A letter of allowance clears the applicant from being charged with trespassing, while undertaking technical studies or construction on the land. Therefore, this issuance permitted contruction to continue while the lease was being processed through the various agencies, albeit at the owner's risk. The letter of allowance was subject to the Navigable Waters Protection Act, all

regulations of the Capital Regional District (including zoning), all regulations of the Federal "Fisheries Act", a legal survey being completed within one year, the provisions that there be no filling, no dredging, and no liveaboard boats without proper sewage facilities, and that the Crown lands be kept safe, clean, and sanitary, among other provisos.

The letter of allowance noted, "All concerned agencies have approved your application. But the Capital Regional District had advised that the area is not zoned to permit marinas. It is therefore up to you to have the area rezoned. Should you choose to develop your proposed marina before it is rezoned, do so at your own risk." Thus, it was made quite clear in the letter of allowance that rezoning was required for the proposed marina and that construction was at the owner's risk. However, the procedure could perhaps have been more clear if only technical feasibility studies had been permitted under the letter of allowance, i.e. if actual construction had been absolutely disallowed by the Land Management Branch until proper zoning had been secured.

The zoning bylaw in place at that time was By-law No. 103 (Zoning By-law, Outer Gulf Islands). As Mayne Island had not yet completed a community plan, the current zoning bylaw was a 1972 version which applied to all the outer Gulf Islands. (At the time of writing, the new zoning bylaw for Mayne Island has not yet been given final reading.) Under this bylaw the zoning was "Water A," which permitted:

1. Private floats, wharves, piers and walkways
2. Sea walls, breakwaters, ramps, dolphins, and pilings

necessary for the establishment or maintenance of uses permitted.

This zone was in contrast to the "Water B" zone, which permitted:

1. Uses permitted by Water A zone
2. Sales and rentals of boats and sporting equipment
3. Marinas
4. Yacht clubs
5. Boat sheds and shelters
6. Mooring facilities for water taxis, ferries, fishing boats, sea planes, or similar commercial uses
7. Marine fueling stations
8. Fish buying stations
9. Sea walls, breakwaters, slips, docks, ramps, and dolphins and pilings necessary for the establishment of uses permitted.

Water B zone obviously permitted much more extensive foreshore development, and definitely permitted commercial use of such development.

However, the Water A zone was poorly worded. It did not specify uses to which the private floats, wharves, piers, and walkways could be put. Section 17.4 of the bylaw stated, "Private floats and wharves shall be used for private access only and no commercial or industrial activity or use shall be permitted." However, since the upland property was zoned for commercial use, it was not absolutely clear whether commercial activities relating to the private floats and wharves could legally occur.

In any case the CRD felt that for "marina" use rezoning was

required. However, according to Mr. Pinchin, he was told by the CRD, that he should build the private dock first, and then have it rezoned to commercial. Thus, financing, surveying, and pile driving were arranged during the winter of 1977-78. On January 1, 1978 the planning function was transferred from the regional districts to the Islands Trust. The Trust automatically adopted all existing subdivision and zoning bylaws, as well as community plans, from the regional districts. The Trust required that rezoning occur before construction of the dock.

Mayne Island had not yet finished formulating its Official Community Plan. The community of the island was in the process of actively contributing to the plan. (It was not until June 21, 1978 that the completed plan was adopted by the Islands Trust.) It had been intended, both in the planning legislation (section 698 of the Municipal Act, which gives Official Community Plans paramountcy) and by the island residents, that new zoning and subdivision bylaws would be drawn up, using the Official Community Plan as a basis.

In March or April of 1978, 21 pilings for the foreshore structure were driven into the leased property. Upon notification of this development, the Land Management Branch issued an order to cease and desist further development of the property as this action was in contravention of the terms of the lease agreement. The Land Management Branch further notified that if rezoning was not approved, the Branch would require that all improvements be removed at the owner's expense. Thus, in a case where an attempt was made to circumvent the usual approval procedure, the Land Management Branch was supportive (initially,

at least) of upholding zoning bylaws.

On March 30, 1978 the Islands Trust received the rezoning application from Pinchin Holdings Ltd., requesting rezoning of the foreshore from Water A to Water B for "marina use." The Islands Trust informed Pinchin Holdings Ltd. that "use of a private wharf as an adjunct to a commercial venture was in contravention to Bylaw No. 103."

At the April 12, 1978 meeting of the Mayne Island Trust Committee, Mr. Pinchin presented his proposal to the trustees and answered their questions. The Committee passed a motion to forward the proposal to the Mayne Island Advisory Planning Commission for their consideration and advice, and to so inform the Land Management Branch. (The role of the island Advisory Planning Commissions is to provide advice to Trust Committees, on tasks assigned by the Trust Committees. APC's are not decision-making bodies. They may be elected or appointed, according to the wishes of the Trust Committees.) The Islands Trust also forwarded the application to several other agencies for technical evaluation.

The matter was considered at three Advisory Planning Commission meetings. The APC met with Mr. Pinchin, inspected the site, heard the opinions of many residents, and considered the community plan. On April 28, the APC recommended <u>against</u> approval of the proposal, with one dissenting vote out of five.

The public sentiment on Mayne Island was strong, but split. Those who were opposed to the foreshore development were alarmed that the application had reached this stage before they had been

made aware of it. (This again points out the weakness of the Islands Trust in communicating with the public of the islands in this particular case study.) A large number of people (219) grouped together to form the "Bennett Bay Preservation Committee." One of their main concerns was that there were no guarantees that the hotel and dock would not be sold to a private yacht club. Another concern was that the dock would "automatically close most of the beach to shellfish harvest" (Robert K. Cox, B.C. Marine Resources Branch, as quoted in Robert Skelly's March 6, 1979 news release), and of course there were concerns about the aesthetics of the beach.

A smaller number of people signed petitions supporting the development, mainly on the grounds that more moorage facilities were needed by boaters of Mayne Island.

During the period from March 30, 1978 to September 26, 1978 the application received technical evaluation from several agencies, as coordinated by the Islands Trust.

In early May, 1978 Mr. Pinchin appears to have revised his application so that 1) Lot 560 would extend 800 feet from the shore instead of 1500 feet, and 2) the area of the reduced Lot 560 to be rezoned would be only one half of the new lot size.

At the July 24, 1978 meeting of the Mayne Island Trust Committee, it was resolved that when the technical and environmental studies had been completed, and the data collated, the Mayne Island Advisory Planning Commission be given the opportunity to assess the material. It was coincidentally resolved that staff be directed to commence work on formulating

a zoning bylaw for the entire island, reflecting the Mayne Island Official Community Plan. (It is noted that the Islands Trust was making much use of the local APC, implying that local opinion was seriously being considered at this stage.)

The results of the technical evaluations were as follows:

1. Ministry of Highways and Public Works: No objection (June 23, 1978)
2. Division of Public Health Inspection, Capital Regional District: By today's standards (i.e. the Provincial Sewage Disposal Regulations), the sewage disposal system at the Mayne Inn is most inadequate (e.g. working capacity of 1125 gallons instead of 4000 gallons), although it may be operating without any problems. If any changes are made now or in the future (e.g. to accommodate more people), the owner would be required to make the necessary application for a permit to construct or alter the disposal system so as to update the system to comply with existing Sewage Disposal Regulations.

   The existing water system consists of the Mayne Inn's own well and two storage tanks. Water quantity on Mayne Island is not abundant. Whether or not the Inn would have enough water to service a marina is extremely difficult to say. With more and more residences being built on Mayne, the groundwater table is being taxed even further.

   (June 29, 1978)

3. Dept. of Fisheries and Environment Canada, Environmental Protection Service: This agency reviewed this application under the Navigable Waters Protection Act on Sept. 1, 1978, and considered it especially with respect to fisheries and waterfowl interests (August 15,1978). No objections. (This was the same as the response made to Land Management Branch in September, 1976.)
4. Dept. Of Fisheries and Environment Canada, EPS, Marine Programs, Microbiology Laboratory: This laboratory conducted a bacteriological water quality study and a float study for several areas of the Georgia Strait, including Bennett Bay (upon request of the Islands Trust). Schedule 1 (contaminated areas) of the B.C. Fishery Regulations imposes a 400 foot closure around any wharf. Previous studies by EPS in 1973 and 1974 indicated that "in most areas [a 400 foot] closure is adequate to protect the shellfish resource in the area." In those cases where the 400 foot closure was deemed inadequate, the fecal pollution sources were onshore (e.g. direct discharge from onshore dwellings, septic tank seepage, freshwater inputs); contamination did not result from boat discharges. ... [The September 18 report noted that no study had been made of physicochemical parameters in the bay, and no studies on

> the ecology of Bennett Bay or other water areas surrounding Mayne Island were found. The author of the report speculated that as there was no onshore freshwater source to Bennett Bay, the contamination that did exist in Bennett Bay was from the Fraser River.]
> (June 15, August 23, and September 18, 1978)

These technical evaluations generally indicate that with improved sewage and water facilities at the Mayne Inn, the proposed docking facility would probably not cause serious environmental damage to the bay, except within the 400 foot closure with respect to shellfish harvest.

On September 18, 1978 the Islands Trust staff prepared a report evaluating the amended rezoning application with respect to the Official Community Plan. The report paid particular attention to impacts of the proposed development on 1) the natural environment, 2) access to and along the waterfront, 3) aesthetics, and 4) water and sewage disposal services. It also included and interpreted all of the technical data referred to above.

On September 21, 1978 the Mayne Island Trust Committee resolved that a bylaw be prepared, rezoning part of Lot 560 from Water A to Water B, and that the bylaw be forwarded to a public hearing (as required by the Municipal Act), to be held on September 30, 1978. As the Trust could legally have refused to consider the rezoning application, it appears that the trustees were not closed-minded about the development.

During the next few days the Advisory Planning Commission considered the staff report, a drawing of the area, the letter from the Public Health Inspection Division of the Capital

Regional District regarding sewage disposal facilities at the Mayne Inn, and the EPS survey of shellfish-growing water. The APC also reconsidered all the information which it had discussed in April, as well as the May 9, 1978 letter from Mr. Pinchin indicating the proposed revisions (i.e. reducing the size of Lot 560.)

The September 30 report of the APC made reference to a number of objectives and criteria stated in the Official Community Plan, which the APC felt were particularly relevant, including the following:

- to preserve and protect environmentally sensitive areas by basing land use decisions on the inherent capability [of the area] for different types, scale, and intensities of use
- to ensure a type, scale, intensity and rate of development that is consistent with the maintenance of the quiet rural atmosphere ... and will minimize the impact on the natural environment
- to ensure the level of service provided is consistent with maintaining the existing rural character and natural environment
- adequacy of existing roads, water supply, sewer and other service systems to accommodate the proposed development
- in water areas, regard shall be given to the protection of swimmers, to prevention of overcrowding of boats, interference with navigation and moorings and discharge of pollutants.

The APC was unable to reach a unanimous recommendation. Three of the members felt that rezoning the water lot would not meet the objectives and criteria of the Community Plan, would do "irreparable harm to the unique and environmentally sensitive" bay, and would interfere with "its quiet rural atmosphere." The other two members felt that rezoning could be allowed, subject to a few provisions including: 1) that the area to be rezoned to Water B be not more than 2.14 acres, and 2) that the applicant

enter into a development permit with the Islands Trust ensuring (among other things) that use of the marina be restricted to guests of and visitors to the marina and residents using the mooring facilities.

On September 30, 1978 the Islands Trust held a public hearing on the rezoning bylaw. As well as the Mayne Island Trust Committee and staff, approximately 150 members of the public were in attendance. Out of 35 written submissions presented, 33 were opposed to the development. Out of 27 people speaking to the matter, 17 were opposed. Thus, a significant majority of islanders who voiced their opinions were opposed to the development.

At the Mayne Island Trust Committee meeting which followed the hearing, the rezoning matter was discussed at length. The suggestion was made that another water zone was required in Bylaw No.103 to allow for a more limited range of commercial uses. While the need for commercial boat moorage in the vicinity was recognized, trustees were not certain whether Bennett Bay was a suitable place for such a use, and felt that even if it were a suitable place, the scope of uses allowed by the Water B zone was too broad for Bennett Bay. (All Mr. Pinchin was requesting was to be able to charge for boat moorage and to rent out some boats, and Water B zone permitted much more than these uses.) The rezoning bylaw was refused first reading. A resolution was made that an amendment to the zoning bylaw be drafted to allow for a more limited commercial use of Crown foreshore in comparison with the Water B zone. It was understood that Pinchin Holdings Ltd. could apply for

rezoning to this new zone, when it had been drafted. (However, considering the strong public reaction, it is possible that this move was simply a stalling technique; it is hard to say whether the trustees planned at that time to allow the project under the new zone, or whether they planned to allow the public time to more firmly reject the proposal while making it appear that they had afforded the developer a fair chance. Presumably, by authorizing the preparation of the new zone, they thought there was a considerable chance that the public would accept the proposal with more restrictive zoning conditions.)

After the September hearing, Mr. Pinchin realized that the new bylaw would not be passed before the Islands Trust elections in November. He was therefore concerned that new people might gain office and that this would create more delays for his application. As this meant that he would perhaps lose another summer season, it appears that he instructed his lawyer to write to the Land Management Branch, explaining that the dock would be initially used as a private dock, and then following the elections a rezoning application would be made for commercial use. On November 9, Mr. Pinchin approached the Land Management Branch to amend the lease application to permit "private boat moorage" instead of "marina" use. It was apparent that he had hoped that as such, the water lot would not require rezoning, as private floats, wharves, piers, and walkways are permitted uses of the Water A zone. He amended his development plan, deleting several fingers from the wharf, and he indicated to the Land Management Branch that he required the remainder for his own private use.

The Land Management Branch, in a letter dated November 9, 1978 asked the Islands Trust whether this purpose was in accordance with existing zoning of the foreshore. On November 16 the Mayne Island Trust Committee carried a resolution that the new Mayne Island Trust Committee taking office December 2 be requested to forward Mayne Island Bylaw No.10 to Public Hearing as soon as possible following their taking office, implying that they were still under the impression that rezoning to commercial use was requested or required. On November 17, 1978 the Trust requested legal opinion from its lawyer regarding the precise meaning of the existing zoning. On the same day the Trust requested the Land Management Branch for additional time for a response.

The November elections resulted in the re-election of the two Mayne Island trustees. It is important to note that one had maintained a strong position against the dock and the other had taken a moderate position in favour of it.

Legislation amending the Islands Trust Act by allowing for the election of general trustees by and from amongst the 26 local trustees, took effect December 1, 1978. As one previously appointed general trustee ran for office as a local trustee, and then succeeded in his election to the General Trust, the composition of the General Trust changed by two rather than three members. Thus, the Mayne Island Trust Committee changed following the 1978 elections by two members.

On December 14, 1978 the legal opinion was sent to the Islands Trust, expressing that the intended use did appear to be

prohibited by the current zoning bylaw. The opinion was that since section 17.4 of the bylaw clearly prohibits the use of private floats for commercial activities and since the adjacent upland was zoned commercial, the planned development was prohibited by law. However, it was not until January 5, 1979 that the Trust conveyed this legal opinion to the Land Management Branch. Christmas holidays and consultation with the Mayne Island Trust Committee are considered to be the reasons for the three week delay.

Apparently without heeding the Trust's request for additional time (i.e. without waiting for the Trust's opinion on the rezoning matter) the Land Management Branch issued a letter of allowance for the water lot "for private boat moorage purposes" on December 20, 1978. This replaced the September 6, 1976 letter of allowance "for marina purposes." It included the following provisions:

- lease is subject to the Navigable Waters Protection Act,
- lessee agrees to keep the Crown lands in safe, clean, sanitary condition to the satisfaction of the Lessor,
- no improvements are to be placed on the leasehold other than those indicated on the development plan presented to the Lessor Nov. 2,1978.

This letter of allowance did not mention any need for rezoning.

At the January 27, 1979 meeting of the Mayne Island Trust Committee, Mr. Pinchin was asked whether he wished to apply for rezoning to the new bylaw. He replied that he was constructing a private dock for the time being, which seemed to imply that he did not wish to apply for rezoning at that time.

The Islands Trust then informed Mr. Pinchin that the Mayne

Island Trust Committee considered commercial activity as encompassing any activity, use, or structure associated with the operation of a lodge or restaurant. Thus moorage of boats of paying guests and moorage for which direct or indirect payment was made were considered commercial activity. Rezoning to an appropriate commercial water zone was necessary, in the opinion of the Islands Trust. On February 15, 1979 the Islands Trust issued a letter to the Land Management Branch indicating the same, i.e. that private boat moorage associated with a hotel was not in keeping with the zoning bylaw. This letter also questioned the need for two hectares of water if the use was to be for residents and non-paying guests only; the Trust asked that the area be reduced.

In the meantime, Mayne Island residents continued to express feelings both for and against development of Bennett Bay. On February 14, 1978 Premier Bennett instructed the Honourable James Chabot, Minister of Lands, Parks, and Housing, to look into the problem and to directly contact the Bennett Bay Preservation Committee.

On February 26, 1979 with no further consultations with the Trust, the Land Management Branch issued a lease to Pinchin Holdings Ltd. (to follow the December 29, 1978 letter of allowance). The lease was for "boat moorage purposes incidental to the hotel on the adjacent upland." It approved erection of pilings 130 meters out into the bay, followed by 50 meters of floats stretching further out for moorage. There was also provision for further expansion. This appears to be an attempt by the Land Management Branch to circumvent the Islands Trust

zoning bylaws.

On March 9, the Minister informed a Mayne trustee that before making the decision to grant the lease, he had personally visited Bennett Bay and several other bays around the island. According to the Bennett Bay Preservation Committee, no contact was made with its members. The Minister reported in a radio interview (CBC, March 8, 1979) that he found that the dock "will not mean more boats coming in closer to the shore than what is presently taking place." In answer to the request by the Bennett Bay Preservation Committee for a public hearing, the Minister replied (on the March 8 interview) that "the residents of Mayne Island are split down the middle. It would be evenly distributed, those that support the docking facility and those that are opposed, and to hold a public hearing on this issue would be pointless in my opinion."

Regarding the question of the Trust's jurisdiction in this matter, the CBC interviewer asked, "What happened to the decision to refuse the dock made by both the CRD and the Islands Trust?" The response of the Honourable Mr. Chabot was, "...[the decision] was beyond their sphere of jurisdiction. The foreshore lease is of Crown land, rests solely with the Crown, not with the Islands Trust." (sic) This statement is, if not incorrect, very misleading. The Islands Trust <u>does</u> have jurisdiction over all private and Crown lands in the trust area (quite probably including the sea bed and foreshore). It is true that the Trust does not have authority to grant leases and other dispositions of Crown land. However, it certainly does have jurisdiction over zoning of Crown land. And aside from the

planning function (i.e. powers of implementing community plans and zoning and subdivision bylaws), the Trust has been given explicit jurisdiction to make recommendations regarding Crown lands under s.3(2)(a), s.3(2)(b), s.3(2)(c), and s.6(4) of the Islands Trust Act. Provided that the Trust does have jurisdiction over the foreshore, it is clear that an overlapping jurisdiction is involved. Furthermore, as it was the intent that the Trust be the coordinating agency, it was expected that other Crown agencies would consult and attempt to cooperate with the Trust's objectives.

The problem is broader than simply Lands overriding the zoning bylaws of, say, a regional district; since the Trust has a special role to play, over and above its planning function, the action of the Land Management Branch in issuing this lease without cooperation or coordination with the Trust is a more serious breach of intent. This case appears to be an example where the system (meant in the broader sense that just the Islands Trust) has failed to produce the intended result.

On February 27, the Trust was "given notice" by the Land Management Branch of this new approval, "in compliance with section 6(4) of the Islands Trust Act."

A spokesman for the Land Management Branch was quoted as saying (in the Gulf Islands Driftwood, March 6, 1979) that the Branch issued this lease because they felt that it was "in the interest of a particular person to be able to moor boats if it has something to do with his business. ... We made the decision to issue the lease against the wishes of the Islands Trust

because we felt that it was in the best interests of the province as a whole. .... We thought considering that was important, rather than just the feelings of the people living adjacent to it." Whether or not it was in the wider provincial interest to issue the lease, this statement makes it clear that an attempt had been made by the applicant or by the Minister to define the public interest in the wider forum than the public of the island.

The response from a general trustee of the Islands Trust (in the same newspaper) was that the Trust could not act as any more than an advisor to the Land Management Branch. "Lands has every right to do what they have done. We're charged with preservation and protection of the islands, but when it comes to waterfront leases we can't stop them. As far as I'm concerned, we can't do the job we're being asked to do if the lands department decides not to listen to our advice."

The Bennett Bay Preservation Committee felt the actions of the Minister in granting the lease to be "reprehensible":

> Your failure to notify our committee or to disclose the present application and marina plans to our solicitors was surely a denial of our democratic rights. ... Through your public statements to the press and CBC radio, you have damaged the reputation of the Islands Trust by challenging their authority and efficiency in dealing effectively with Island matters.

The Bennett Bay Preservation Committee felt that the Minister had usurped zoning powers of the Islands Trust, and that citizens' rights of due process had been seriously impaired.

NDP environment critic Robert Skelly charged that political interference at the cabinet level had overturned the ruling of

the Islands Trust. In a news release on March 6, 1979 Skelly said:

> It is clear to me that there was political interference and that it occurred at the cabinet level. Only at the cabinet level would a decision to overturn a ruling of a duly-constituted body, such as the Islands Trust, be made. Only at the cabinet level could the political ramifications of an unpopular and environmentally-dangerous decision be handled.
>
> The public should know what sort of lobbying went on to make the lands branch overrule the Trust's decision and we should know more about the relationship between Pinchin Holdings Ltd. and the Social Credit Party.

While this strong dissatisfaction was being expressed, the Islands Trust was still faced with the problem of whether rezoning was required for the intended use of the water lease. At the Mayne Island Trust Committee meeting on March 7, 1979 a decision was made that the draft bylaw, which had recently been prepared to allow for a limited commercial water zone (Water Zone B-1), be amended to provide for moorage use in conjunction with specified commercial uses (e.g. hotels) and moorage space (including space to be auxiliary to the commercial use). It was resolved that Pinchin Holdings Ltd. be notified that:

1. notwithstanding the February 26 lease, proper zoning for commercial use was still required before development could proceed--<u>there were two separate and distinct approvals required by legislation</u>;
2. the Mayne Island Trust Committee was proceeding with a rezoning bylaw to rezone the leased area to the new commercial water zone;
3. like any other rezoning bylaw, this would require a public

hearing.

On March 13, 1979 a letter from Honourable James Chabot to the Bennett Bay Preservation Committee lawyer stated that the Minister was satisfied with the decision and that the matter was closed.

The Mayne Island Trust Committee resolved on March 15, 1979 to write to the Minister of Lands, Parks and Housing to express the Trust's concern that the recommendations on Crown lease applications for foreshore were not being reflected in the decisions of the Land Management Branch.

The Mayne Island Trust Committee held another meeting on April 5, 1979 at which time a public hearing was scheduled for April 21. The Mayne Island Advisory Planning Commission was requested to make a submission. At that time one Mayne trustee remained firmly opposed to the development, while the other trustee remained unconvinced as to the adverse effects of the boat moorage facilites.

The April 21, 1979 public hearing regarding Bylaw No. 10 drew an overflow crowd of about 200 people, and lasted about seven hours. Out of 201 written submissions, 124 were against the proposal and 77 were in favour. Out of 27 oral submissions, 17 were opposed and 10 were in favour.

Immediately following the hearing, the Mayne Island Trust Committee held its meeting and resolved to rescind the first reading of the bylaw. Two general trustees (including the Chairman) and one local trustee voted against the bylaw, while

one general trustee and one local trustee voted in favour of it. The Chairman felt "preserve and protect" should be interpreted as preserving the status quo when there is any doubt about change. Other arguments against the bylaw were that 1) the Advisory Planning Commission was currently developing the new island zoning bylaw, and this area could quite likely become a "beach" zone, and 2) it was suspected and feared that the development may be sold to a yacht club. Thus, it appears that, while not unanimous, the Trust decision took into account public opinion, planning considerations, social impact, and risk of polluting the bay.

Not long after these meetings a contract was drawn between Pinchin Holdings Ltd. and Dolphin Pile Driving Ltd. to complete construction of the dock. Construction then resumed. Mr. Pinchin was quoted in the May 16, 1979 Driftwood as saying that the land access to the wharf would be private. "Any boatowners who wish to use the Inn's facilities, however, may tie up to the wharf."

The Mayne Island Trust Committee resolved on May 17 that the Trust should initiate legal action for enforcement of the zoning bylaw. Construction of the wharf ceased once more.

However, the Islands Trust was prevented from seeking an injunction in May because it had not yet been incorporated; section 2(5) of the Islands Trust Act had not yet been proclaimed. Under this situation, liability for damages would have fallen on the trustees themselves, rather than on the Islands Trust. The Trust requested to the Minister of Municipal

Affairs to have this section proclaimed, and on June 29, 1979 the General Trust was incorporated.

With respect to building regulations (which are administered by regional districts), the Capital Regional District found that while a walkway on piles would require a building permit, floats would not; it was found that no authority had jurisdiction to carry out the building and safety inspection of docks. The Capital Regional District informed the Trust on May 24, 1979 that because of the Trust's stated opinion that the land use contravenes the zoning bylaw, the Capital Regional District was in a position to require the applicant to apply for a building permit, but to advise him that a permit could not be issued until rezoning was secured. It was felt that if the applicant should refuse (while continuing construction), the Capital Regional District would be in a strong position to apply for an interim injunction which would stop construction at least until the Trust's request for an injunction could be heard. This illustrates an attempt by the CRD to cooperate with the Islands Trust.

The CRD decided to proceed to enforce the building bylaw, and to make representation to the Minister about the lack of ability of the Islands Trust "to make their zoning bylaws stick." Mr. Pinchin was informed that as the Trust said the zoning was incorrect, no building permit could be issued for the illegal structure. Further, the existing work should be removed.

Mr. Pinchin then requested the CRD for a building permit.

As planned, the CRD replied that it would not issue a building permit for the dock in opposition to the Islands Trust zoning bylaws. This letter repeated the order to cease and desist and to remove existing structures.

In mid-August, 1979 construction resumed on the dock. The Trust then filed for a court injunction, and on August 31, 1979 the Supreme Court of B.C. issued an interim injunction ordering Pinchin Holdings Ltd. to restrain until further trial from further proceeding with construction of the dock.

The case was heard in the Supreme Court of B.C. on May 12, 1980. The question to be decided was whether the dock was in fact commercial or private. It appears that there was no doubt about the legality of the Land Management Branch issuing the lease contrary to the recommendations of the Trust, nor the Islands Trust having jurisdiction to zone the foreshore. Counsel for the Islands Trust argued that the dock was public rather than private and that it would be used for commercial activity rather than for "private access only." Counsel for the defendents argued otherwise. Judgment was in favour of Pinchin Holdings Ltd. (and Dolphin Pile Driving Ltd.). It was stated that the owner had the right to exclude the public from use of the dock, and as no charge was to be made for use of the dock, commercial activity of the Mayne Inn did not imply commercial use of the dock. The Islands Trust is appealing this decision.

It should be noted that if the Land Management Branch had refrained from issuing the lease (e.g. on the basis of a recommendation to this effect from the Islands Trust), this case

would not have had to go to court to be argued on the technicality of what constitutes private and commercial use. However, this would have required the cooperation of the Land Management Branch.

E. Discussion of the Bennett Bay Marina Case

This case study illustrates several points about the relationship of the Islands Trust and the Land Management Branch, as well as about jurisdiction questions, bases for decision-making, procedural complexities, and the role of politicians at various levels. It must be noted that the case does not reflect only on the significance and effectiveness of the Islands Trust; it is of relevance to all planning authorities, i.e. regional districts and municipalities outside the trust area, particularly those having jurisdiction below the high water mark. It raises a very real question regarding the significance of local government zoning bylaws with respect to Crown land, and Crown foreshore in particular.

Primarily, the overlapping jurisdiction between the Islands Trust and the Land Management Branch regarding Crown land administration is apparent. While the Islands Trust can make recommendations regarding the acquisition, use, and disposition of Crown lands, and must be given notice prior to development or disposition of Crown lands, it does not have final decision-making power in these matters. This power lies with the Land Management Branch (or ultimately the Minister of Lands, Parks and Housing).

However, the Islands Trust does have some measure of absolute control over activities on Crown lands probably including all the water in the trust area, pending the Strait of Georgia case and clarification of the "trust area," through powers of zoning and subdivision regulation and community planning. (Although the trust area itself may encompass a large area of water, questions of paramountcy may arise if the Trust were to attempt to regulate activities in this area.)

It appears that at least two distinct conditions must be met for disposition of Crown land: permission from the Land Management Branch, and compliance with the zoning and community planning regulations of the Islands Trust. (A third, again separate, condition is compliance with the regional district building regulations.) These two approvals do not seem closely connected, although the Land Management Branch does (at least sometimes) state that their approval (e.g. in the form of a lease) is subject to compliance with local zoning bylaws. At one point in the case, the Premier did say, "All leases are issued subject to approval of local authorities," which turned out to be false in this example.

This study showed that the Land Management Branch was not prepared to consider the Islands Trust as any more than a local zoning authority; it did not seem to recognize that the Islands Trust was created by provincial statute to coordinate island development such that it was responsive to the local interest as well as the provincial interest of protecting the islands.

The overlapping jurisdiction has created confusion among

the general public and probably among applicants as well. A common misconception among the public appears to be that the Islands Trust has real decision-making power regarding administration of Crown lands. This point is borne out by the CBC interviewer's first question of the Lands, Parks and Housing Minister: "What happened to the decision to refuse the dock made by both the CRD and the Islands Trust here?" These in fact were not decisions but rather recommendations only. (In fact, it appears that recommendations of the Islands Trust were not explicit recommendations against the granting of the lease, but rather implicit recommendations through the lack of success in the rezoning application. This might be considered a downfall of the Trust; however, the issue did have two sides and the Trust took the time and trouble to allow those sides to present themselves and to consider all affected parties in their decision--by drafting two rezoning bylaws and allowing them to go to public hearings.)

Since the Islands Trust's mandate is more specific than that of the Land Management Branch, the Trust's criteria of approval are likely more stringent. Therefore, it may be advantageous to the application procedure if the developer were required to secure correct zoning before the issuance of a lease from the Land Management Branch or at least to ensure that the applicant understands that the lease is invalid if correct zoning cannot be secured. This could help circumvent unnecessary confusion and frustration on the part of the applicant, and unnecessary bad feelings and distrust between the Islands Trust and the Land Management Branch. It would seem

most desirable if the applicant did not have to feel as if two separate approvals were required; preferably the Islands Trust and Land Management Branch could coordinate the two approvals such that neither was issued without the other.

The case also highlights an example where either the Land Management Branch, or (more likely) provincial politicians working through the Land Management Branch, have attempted to subvert two of the intents of the Islands Trust, namely 1) to coordinate and control island development, and 2) to offer local communities a measure of control over island development. Regarding the first of these, it is obvious that the Trust was not permitted a coordinating role. Regarding the second, while the island residents were not unanimous in their feelings against the dock, a much larger proportion of them voiced opinions against the dock than in favour of it. A yachting magazine, probably representing many residents of the mainland, voiced strong opinion in favour of the dock. Thus, a difficult decision had to be made. However, the provincial government did not simply make a straight-forward decision to grant a lease; rather it reworked the wording of the lease many times to attempt to circumvent involvement of the Islands Trust and, consequently, involvement of the island residents (through the public hearing process required for rezoning).

The bases on which decisions were made by the respective agencies were also interesting. They appeared to change through time. The Land Management Branch appeared to base the initial decision of granting the lease on technical information which indicated little cause for environmental concern. Even the

Islands Trust recommendation at that time was not opposed to the dock (subject to rezoning). This recommendation appeared to be based on the same technical information used by the Land Management Branch in its initial decision. It is quite curious that the Islands Trust did not elicit public opinion at that time. A "no" recommendation of the Islands Trust, based on public opinion, could conceivably have altered the initial decision of the Land Management Branch, consequently removing the need for any of the frustrating and costly procedure which followed. (It is interesting, however, to speculate about the likelihood of the Land Management Branch refusing to grant the lease, had the Islands Trust initially objected to the dock.)

As time progressed, the decision of the Land Management Branch appeared to be based more on sympathy with the developer than on technical information, or information about public opinion. Perhaps public opinion of non-resident boaters did play some role in the decision. But since the Honourable Mr. Chabot did not contact the Bennett Bay Preservation Committee during his visit to the island, it is difficult to assume that much account was taken of the Committee's views.

In contrast, with time, the Islands Trust took serious account of local opinion. The local opinion was not based solely on the technical information submitted earlier to the Land Management Branch. Local opinion against the dock seemed to be based more on aesthetics of the beach area, the need for careful planning for the island as a whole, and perhaps some resentment toward the hotel owner for starting dock construction prior to rezoning. Local opinion in favour of the dock was

based on wishes for additicnal mooring space on the island. While the local opinion was split, the Islands Trust adopted the position that as there was some serious doubt about the development, it was better to preserve options for future development decisions, than to make such a costly mistake. Thus, the Islands Trust was fulfilling its mandate on two counts here: 1) affording local residents a major role in decision-making, and 2) preserving future development options rather than risking the possibility of undesirable development.

The detail of this case study illustrates the great complexity and high cost of the decision-making procedure. Now that the Islands Trust has secured the planning function, and now that community plans and zoning bylaws have been put in place for most islands, some of the confusion and complexity will (presumably) be circumvented in the future. The new agreement between the Land Management Branch and the Islands Trust (discussed in the next section) should also help in this respect. However, in this case, an enormous amount of time was required by the developer, the government agencies, and the general public to complete the procedure.

This raises a further point. The complex procedure placed a high premium on organizations with resources. For example, the developer had the capital resources to begin construction of the dock on the gamble of circumventing the zoning bylaws. This immediately put him in an advantageous position of being able to draw sympathy, for example from the Land Management Branch, due to the investment which would be lost if the structures had to be removed. Consequently, in order to overcome such pressure,

the concerned public and the Islands Trust had to expend a large amount of time, money, and energy to oppose the development. Had the Bennett Bay Preservation Committee not been so large and well-organized, one could speculate that the Islands Trust might not have been able to adopt and maintain a position against the development; rezoning quite likely would have been granted. In summary, the procedure tends to favour organization systems with resources, rather than public interest. (This will be discussed further in the next section on theoretical importance.)

The case raises the question about the need for an agency to control its own budget. Unlike municipalities and regional districts, the Islands Trust budget is strictly controlled by the provincial government. Legal opinions requested by the Trust are paid for by the Attorney-General's department. However, the Trust must request the permission of the Attorney-General's department before entering into any court cases because that department pays the bill. This puts the Islands Trust in an awkward and perhaps weak position, particularly when it attempts to oppose an action of a provincial department or an action resulting from a decision of the provincial government (e.g. the decision of the Land Management Branch to issue the lease); it is obligated to ask the provincial government to support a fight against itself! (It is recognized that the Trust cannot technically take another provincial agency to court. However, the above statements could be relevant if the Trust were to seek a declaratory judgment regarding jurisdiction or paramountcy. The recent legal opinion by the Attorney-General's Department that the Islands Trust Act is subordinate

to the Mineral Act, for example, could conceivably hinder the Trust from obtaining a declaratory judgment on this question, as the Attorney-General's Department would have to approve expenditure for such a judgment.)

As a result of this case, it was discovered that neither the regional districts, nor the Islands Trust, nor any provincial level of government has any jurisdiction over building regulations for wharf construction under the National Building Code. The opinion given for the case stated that a permit would be required for the structure crossing the foreshore (commercial wharves only) but not for the floats. This points to a gap in legislation.

The case did show a considerable degree of cooperation between the Capital Regional District and the Islands Trust. (This was somewhat surprising and encouraging, given the firm rejection of the Islands Trust concept by the Capital Regional District Chairman.) In this respect, the Islands Trust fulfills its mandate to coordinate and cooperate with other government agencies.

The necessity of incorporating a local government was also highlighted.

F. Theoretical Significance of Bennett Bay Marina Case Study

An attempt is made here to relate the theory discussed in chapter V with the Bennett Bay marina case study. Perhaps some theoretical significance may be drawn with respect to why events occurred as they did. The postulates and corollaries summarized

at the end of chapter V will be discussed here in the same order, to the extent that they relate to this case.

Decisions of the voters in the November 1978 elections seem to reflect the private interests of the voters on Mayne Island, comparing the results of the election with the demonstration of individual interests at the public hearings. While four people ran for office, the two incumbents regained trusteeship--one strongly opposing the dock and the other moderately in favour of it. (The person who placed third was one of the cofounders of the Bennett Bay Preservation Committee.) The trustee winning the most votes was the one who opposed the dock. This quite accurately reflects the opinions voiced at the public hearings (which both had very good turnouts); while several people were in favour of the dock, the majority were not.

With respect to the postulate that "politicians will allocate their time to win votes rather than necessarily to master issues," and its corollaries, several points can be made. The trustees (local and general) were obviously very sensitive to the opinion of their electorates; they were quite cautious in their moves (their 1976 decision excepted), trying to seek the choice which the public on the island would prefer most. Similarly the Honourable James Chabot allocated his time to win votes with Mr. Pinchin and the broader public. He did not take the time to talk with the Bennett Bay Preservation Committee (i.e. to try to master the issue). Rather he allocated his time to serve the interests of Mr. Pinchin and boaters from the rest of the province. Specifically, it appears that he spent considerable time with the bureaucracy, getting them to alter

their normal procedures (i.e. whereas letters of allowance were previously subject to rezoning, the final lease was not; and the lease purpose was altered to get around the zoning regulations). This lends support to corollary 2aca. It is notable that the MLA for Mayne Island is from the Social Credit Party. The theory leads one to ask the extent to which Mr. Pinchin and provincial boaters are supporters of the Social Credit Party.

With respect to corollary 2ab, it is interesting to note that property owners who are only seasonal residents tend not to have winterized dwellings on the islands, and since the elections are held in November, they tend not to vote in the Islands Trust elections. Whether this segment of the island population would tend to vote for or against the dock is purely speculative. Being mostly from urban centers they may be more open to the idea of a marina than permanent residents. On the other hand, wanting to escape the urban environment, they may be more opposed to it. One of the cofounders of the Bennett Bay Preservation Committee is a seasonal resident. If her stand was representative of other seasonal residents (who tend not to vote), one could speculate that the feelings of island residents against the dock were underrepresented by the Trust. (This could explain why the Bennett Bay Preservation Committee cofounder only came third in the 1978 election. It is notable that she did win a by-election when the trustee who previously topped the polls [i.e. the trustee opposed to the dock] resigned.)

As previously mentioned, Mr. Pinchin had a large vested interest in the issue, and could therefore rationally afford to

invest much time and resources in the decision process. This is evidenced by his proceeding with dock construction prior to rezoning, his travel to the offices of the bureaucracy in Victoria, Vancouver, and Nanaimo while technical and environmental studies were being done, the involvement of his lawyers, and his several interactions with the Land Management Branch (as implied by the several changes in wording of his letters of allowance and the lease)--not to mention interactions with politicians of both levels, the evidence of which is purely speculative. He successfully exerted more influence on the decision process than those without vested interests.

Obviously the vested interests of Mr. Pinchin were larger than those of other property owners of Bennett Bay and other residents of Mayne Island. However, the interests vested in other properties on Bennett Bay do explain why most of the other Bennett Bay property owners joined the Bennett Bay Preservation Committee; they had something quite large to lose (both economically and aesthetically), so could afford to support this committee. As for the residents who joined the Bennett Bay Preservation Committee but had no economic interest in preserving the bay, corollary 3a may explain why they joined the group: 1) they had a high disutility for the dock, and they could not escape the dock, i.e. the dock interferred with their enjoyment of the beach which they must have valued a lot,
2) they had imperfect environmental information, i.e. the information--or lack of it--led them to believe that there would be serious ecological damage to the bay, while the actual environmental studies (while not conclusive) did not express

much cause for worry about environmental damage except with respect to the water and sewage facilities at the inn, and 3) cost of contributing to the group was low, i.e. a paltry $2. All of these factors probably contributed to the existence and size of the Bennett Bay Preservation Committee.

There was not very much research done in this case study with respect to the bureaucracy. However, a few inferences can be drawn. One is that bureaucrats in the Land Management Branch, as in any other Branch, are not likely to willingly allow another government authority such as the Islands Trust to coordinate them; this would involve the objectives of their branch being compromised with those of other departments and would detract from their department's power. As it is in the personal interests of bureaucrats to retain if not to promote the relative power of their department, it is not in their interests to submit to requests and recommendations of other agencies. The case study thus supports corollary 4aa.

Another inference to be drawn about bureaucrats is that they will go to great lengths to please the Minister in charge of their department; they will submit to political pressure if the pressure source is "the hand that feeds them."

Postulate 5 ("Decisions of politicians and bureaucrats will tend to accord with the mandate of their government body") is also supported by this case. The mandate of the Land Management Branch is to administer Crown land, which is interpreted generally to mean assigning leases and other dispositions, rather than <u>refraining</u> from assigning dispositions

(i.e. refusing dispositions). The reluctance of the Land Management Branch to refuse the lease in the case study supports this notion. Similarly, the attention which the Islands Trust gave to local opinion, and the decision which it made on the basis of local opinion, environmental considerations, planning considerations, and preserving options for the future reflected its mandate.

Finally, corollary 6a is supported by this case study. Whereas Mr. Pinchin was not certain to receive satisfaction from the Islands Trust (his "representative council"), he attempted to legitimize his interests to the provincial public (e.g. through advertising on Vancouver busses), successfully influencing the provincial authority to override the local authority.

G. Relations of the Islands Trust and the Land Management Branch Since the Case

Since the Bennett Bay Marina issue, the Islands Trust has taken action to facilitate its decisions and to improve relations with the Land Management Branch.

On February 17, 1979 the General Trust decided to develop a marina policy for the trust area. The policy, adopted March 14, 1979 emphasized keeping boat mooring facilities on a small scale; providing for the minimum need, primarily of local residents; and suiting the capacity of the natural environment. This policy should facilitate future decisions of the Trust regarding zoning and development of Crown foreshore.

Also on March 14 the General Trust adopted the following policy regarding lease applications for Crown land:

> Lease applications for the use of Crown Land by private parties, for other than public service uses, should not be approved.

This followed a letter from Lands in February which requested comments on the leasing of Crown land by a private party. Under the Islands Trust reserve, this request should normally have been flatly refused (i.e. the Land Management Branch would normally not even refer such an application to the Trust), but for some reason this application made it through the channels. The Trust policy stated above, backs up the reserve which seems to be a very tenuous instrument.

Regarding Lands--Trust relations, on March 15, 1979 the Trust wrote a letter to the Minister of Lands, Parks and Housing to express "concern with recent decisions of the Lands Branch in the granting of Crown Leases in the Islands Trust Area" (see appendices). The letter argued that "the [Islands Trust Act] makes a very strong case for serious consultation with the Islands Trust [through sections 3(1), 3(2)(b), and 6(4)] before decisions are made to grant leases ....." The Trust had inferred from the legislation that any decision made against Trust recommendations would require "very substantial justification." The letter listed three recent decisions in which such was not the case, the Bennett Bay lease being one of them. (The others concerned a private boat ramp and an oyster culture.) It was noted that in the case of Bennett Bay, the lease was granted "despite the fact that the use provided for violates the Zoning By-law and with very little consultation

with the Islands Trust." The letter requested a meeting with the Minister or his senior officials to discuss cooperation between the two agencies.

By taking this initiative to improve cooperation between agencies (in calling for the meeting) one could say that the Trust was working toward fulfilling the coordinating aspect of its mandate. (One could also say that the Trust was attempting to regain the power which it thought it had been awarded through the Islands Trust Act.)

At the meeting which ensued on May 9 the development of an agreement between the Ministry of Lands, Parks, and Housing and the Islands Trust was suggested by the Lands representatives. This was to clarify roles and objectives of the two agencies, and to assist their future relations. Distinction of jurisdiction between the Land Management Branch and other agencies, including the Islands Trust, with respect to Crown lease approval was also discussed.

Following the meeting, the General Trust noted that island community plans and adopted Trust policy endorse the prohibition of subdivision and leasing of Crown land for private purposes. It requested that staff investigate the implementation of Trust policy on Crown land through an Order-in-Council. A notable finding was that under section 11 of the Land Act, the Lieutenant-Governor in Council may for any purpose considered advisable in the public interest, reserve Crown land from disposition. As this would make changes in Crown land disposition more difficult, it would provide an extra measure of

"protection." It was suggested that the proposed agreement between the Islands Trust and the Land Management Branch could possibly involve this reserve.

On May 23 the Trust manager presented to the General Trust a potential outline for an agreement with Lands[4]. It is important to note (as the outline itself noted) that the outline was "based on streamlining the current roles and procedures" rather than on having all Crown land (and water) in the trust area leased to the Islands Trust, which would in effect delegate Crown land management to the Islands Trust. While the District Municipality of North Saanich already has this latter arrangement, implementing it in the trust area would have major staffing implications and would perhaps require an amendment or proclamation of the Islands Trust Act.

It is interesting to speculate as to why the Trust did not attempt to secure protection of Crown lands through this lease arrangement. Certainly, this would be a major expansion of the Trust's role, and would perhaps dilute the effectiveness of the Trust with the extra administrative problem (as indeed the planning function may have done). Secondly, this arrangement would be unnecessary if the Trust could develop the cooperation of the Ministry of Lands, Parks, and Housing. Thirdly, one might expect that the Trust would encounter great difficulty in securing such a lease, particularly if the theoretical notions regarding the protectiveness of department responsibility by

---

[4]In mid-1979, the "Land Management Branch" was changed to the "Lands and Housing Regional Operations Division."

bureaucrats were true; Lands may be very reluctant to give up this role and therefore refuse to grant the lease. Related to this last point is the feeling of the Trust of general lack of support from the provincial government, including from the Trust's own Minister, Municipal Affairs Minister Bill Vander Zalm. This has perhaps created a pessimism with respect to the likelihood of the Trust acquiring this function. (One might argue that if North Saanich succeeded, the Islands Trust could, too. However, North Saanich has considerably less Crown land than the trust area has.)

Among the more interesting suggestions made in this outline were the following:

2. Roles and Responsibilities

- Lands lead role in administering the granting of interests in Crown land--leases, easements, etc.
- Lands lead role in [physical] protection of Crown Land whether under conditions of lease or vacant
- Trust lead role in policy on use of land including conservation and resource development
- Lands will recognize and be bound by Trust policy in Regional and Community Plans and other by-laws and where there is conflict will agree to the Trust's resolution of such conflict. [It is not clear here whether conflict refers to 1) conflict between the plans and bylaws, or 2) conflict between the Islands Trust and Lands interpretations of the plans and bylaws.]
- The Trust will recognize and be bound by Lands policy of ....

3. Procedures on Applications

- To avoid applicant frustration from conflicting decisions by both parties under their respective roles, it is agreed that any application for lease or other interest in Crown Land must receive both parties approval to proceed.

4. Limitations

- Both parties agree that no leasing for private homes or cottages will be entertained.

5. Reserve Status

- Lands will assist the Trust in implementing Trust policy in Regional Plans and/or Community Plans by providing appropriate reserves or amending reserves under Section 11 of the Lands Act or under the Greenbelt Act.

Prior to the final formulation of the Islands Trust--Ministry of Lands, Parks, and Housing Agreement (March 28, 1980--see appendices), several interactions took place with respect to Crown land subdivision which shed more light on the Islands Trust--Lands relationship.

Regarding Crown land subdivision, and use of Crown land for private purposes (e.g. through residential leases), the Trust Council had unanimously passed a resolution in February, 1979 to recommend to the General Trust "that it inform the appropriate Ministers that the Trust strongly opposes any proposal to develop subdivisions on Crown Land in the Trust Area." (See the June 6, 1979 letter from Chairman John Rich to Honourable James Chabot in appendices for the rationale of this resolution.)

The General Trust directed the staff to inquire about the existence of such subdivision proposals, and as no subdivision plans were found to exist the matter was dropped. However, island residents in May and June reported to trustees that Provincial officials had been inspecting possible subdivision locations on Crown land. Thus, on June 6, 1979 the Trust Chairman requested the Minister of Lands, Parks and Housing to clarify this matter and if possible to "provide an assurance that the Government is not proposing to subdivide in the Islands." Two applications for residential leases had been

received around that time by the Trust from the Lands Branch, and the Branch itself had inquired whether a third portion of Crown land was zoned for residential use. A subsequent letter from the Trust to the Honourable Hugh Curtis, Provincial Secretary and Minister of Government Services, clarified that the Trust was not only concerned about the subdivision and sale of Crown lands, but also the residential or other private use of Crown lands (not including private use of foreshore). According to the Trust Chairman, the policy of the Trust to not lease Crown land for private purposes is "based on the knowledge that there is an inadequate amount of useable public land on the islands and any further alienation of Crown land would serve to aggravate the problem" (Letter from John Rich to the District Municipality of North Saanich, June 22, 1979).

As of July 13, 1979 the Trust had not received a reply from the Minister of Lands, Parks and Housing clarifying the Government's intentions. However, a request from the District Land Manager in Nanaimo to rezone a parcel of Crown land on Galiano for residential subdivision (eight 5-acre lots) had been received. This request was said to be "in response to the Premier's directive to make Crown Land available to the public for residential purposes." A report from the Land Management Office and Housing Office had indicated that "the area would have a higher and better use as residential property than as forest land." Thus, it appeared that Lands did intend to subdivide the Crown land.

The Trust Chairman reiterated to the Minister on July 13, the Trust's opposition to any Crown land subdivisions in the

trust area (see appendices). His letter noted that "the Islands Trust is not disagreeing with the commendable intention of making land available to the citizens of British Columbia, but rather that the Trust Area is different from the rest of the Province in many ways." This statement was supported by reference to the existence of the Islands Trust Act and existing land uses. The letter pointed out that of the 7000 vacant lots on the islands, many were for sale, and that many more lots would be created and sold as private land if subdivided under current subdivision and zoning bylaws. The letter made reference to the Trust's mandate to make recommendations to cabinet regarding acquisition, use, and disposition of land; and to the Minister's July 3, 1979 statement that "we must ... be aware that [Crown] land is owned by all British Columbians and we have the responsibility to ensure that sales to individuals are in the general public interest." On this basis, the Chairman requested that the matter of subdivision of Crown lands in the trust area be reconsidered.

It was not until September 5, 1979 that the Minister responded to either of the Trust's two letters (and not until September 18 that his response was received by the Islands Trust.) The letter cautioned that "the trusteeship should ensure that its policies do not become inflexible so that the citizens of British Columbia are denied an equal opportunity to live within the Trust area as is permissible in any other location." It was noted that an abundance of lots available on the market may not reveal such things as high price and location, which may exclude B.C. citizens from acquiring land.

(Note that as no study has been made recently of the market demand for lots in the trust area, it is difficult to support either this argument of the Minister or that of the Islands Trust concerning the existing availability of lots. It may be better to err on the conservative side of the Trust until such studies are done.)

The Minister felt that "if at all possible, the opportunity should be afforded to British Columbia residents to live in a location they may desire. ... Too strict a rationing of land tends to spiral the cost, limit equal opportunity and restrict needed growth." This points out the difficulty experienced by the trust area as a unique and special locale. Whereas this statement of the Minister may be perfectly applicable to the province in general, it may not be entirely appropriate on the trust islands. Growth, per se, in this area does not appear to be a major priority of island residents, nor trustees, nor many other B.C. residents); rather, controlled development to maintain the rural environment and preserve the amenities of the islands is a more common objective. Certainly, unrestricted growth would be disastrous to the islands, even if it were permitted under the worthy objectives of keeping land costs low and providing equal opportunity for B.C. residents to live where they most desire. This problem is more fully discussed in the following chapter on subdivision.

Finally the Minister said,

> ... I am confident that a re-examination of Crown lands in the Trust area would produce a positive approach to the disposition of some of these lands and

> assist my Ministry when applications for lands within the area are received.
>
> It would be desirable if we could resolve areas of overlap and ambiguity in order that our programs may proceed within the Islands Trust area as they do in other parts of the province.

It is implied that it is the Islands Trust which should re-examine its policy on Crown lands, not the Ministry of Lands, Parks, and Housing. It is also implied that the trust area should not be treated any differently from any other part of the province, with respect to Crown lands. The stage is set for the Islands Trust--Lands agreement to attempt to resolve these overlaps and conflicts raised in this exchange of letters.

H. Agreement between the Islands Trust and the Ministry of Lands, Parks and Housing

The agreement signed March 28, 1980 between the Islands Trust and the Ministry of Lands, Parks and Housing deals somewhat effectively with procedures but does not tackle respective policies. It is probably reasonable to assume that provided decision-making procedures run smoothly and can adapt to handle policy conflicts, it is not so important to resolve all differences in the policies themselves through such an agreement.

1. Highlights of the Agreement

The Agreement is included in the appendices. Among the important statements in the agreement are the following:

> 2. Responsibilities and Jurisdiction of the Ministry and the Trust

2.3.1
Where the responsibilities and objectives of the Ministry and the Trust result in divergent positions on any matter affecting Crown land, the matter will be referred to the signatories of this agreement in an effort to resolve the conflict.

3. Planning for Crown Land Within the Trust Area

3.1
Where a Crown land plan within the trust area is being developed by the Ministry, the Trust will be requested to comment and participate in the planning process.

3.1.1
In the preparation of Crown land plans, or the establishment of reserves of Crown land, the Ministry will take cognizance of the policies and objectives of the Trust.

3.1.2
Where the Ministry prepares a Crown land plan, the Ministry may establish reserves ... and may request that an Official Community or Official Settlement Plan in existence for the land be amended so that it becomes consistent with the Ministry plan.

3.2
Where the Trust undertakes the preparation or amendment of a community or settlement plan ..., the Trust will refer matters concerning Crown land to the Regional Director [of Lands and Housing] for comment.

3.3
Where the Trust undertakes the preparation of a regional plan ..., and where the Trust establishes an advisory committee similar to the technical planning committee ..., the Ministry will [participate].

3.4
In the preparation of a community, settlement or regional plan, the Trust will take cognizance of Crown land policies and management objectives of the Ministry.

3.5
Where the Ministry maintains a reserve on Crown land ... and where the restrictions of use or the permitted uses of the land within the reserve are inconsistent with an Official Community or Official Settlement Plan in effect, the Trust may request that the reserve be amended so that it becomes consistent with the plan.

4. Application for Crown Land Within the Trust Area

4.1
All applications for the use of Crown land ... will be referred to the Trust ... .

4.1.1
Adjudication of an application will not be undertaken until the Trust has replied to the referral or until 21 days from the date of the referral... .

4.2
In the adjudication of an application for Crown land, the Regional Director will consider the comments of the Trust.

4.2.1
Any tenures issued by the Ministry will be subject to

the by-laws of the Trust.

2. Discussion of the Agreement

The Agreement does not generate many new procedures for decision-making; it generally formalizes old procedures. The most notable exception is that conflicts on any matter affecting Crown land are to be referred to the Islands Trust Chairman, Islands Trust Manager, Deputy Minister and Assistant Deputy Minister of the Ministry of Lands, Parks and Housing for resolution. Thus, the case where Pinchin Holdings Ltd. was issued a lease contrary to wishes of the Trust should not occur so simply in the future. Rather, first the Trust should be formally contacted for an opinion on the matter, and second, if that opinion conflicts with that of the Land Management Branch, a meeting should be held between these senior officials to work through the conflict. The Agreement will likely lead to increased interaction between the two agencies in the future.

It is noted that the Agreement does not give any guidance as to how policy conflicts will be resolved by the signatories. It is also noted that whereas the Trust Manager's outline suggested that the Trust have lead role in policy on land use and resource development, and that Lands recognize the Trust's resolution of conflicts (perhaps referring to bylaw conflicts or Lands--Trust conflicts), neither of these suggestions were incorporated into the final Agreement. Another suggestion put forth by the Trust was that to avoid applicant frustration from conflicting decisions by both parties, applications should

receive approval of both parties before proceeding. It is apparent from the Agreement that except for specifically stated bylaws of the Trust, Lands did not want to be bound by Trust comments.

While section 4.2.1 says that dispositions will be subject to the bylaws of the Trust, in a sense this goes without saying because the Trust bylaws are recognized law. However, one would expect that this statement means that tenures issued will openly state that they are subject to bylaws of the Trust, so that applicants are clearly aware that the tenure agreement does not override Trust bylaws. What is not mentioned in the formal Agreement is whether the Lands and Housing Regional Operations Division will attempt to work its way around Trust bylaws, as occurred in the Bennett Bay Marina case. One would hope that the Agreement (and bad experiences such as this case) would lead to improved relations between the two agencies, such that this sort of activity would not occur in the future.

The important remaining question is the lack of policy statements in this Agreement. A statement of Lands' objectives which appeared in an early draft of the Agreement included "planning management and allocation to ensure and encourage the best use of Crown land." This statement raises the question of how "best use" is determined. The Islands Trust had pointed out that "the Trustees would not want "best" interpreted as meaning the use with the biggest financial return." The phrase was subsequently removed from the agreement, rather than clarified. Thus, it remains to be seen how the Lands and Housing Regional Operations Division calculates "best use," and whether this

basis meets the approval of the Trust.

Similarly, the policy of the Islands Trust regarding the private use of Crown land is not addressed in the Agreement. Nor is the suggestion (made in the Trust's outline) that Lands would assist the Trust in implementing Trust policy by providing or amending reserves under section 11 of the Land Act or under the Greenbelt Act.

I. Conclusion

In conclusion, the formalization of procedures of decision-making between the Islands Trust and the Land Management Branch will no doubt assist Crown land matters in the future. It is felt that the case study examined here created so much discomfort among civil servants and politicians of the two agencies that they were happy to resolve procedures in such a way that a similar experience would not reoccur.

A more recent issue involving a foreshore lease for log dumping at Welbury Bay, Saltspring Island, had a more favourable outcome. The public and the Islands Trust appeared to be unanimously opposed to the granting of the lease, and there did exist a more suitable site for log dumping elsewhere on the island. Until the final decision was made by the Lands and Housing Regional Operations Division, however, the general feeling among the public and the Trust was, "If the Division does not refuse <u>this</u> application, what does it take for them to refuse <u>any</u> application?" But the ultimate decision, which followed public meetings held by the Trust and a strong

recommendation from the Trust against the proposed use, refused the lease application.

It may be that relations are gradually improving between the Trust and the Lands and Housing Regional Operations Division, or alternatively that the lease application came at a time when the Division was particularly sensitive to the Trust as a result of the Bennett Bay Marina case and the pending Agreement. Only the future can answer this question.

Comment is now made on the success of the Trust (or rather the system) in achieving the three major intents interpreted at the end of Chapter IV, with respect to Crown land:

1. The Trust was to act as the single mechanism of coordination and control of island development. Where other government departments planned any changes on the islands, the intent was that there would be consultation with the Trust, cognizance of Trust objectives, and cooperation with the Trust's role as coordinating body.

It is apparent that the Lands and Housing Regional Operations Division does not regard the Islands Trust as the single mechanism of coordination and control of island development. At least in the past, it has been less than cooperative with Trust objectives. It has made great efforts to avoid the Trust's policies, recommendations, and even bylaws.

The new agreement between the Trust and Lands will hopefully improve relations with respect to consultation and cognizance of Trust policies, but it does not appear that it

will significantly improve cooperation with the Trust's role as coordinating body.

2. The Trust was to ensure orderly development of the islands, guarding against significant negative impacts on the natural and social environment. The case study revealed that the initial decision of the Mayne Island Trust Committee in favour of the dock was a mistake, judging by the hostile social reaction to that decision. While the natural environment was not seriously threatened by the dock, aesthetics of the beach area were, and public reaction was not elicited by the Trust at that time.

However, following that decision, the Trust decisions against the rezoning reflected a conservationist attitude toward development, preservation of development options for the future, close consideration of the pending development of a zoning bylaw, and the social environment on the island. In general, with respect to Crown lands it does appear that the Trust is attempting to achieve orderly development, and with the cooperation of the Lands and Housing Regional Operations Division will probably be successful in doing so.

3. The Trust was to afford local communities a significant measure of attention and local control, ensuring that provincial interests in scenic beauty, rural atmosphere, and recreational amenities were protected.

There exists some contradiction in this intent, if recreational amenities conflict with scenic beauty and rural atmosphere. The Trust's decisions appear to give local

community input much weight, and to ensure the protection of scenic beauty and rural atmosphere more than the development of recreational amenities.

In conclusion, it appears that with respect to Crown land, the Trust is trying to fulfill its intents, but will only be successful to the extent that the Lands and Housing Regional Operations Division cooperates with Trust objectives.

Chapter VII

SUBDIVISION

A. Introduction

1. History of Subdivision Activity on the Islands

Subdivision activity on the islands has been influenced by a number of different factors since the first settlers arrived on the islands in the late 1850's and early 1860's. The first settlements tended to be located in fertile valleys and near sheltered shores where boats could be easily landed (Howard, 1973).

Transportation played a key role in island development, as stated in Glover (1974):

> Early transportation to the islands was by private steamship companies whose boats plyed the waters of the Strait, carrying passengers and supplies. In the early days there were no island roads; the boats stopped off at various points around each island. Gradually the Provincial government took over the function of ferry service to the islands and in the 1950's car ferries were introduced on some of the runs. ... With the arrival of the automobile on the islands the settlement pattern was drastically altered and previously inaccessible areas were opened up to residential development. Residential settlement shifted from permanent to seasonal residents. The number of new homes built rose steadily, particularly in the 1960's when rising incomes and increased leisure time meant that greater numbers of people could afford second homes. For example, on Hornby Island there were only 44 subdivided small lots of less than two acres prior to 1960; in the period to 1970, 400 subdivided residential lots were created on that island (Comox - Strathcona R.D., 1971). Similar subdivision activity has occurred on most of the islands in the southern region of the Strait of Georgia. (pp. 14-15)

The ten-acre freeze imposed on the island by the provincial government in October, 1969 became another major factor in subdivision activity. It temporarily halted the creation of any lots less than ten acres in size until Official Community Plans or zoning and subdivision bylaws had been adopted by respective regional districts. However, subdivisions for which tentative approval had already been granted were, in almost all cases, permitted to proceed under "in-stream" status. Also, an administrative decision had been made by the Chief Approving Officer to permit final plans for large multi-phase subdivisions to be submitted until March 31, 1970. Several major subdivisions were created under this decision.

2. Subdivision Control Prior to and Under the Islands Trust

No official directive to generate island community plans had been issued to the regional districts by the provincial government. It was hoped that the ten-acre freeze was a sufficiently drastic measure to ensure that the regional districts would begin work immediately on the plans. Some regional districts did begin diligent work on the plans, and others for various reasons did not. In any case, the process of developing Official Community Plans and corresponding zoning and subdivision bylaws generally took several years. Table III lists for each of the thirteen designated islands the dates of adoption of the original Official Community Plans and zoning and subdivision bylaws, as well as dates of major revisions or replacements.

TABLE III

PROGRESS OF ISLAND PLANNING

Island	Official Community Plan Adoption	Subdivision Bylaw Adoption	Zoning Bylaw Adoption	Revisions in Process
Bowen	June 29/77	Dec 14/77	Aug 1/72 Dec 14/77	OCP Zoning Subdivision
Denman	June 23/78	Aug 28/72 Feb 23/76	Aug 28/72	Zoning
Gabriola	June 16/78	in process	July 27/71	Zoning
Galiano	Jan 17/74	Nov 6/78	June 28/72 Nov 6/78	
Gambier	Jan 27/77	Oct 25/79	Nov 12/76 Oct 25/79	
Hornby	Apr 25/77	Sept 30/74	July 22/74	
Lasqueti	Nov 16/78	None; June/75: 10 acre development only		
Mayne	June 21/78	June 28/72	June 28/72	Zoning Subdivision
N. Pender	Sept 22/76	Dec 20/78	June 28/72 Dec 20/78	
Saltspring	Mar 13/74 Mar 21/79	Feb 11/76 Mar 21/79	Dec 14/70 Mar 21/79	
Saturna	July 28/76	Dec 14/77	June 28/72	
S. Pender	Jan 30/74	Dec 14/77	June 28/72	Zoning
Thetis	June 8/77 July 3/80	June 8/77 July 3/80	Sept 8/76 July 3/80	

Until January 1, 1978 the seven regional districts in the trust area retained the planning function, and therefore were responsible for developing the Official Community Plans, and zoning and subdivision bylaws. While the Islands Trust had the power of approval of these plans and bylaws, the regional districts were not obligated to consult or otherwise involve the Islands Trust in the formation process. Nine of the thirteen Official Community Plans were adopted prior to January 1, 1978.

It might be reasonable to speculate that if the Islands Trust had had the planning function since 1974, the island plans may have reflected the "preserve and protect" philosophy more than they presently do. In practice, it is probably easier to set down stiff policies and regulations when starting from a clean slate (i.e. in the original community plan and regulatory bylaws), than it is to make existing plans and bylaws more restrictive. The rationale here is that in the latter case, individuals are perhaps more aware of exactly what rights are being denied them; whereas in the first case, 1) it may appear that everyone's rights are being denied to more or less the same extent, and 2) given the recognized need for some kind of control, the degree of control is not so much in question.

The Islands Trust has rescinded (and replaced) original zoning bylaws previously adopted by regional districts for five islands (Galiano, Gambier, N. Pender, Saltspring, and Thetis) and is now in the process of rescinding or amending the bylaws for four other islands (Gabriola, Mayne, S. Pender, and Saturna). With respect to subdivision bylaws, the Islands Trust

has rescinded or amended the original bylaws for four islands (Galiano, Gambier, N. Pender, and Thetis), and is anticipating preparing bylaws for Gabriola and Mayne shortly. It is generally felt by Trust planners that the new bylaws are more detailed and more restrictive than the old ones. This would suggest that the Trust is using the planning tool to better control development on the islands.

B. Indications of the Trust's Performance with Respect to Orderly Development

1. The Subdivision Problem

A variety of indicators might be used to measure the extent to which the Trust has satisfied its intent regarding orderly subdivision. One indicator is the rate of subdivision activity. A second indicator would be evidence of negative environmental or social impacts. Since the Islands Trust was foremost a "watch-dog" agency to guard against significant negative impacts, rather than a positive planning authority, this study emphasizes indicators of negative impacts rather than indicators of positive impacts.

a. Rate of creation of new lots

The ten-acre freeze severely curtailed the rate of subdivision during the early 1970's. Since then, the rate of subdivision has grown quite markedly, as shown by the Table IV.

Statistics from this table are from the District Highways Office in Victoria, and apply only to Saltspring, Galiano,

TABLE IV

RATE OF SUBDIVISION

Year	# Tentative Applications	# Lots Proposed by Tentative Appl.'s	# Final Appl.'s	# Lots Proposed by Final Appl.'s	Average # Lots per Final Application
1974	41	125	23	44	1.9
1975	60	191	27	83	3.1
1976	82	313	38	84	2.2
1977	74	230	78	246	3.2
1978	85	423	50	159	3.2
1979	95	593	49	204	4.2

NOTE: Amalgamations and boundary changes are listed as 1 new lot.

Mayne, Saturna, the Penders, and the smaller associated islands.

The "# of Final Applications" indicates the number of applications submitted for final approval. (Presumably, all of these applications had already received a tentative approval, i.e. a "preliminary layout approval" or "P.L.A.") Once a proposal reaches this stage, Highways sources say there is approximately a 99% certainty that the plan will ultimately be approved, deposited in the Land Titles Office, and subdivided. Thus, while the figures in the fourth column (number of lots proposed by final applications) do not represent the number of lots actually created during that year, they are a very good estimate of that number; the main difference between the two figures is caused by the approximate three week time lag between the submission of an application for final approval and the actual granting of final approval. For example, while the above table shows 204 lots requesting final approval in 1979, the Victoria District Highways Office shows 220 lots as actually being created in 1979; this difference reflects final applications submitted in late 1978 and approved in 1979, and clerical error.

The table illustrates an increasing trend in the rate of subdivision. The decline in 1978 was evident elsewhere in the Capital Regional District (and throughout the province) and was attributed to the shortage of money and the resultant decline in lot sales. 1979 saw a continued money shortage, but lot sales rose again due to an influx of buyers from outside British Columbia, particularly from Alberta. This explains the 1979 rise in the number of lots proposed. The fourth column, which

most closely represents the number of new lots created each year indicates high rates of subdivision for the past three years.

There appears to be some correlation between the number of lots proposed by tentative applications and the number of lots proposed by final applications in the following year. While a time lag of one year between tentative and final application is rare for small subdivisions requiring no road work, it is quite common for larger subdivisions which require contruction of roads, community water systems, etc.; and large subdivisions do comprise the bulk of the total--in 1979, 6 large subdivisions comprised 60% of the total lots proposed for the islands specified above. Thus it is fairly reasonable that such a correlation should exist. If this is so, it is expected that at least as many lots will be created in 1980 as were created in 1979, as the number of lots proposed by tentative applications in 1979 was about 170 more than proposed in the previous year. (It is noted, however,that 165 lots were proposed in one application alone for Sidney Island, and this proposal was not successful.) As of July 11, 1980, 76 tentative applications had been received by the Trust in 1980, 40 of which were for the islands in the preceding table. This is evidence that the rate of subdivision is continuing at a high rate. It is significant that the number of tentative applications submitted each year has increased steadily, except for the small decline in 1977.

Table V shows the relative abundance of small lots (under 2 acres) in the trust area. The table indicates that on almost every island, the number of lots less than 2 acres in size is well over half the total number of lots on the island.

TABLE V

SUBDIVISION LOTS (1977)

Island	Number of Lots	Area in Hectares	Average Lot Size Hectares	Number of Lots: Under 0.8 ha (2 ac)	0.8-4 ha (2-10 ac)	Over 4 ha (10 ac)	Total
Bowen	1,430	5,052	3.5	1,225	119	86	1,430
Denman	498	4,974	10.0	253	104	141	498
Gabriola	2,790	5,075	1.8	2,305	362	123	2,790
Galiano	774	5,787	7.5	467	204	103	774
Gambier	432	5,828	13.5	266	83	83	432
Hornby	937	2,977	3.2	731	73	133	937
Lasqueti	227	6,799	30.0	91	21	115	227
Mayne	1,387	2,327	1.7	1,193	80	114	1,387
N. Pender	1,859	2,728	1.5	1,636	198	122	1,956
S. Pender	97	934	9.6	"	"	"	"
Saltspring	3,294	18,555	5.6	2,040	659	595	3,294
Saturna	380	3,035	8.0	299	32	49	380
Thetis	239	1,036	4.3	137	69	33	239
Totals	14,344	65,106	4.54*	10,643	2,004	1,697	14,344

*Average

Table from: Islands Trust "Regional Plan Background Report" (Draft of February 1980), p. 50

Data from: "Land of the Trust Islands," Islands Trust, 1978.

In summary, the consistently high rate of subdivision on the islands means there is no room for complacency with respect to subdivision on the islands.

b. Evidence of density-related water shortages and sewage disposal problems

While several islands have experienced water shortages in recent years, it is not a simple matter to relate these problems strictly to density of development. Although problems tend to be concentrated in residential areas (e.g. on Saltspring, Mayne, Hornby, North Pender, and Gabriola Islands), they may be attributable to use of inadequate technologies. Thus, with installation of cisterns or other reservoirs, it appears that water shortage problems may be overcome. It must also be noted that these problems tend to be found in developments which took place prior to the formation of the Islands Trust.

Even sewage disposal problems cannot be strictly related to density, as upkeep of mechanical equipment such as septic tanks is critical to the problem. Chemical run-off from gardens and farms can also seriously affect water quality. However, it appears that residential and commercial development around St. Mary Lake and Ganges Harbour on Saltspring, and around Magic Lake on North Pender may be related to advancing eutrophication of these water bodies. Again, much of the development now seemingly related to sewage disposal problems occurred prior to the Islands Trust.

Many trustees do appear to be highly concerned about environmental impacts of subdivision development, with respect to such things as water supply and waste disposal. For example, it appears that trustees on Denman Island were successful in demanding of the Highways Branch that water be proven on every lot rather than on a sample of the lots. It appears that subdivision regulations developed by the Trust generally consider the environmental carrying capacity of the islands. The problem seems to be more that carrying capacity is highly dependent on technologies employed, and this is where trustees are less certain of how to handle the situation, as the acceptability of certain technologies is a social rather than environmental problem. The following excerpt from the Islands Trust "Regional Plan Background Report" (Draft of February 1980) illustrates the Trust's recognition of the social as well as biophysical components of this problem:

> An analysis of parcel size data for the major islands highlighted the large number of small parcels on these islands. Seventy-four per cent of the parcels studied were under .81 hectares (2 acres) in size (Barr). This figure does not include commercial, industrial, or institutional parcels. It seems unlikely that essential services such as water supply and adequate sewage disposal can be provided within the confines of many of the smaller parcels, yet the provision of piped water from external sources and sewers are seen by many as threats to the "self sufficient" rural lifestyles of the islands. Such provisions are seen as tantamount to urbanization. (p.47)

c. Evidence of social dissatisfaction

While the rate of subdivision remains quite high, the quality has notably improved, as evidenced by the general lack of public protest with respect to subdivision. Islanders

expressed their concerns when the community plans and subdivision bylaws were developed. The incorporation of these concerns into the plans and bylaws diminished negative public reaction in two ways: 1) the scope for large small-lot subdivisions was severely decreased, and 2) people know where to expect future subdivision to occur, thus removing the surprise element. In summary, there has been little evidence of public dissatisfaction with respect to subdivision on the islands--with the notable exception of a subdivision on Denman Island, examined as a case study in the next major section.

In conclusion, the Islands Trust has been quite successful in achieving orderly development of the islands with respect to subdivision. However, the Trust would probably have been more successful had it had the planning function since its inception, as it would have played a much greater role in the actual formation of the initial community plans and bylaws.

2. "Improvement" of Island Lots

A 1978 Islands Trust study showed that as of 1977 there were a total of 16,388 parcels of land in the trust area, excluding commercial, industrial, and institutional properties. They were at various stages of development; 55% were vacant, 24% had seasonal dwellings, and 21% had permanent residences. (See "Land of the Trust Islands," 1978, and "Islands Trust: Some Basic Statistical Data for the Designated Islands," 1978, for detailed data, analysis, and data limitations.) As noted in the Islands Trust "Regional Plan Background Report" (Draft of

February 1980), "The level of develcpment has important implications in the planning process for development densities, the adequacy of services, the provision of community and recreational facilities as well as for the timing of such provisions in the Trust Area" (p. 47).

Regardless of further subdivision, the development potential of existing island lots is considerable. In 1977 there were 9058 vacant parcels (55% of the total number of parcels). To these must be added all lots created since then and to be created in the future. The possibility that these lots may in the future be built upon, and that the existing seasonal residences (3932 in 1977) may be converted into permanent residences could create enormous problems in the trust area. Even with no more subdivision on the islands, the population in the trust area could increase from 9490 people (1976 census) to 40,000 people, if each currently existing lot housed an average of 2.8 people.

As previously discussed, the abundance of small lots on the islands has particularly important implications with respect to environmental and social acceptability of improvements. This discussion raises the obvious question of how planning and control of lot improvement is done. No agency, not even the Islands Trust, can directly regulate the rate of building on vacant lots nor the rate of conversion of seasonal dwellings to permanent residences. A property owner simply has to apply to the regional district for a building permit; there is no interaction with the Islands Trust at all, except through zoning and subdivision bylaws. The regional district is obligated to

issue a permit as long as the structure complies with zoning and subdivision bylaws, building codes, and health standards. Health standards may specify a minimum distance between a well and a septic tank field, thus limiting construction on small lots. Zoning bylaws can indirectly affect building rates by regulating building use, building size and number of buildings per lot.

Thus, the Trust is in a weak position with respect to control of lot improvement. One policy option available to mitigate the potential problems of a vastly increased island population is the amalgamation of smaller parcels of land. Without the power to buy land, the Trust cannot force amalgamation.

Because health standards in a particularly critical area of Saltspring Island resulted in some property-owners not being allowed to build, the Trust requested the Capital Regional District not to issue permits unless lots were amalgamated. This would relieve the inequity problem of the first people to build causing restriction of their neighbours from building. While the Medical Health Officer at the CRD initially used some discretion in favour of the Trust's request, and some people have complied with his orders to amalgamate before building, he apparently felt that if challenged in court, he would not be able to maintain this position. Therefore, he no longer demands amalgamation. (The initial cooperation of the CRD is to be noted here.)

In any event, except in the case of fairly clear health

implications, the Trust and regional districts are quite powerless to control building rates.

One section of the Islands Trust Act which might perhaps offer a tool to control the rate of lot improvement is section 6(2):

> ... no person shall construct or enlarge a building or improvement upon land situated within the trust area unless the contruction or enlargement is approved by the trust committee having jurisdiction ...

According to Ince (1977), B.C. Regulation 525/75 exempts most of the islands in the Trust area from the application of section 6(2). The Regulation also restricts the application of section 6(2) to specified types of building developments. This thesis has not probed the extent to which this section could potentially be used to limit lot improvement nor the extent to which the Islands Trust has attempted to use it.

3. Conclusion

While the Islands Trust appears to have used what powers it has to effectively control subdivision and lot improvement on the islands, these fundamental problems of the trust area remain serious. Although rampant small lot subdivision has ended, considerable scope remains for future subdivision and the rate of subdivision remains high. While the Trust cannot take all the credit for the control which currently exists in the form of community plans and zoning and subdivision bylaws, neither can it take the blame for the fact that these regulatory mechanisms might have been more restrictive had the Trust been given the planning function in 1974.

A definite gap exists in the legislation with respect to lot improvements. The right to build on one's property is unchallenged. This has enormous implications for the future of the trust area.

C. Subdivision Approval Procedure

In the preceding section it was concluded that subdivision and lot development are serious matters in the trust area, and that the Islands Trust has a large measure of control over subdivision through its community plans and zoning and subdivision bylaws, which the Trust should use to reflect projected physical and social constraints.

While the previous section acknowledged the control which the Islands Trust has through the planning function, this section looks at the subdivision approval procedure and the role of the Trust in this procedure, to further examine the actual degree of control exerted by the Islands Trust in the matter of subdivision.

1. The "Standard Procedure"

A few years ago the Ministry of Highways and Public Works (now called the Ministry of Transportation and Highways) published a booklet entitled "What Happened to My Subdivision Application?" (undated) for the purpose of correcting the "widespread lack of understanding by subdivision applicants of the extensive amount of work in the consideration of subdivision proposals." Most of this subsection is quoted from this

booklet.

Before a subdivision plan can be registered in the Land Registry Office it must first have the approval of an official known as an "approving officer." In most of the non-municipal areas of British Columbia [including the trust area] the approving officer is an official in the Highways branch of the Ministry of Highways and Public Works. [In some unorganized territory, the approving officer is an employee of the regional district.] ...

It is strongly recommended that in all cases--even apparently simple ones--a tentative application be made before the investment of much money and effort. This "tentative" will be processed by the Ministry and will receive a ruling from the approving officer. If acceptable--and most are, with conditions--it will receive "preliminary layout approval." This will provide a high level of assurance to the applicant that if he completes his works and survey within the next 180 days his final plan will receive approval. But if the subdivision is not acceptable at all, or at least not in the form proposed by the applicant, he will not have wasted money and time building roads, installing water system, surveying, etc. It should be noted, however, that a preliminary layout approval is not an ironclad guarantee that the final plan will be approved. <u>If Provincial law, local regulation, or by-law changes, the approving officer is obliged to follow the new law, regulation, or by-law.</u> His preliminary layout approval can be, in effect, invalidated by such change.

Most of the cases of invalidated preliminary approvals in the past have involved regional district by-laws passed subsequent to preliminary approval. In these cases the Ministry recommends to the regional district board that subdivisions with valid preliminary layout approvals be allowed to proceed under the old rules--provided they are completed in reasonable time. In most, but not all cases, the regional board will allow them, and the approving officer can honour his preliminary layout approval under the old rules.

...

[In the case of unorganized territory where the approving officer is an employee of the Ministry of Highways and Public Works,] ... the Ministry has to take into account many regulations, requirements, and by-laws of other ministries and agencies. The complexity of a particular application bears little relationship to the size or number of lots and even what may appear to be a

simple one-lot subdivision can involve several agencies in the process. The Ministry's interest in highways and roads is just the tip of the iceberg as only about 10 per cent of the consideration is in direct "highways" jurisdiction. The rest is in the jurisdiction of other agencies. As no one person could be sufficiently expert in all fields it is necessary to refer proposals to other agencies for their reports so that the necessary information is given to the Ministry's approving officer who officially makes the approval decision.

The approving officer is a Highways official for historical reasons. When the approval system started in the late 1800's almost the only requirement was that each parcel being created had legal access and the Ministry's predecessor was the appropriate agency to decide that question. Since that time, of course, a wide range in interests have been added, especially in the last decade. The "highways" interest is now a minor part of the total.

When the application is received from the applicant or his agent the District Highways Manager assigns it to [a subdivision inspector, who may have one of several titles. The subdivision inspector makes certain that all the necessary information has been presented with the application, including a detailed sketch and any necessary percolation tests and water table tests.]

With the material now in order the subdivision inspector reviews the detail of the proposal in the light of local knowledge of the area and the site and from one or more field inspection trips. He then decides which agencies are likely to have an interest or are able to advise the approving officer and sends appropriate copies of the material to each of these agencies with a request for a report on their requirements, regulations, and concerns. [Such a request is sent to the Islands Trust, with respect to Trust bylaws and other concerns. Other reporting agencies may include the Highways Branch, Medical Health Officer, Regional District, Water District, Fish and Wildlife Branch, British Columbia Hydro and Power Authority, and the School District. The Islands Trust "reviews the proposal in the light of Trust policy and sets down criteria and standards for subdivision and siting and clearing." Usually one or more of the Trustees visits the site and inspects it in detail.] At the same time [the subdivision inspector] also sends material to other agencies who are not involved at the preliminary stage but whose approval is eventually required before the approving officer can sign the final plan. (my emphasis)

The Islands Trust is also in this class of "non-reporting agencies"; thus, it is implied that approval of the Islands Trust is eventually required before the approving officer can sign the final plan.

> When the reports are received from the reporting agencies the subdivision inspector reviews them and prepares his report which goes to the approving officer at the Regional Highway office. The approving officer there sends his ruling back to the district subdivision inspector who advises the applicant. The ruling may include requirements of the non-reporting group of agencies. The applicant then gets the approval, consent, licence, or certificate from these agencies on his own before submitting his final plan for formal approval.
>
> When the subdivision inspector receives the final plan he checks again to see that it is in order ... . He also checks to see that necessary road and drainage works have been constructed to the required standards. He then reports and sends the plans to the approving officer for formal approval. The approving officer signs the plan signifying his approval and returns it to the subdivision inspector who distributes copies to the appropriate agencies and returns the original to the applicant who arranges for registration of the subdivision in the Land Registry office. This final stage procedure takes only a couple of weeks if the material is all in order. However, the preliminary stage takes varying amounts of time from about three weeks up, depending largely on time necessary for the agencies to investigate, review, and report. Plans and documents can also spend considerable time in transit and in the mail during the process as they go from one agency to another.
>
> ...
>
> In summary, ... only two subjects directly involve the Ministry of Highways and Public Works. One of those is roads, either new or existing, right-of-way for them, and access to lots within the subdivisions and beyond. The second is natural hazards such as avalanche, rock falls, and landslides. ...
>
> In effect the Ministry of Highways and Public Works could be considered as two of the agencies concerned in approval of subdivisions out of 15 reporting and 15 non-

reporting agencies. All have a controlling part in the process of approval or non-approval of the subdivisions.

2. Potential Problems and Peculiarities of the "Standard Procedure"

a. Role of the Islands Trust in the procedure

The Highways booklet referred to above does not detail the role of the Islands Trust in the subdivision approval procedure. The zoning and subdivision bylaws of the Trust are specified law and must presumably be abided by. On this point the booklet does imply that the approving officer would adhere to zoning and subdivision bylaws, and if those bylaws changed before the subdivision had been completed, the ultimate decision of whether to allow the subdivision to proceed under the former bylaws is left to the regional districts (or Islands Trust in this case), not to the discretion of the approving officer.

However, the community plans and general policies of the Islands Trust are not as well-specified. While the Official Community Plans are bona fide bylaws, to be afforded "due regard" by the approving officer (section 711(3) of the Municipal Act), they are usually not highly site specific regarding community goals. And while the existence of the Trust itself, and certainly of its mandate, would imply that there are real policies which the provincial government would like to see implemented through the Trust, these are not site-specific either. Thus, interpretations of these plans and policies must be made for each application. These interpretations may differ between trustees and the approving officer. (In fact, public

choice theory suggests that this difference will exist, due to differences in professional training, and mandate and objectives of the officials. This is further discussed in the next subsection.) In light of section 711(3) of the Municipal Act and of the existence of the Trust and its mandate, it would seem appropriate for the Trust to make specific recommendations for each subdivision application, reflecting overall community goals and general conservationist policies.

It appears that the Trust would agree with this logic, judging by the following excerpt of a letter from a Trust planner to a subdivision applicant:

> The role of Trust Committees in the approval of subdivisions is of an advisory nature. Recommendations from the Trust Committee on an individual application for subdivision approval are made on the request of the District Highway Manager. The role of a Trust Committee is, therefore, to be considered as a reporting agency, similar to that taken by the Local Medical Health Officer or a Water District, although it is pointed out that the evaluation of a Trust Committee may be not only from a technical perspective but also from the perspective of community goals and objectives. These goals and objectives may or may not be articulated in adopted policy documents or in regulatory bylaws.
> (Tonn to Carey, June 28, 1978, my emphasis)

However, a discussion with a Subdivision Assistant from a District Highways Office indicated that the Highways Branch feels compulsion to approve subdivision applications if they comply with the zoning and subdivision bylaws and meet technical specifications of other agencies. It was stated that in most, if not all, cases where the Islands Trust had refused an application and the Highways Branch had approved it, the Highways Branch "had to approve it since it agreed with the

bylaws." As long as a proposal meets with the bylaws (i.e. the approving officer's interpretation of the bylaws), the trustees "not liking it" is not considered sufficient grounds on which the Highways Branch can issue a refusal.

Thus, there exists a potential conflict in the interpretation of the role of the Islands Trust with respect to subdivision approval procedure. This conflict is further investigated in the case study which follows. Before looking at other conflicts and peculiarities of the subdivision approval procedure, reference is made once again to legislation on the matter. The Land Title Act (1979) specifies two points of interest here:

> Section 77(2). The approving officer shall be, in the case of land situated in a rural area;
> i) the Deputy Minister of Transportation and Highways; or
> ii) a person appointed by the Lieutenant-Governor in Council in respect of all or part of the land situated in a rural area.
>
> Section 85(3). In considering an application before him for subdivision approval ..., the approving officer may refuse to approve the subdivision plan if he considers that the deposit of the plan is against the public interest.
>
> Section 86(1). Without affecting the generality of section 85(3) ... the approving officer may ...
> b) hear from all persons who, in his opinion, are affected by the subdivision plan; and
> c) refuse to approve the subdivision plan, if he considers that
> i) the anticipated development of the subdivision would injuriously affect the established amenities of adjoining or reasonably adjacent properties;
> ...
> vi) after due consideration of all available environmental impact and planning studies, the anticipated development of the subdivision would adversely affect the natural environment to an unacceptable level; ...

Section 77(2) indicates that the approving officer does not have

to be an employee of the Highways Branch; he could be some other appointee of the Cabinet. (Conceivably, he could even be an employee of the Islands Trust.) While the present approving officer for the trust area is a planner by training, and was authorized as approving officer by Order-in-Council, he is nevertheless now associated with the Highways Branch.

Sections 85(3) and 86(1) seem to indicate that the approving officer does have some discretion regarding public interest, and while he may not be legally bound by the trustees' interpretation of a community plan or Trust policy, he does have the option of refusing the plan on the grounds of public interest. (Presumably there is no other body that represents the public interest of both the islands and the province more than the Local Trust Committees of the Islands Trust.)

Another point regarding the role of the Trust, is that the Trust's position is weakened by having to go through the several Highways employees (i.e. the subdivision inspector, the District Highway Manager, and the Senior Approving Officer). There is considerable room for changing or disregarding Trust recommendations. According to one subdivision inspector, about 10% of the Trust recommendations are altered or disregarded. If the procedure ensures that the Trust is consulted before the change is made this feature would not necessarily be a serious problem. An investigation of this potential problem is made in section C.6 of this chapter.

b. Impact of mandates on personnel

While the above section discusses the roles of the Islands Trust and the Highways Branch in the subdivision approval procedure, this section probes the possible ramifications of those roles, given the different mandates of the respective agencies.

The Highways mandate is to build and protect public roads and highways. According to Highways personnel, the Branch is to ensure protection of the public vis-a-vis highway travel and to see that the public travels the shortest possible route. As previously mentioned, the mandate to approve subdivisions is secondary to these other functions. Given this mandate, the fact that the Highways Branch has a long history of being development-oriented is not surprising.

The Islands Trust, on the other hand, is conservation oriented. Thus, given the dominant role played by the Highways Branch, and the development-orientation of the employees of the Branch, the actual ultimate decisions regarding subdivision applications might be quite different if the Islands Trust were to play a larger role.

c. Potential confusion of the applicant

Having the approving officer as an employee of the Highways Branch has no doubt led to much confusion on the part of subdivision applicants. This is evidenced in the introduction to the Highways booklet (quoted earlier), written by the Minister of Highways and Public Works, Alex Fraser. There is

understandably a tendency for applicants to feel that highways considerations are the only pertinent requirements. A danger exists that if the subdivision inspectors indicate in the field that roads and access are satisfactory, the applicant may get the impression that the Highways Branch has given approval and thus that all other aspects of the proposal are satisfactory.

3. Case Study: Denman Island Subdivision

A case study of a subdivision application is now examined to further understand the "standard" subdivision approval procedure and the procedure in practice. The case sheds some light on the points discussed in this section. It also reflects on how well the Trust fulfills its intents of acting as the single mechanism of coordination and control of island development, ensuring orderly development with a conservationist attitude, and affording significant local control while ensuring the protection of provincial interests in scenic beauty, rural atmosphere, and recreational amenities. Finally, the case study is significant in the overall theoretical framework of this thesis.

This case involves a proposal put forth by Seaview Land Estates Ltd., originally to create 63 lots on Denman Island. The proposed three-stage subdivision was actually part of a much larger subdivision, the earlier phases of which had already been completed. This proposal encompassed some Agricultural Reserve Land and a swamp, and involved drawing water from a lake for residential use. These factors each complicated the procedure to some extent.

The ten-acre freeze was in effect on Denman Island, from November 6, 1969 to August 28, 1972. The Comox-Strathcona Regional District adopted Bylaw No. 90 on August 28, 1972 which divided Denman Island into three districts or zones, each with a specified minimum lot size.

On May 4, 1973 the first presentation of subdivision plans was made to the office of the District Engineer of the Department of Highways in Courtenay. That office is responsible for approval and recommendations with respect to roads and access, as well as for recommendations for ultimate approval of subdivision plans. (Ultimate approval for applications in the trust area is given by the Senior Approving Officer in Victoria.) This original letter specifically requested approval as to road design; it did not request a preliminary layout approval or overall subdivision approval, although it did ask for comments and suggestions.

In a letter on July 23, 1974 the District Highways Engineer explained that before the Approving Officer would consider the application some additional information was required, including a contour map showing extremities and 5 foot contours around the swamp, and perc testing results of about one third of the lots. The proposal at that time did not comply with the Denman bylaw.

Prints of a revised 55-lot proposal were submitted to the District Engineer in October, this time with a request for a tentative approval (i.e. a preliminary layout approval). The perc testing had been arranged but the contour map was not

provided.

Highways forwarded copies of the plans to the Comox-Strathcona Regional District for their comments. The three subdivisions involved in the proposal complied with the Comox-Strathcona Regional District bylaw for the island. The proposal involved two zones; 49 lots were in District A with a 5 acre minimum lot size, and 7 lots were in District C with a 1 acre minimum.

On October 29, 1974 the District Engineer sent a letter to Seaview Land Estates Ltd., giving approval for the design of culverts, information about access permits, and encouragement to continue with the plans. According to Highways sources, when the Highways personnel checked the roads in the field, they reminded the applicant that a preliminary layout approval had not yet been granted. The sources also claimed that as the applicant was an experienced developer, he was aware that a tentative approval was normally issued before any major work was to be done.

According to the Minister of Tranportation, Communications, and Highways, Alex Fraser (in a letter to Karen Sanford, MLA, April 30, 1979), "at the time of the application the surveyor was beset by personal tragedy and the District Office was extremely busy, and it happened that the procedure of submitting a preliminary layout approval was inadvertently overlooked. Everything was done in good faith and the development was to conform with all agency requirements at that time."

After reviewing the proposal, the Planning Director of the

Comox-Strathcona Regional District on November 6, 1974 informed the Highways staff that while the proposal complied with the applicable subdivision bylaw, the regional district had a few concerns. One was that the possibility of septic effluent could be a problem; the regional district suggested testing the absorptive capacity of each lot adjacent to the swamp individually, and imposing restrictive convenants on the most appropriate drainage fields on each lot. The second concern was that, according to the subdivision bylaw the developer had to provide water to all the lots. Engineering plans of the water distribution system were to be submitted to the regional district for approval. (While the Highways Branch is normally responsible for seeing that there exists an adequate water supply, regional districts may also be concerned about water if water requirements are specified in the subdivision bylaw. The regional district letter appears to be the first mention of this concern, although Highways personnel may have verbally mentioned the requirement to the applicant.)

It appears that the concerns expressed by the regional district were similar to those which might be expected from the Islands Trust today; this again raises the question of the necessity of the Trust having the planning function.

On February 10, 1975 the applicant initiated a request to the Comptroller of Water Rights for "directions for and approval of water services for the subdivision."

In May, 1975 the Highways Department sent a letter to the Islands Trust enclosing a copy of the sketch of the proposed

subdivision, and requesting comments regarding Islands Trust regulations and policies.

The immediate trustee reaction was as follows: "Four lots have large areas that flood; need information on water supply; access to south needed; contours needed; percolation tests needed; agree with park (road) area around lake." The expression of these concerns is consistent with the mandate of the Trust.

It appears that the applicant had previously established the Graham Lake Utility Association to serve an earlier subdivision in the area, and was president of that utility. Thus, it would appear that the applicant would have intended to apply for a service extension from this utility. In June, 1975 the Comptroller of Water Rights informed the applicant that basic to any possible approval of the proposal was the ability of the water source, Graham Lake, to provide the added service. A copy of this letter was sent to the Highways Branch, so at this point the Branch was aware of discussions regarding water but, according to a September 25, 1978 letter from the applicant's lawyer to the Minister, "made no comment or took no action".

The development company proceeded through 1974-75 to construct most of the roads of the proposed subdivision, receiving several field inspections by the Highways staff. By June 18, 1975 most roads were constructed and percolation tests were completed. The perc tests were satisfactory to the Medical Health Officer except on the lots around the swamp. On June 18,

1975 the development company requested approval for the proposal as two separate subdivisions.

The Highways Branch tacitly acknowledged the modified plan and confirmation of road construction and perc testing in a letter two days later which requested a re-alignment of roads to connect with roads in an adjacent subdivision.

On the same day, the Highways Branch sent a letter to the Islands Trust with a sketch of the proposal and a sketch of the connecting roads adjacent to the subdivision. The letter informed the Islands Trust that Highways was requesting extension of the (existing) roads.

The Denman Island trustees informed the Water Rights Branch that they were opposed to the issuance of a water licence to the Graham Lake Water Supply Utility. They expressed concern about the environmental and ecological consequences of lowering the water level of the lake, with particular concern regarding nesting and migratory birds, and fish. "We recognize that an increase in population is inevitable but we must ensure that the natural resources will sustain that increase." They referred to a planning study carried out by the Comox-Strathcona Regional District, which designated Graham Lake as one of a few potential recreation areas on Denman Island; the trustees stated that they did not want to see this area destroyed.

The concerns expressed by the Denman Island trustees were not new or singular to the Islands Trust; they appear to have been shared by many other Denman residents. The Denman Advisory Planning Commission in 1971 had expressed similar concerns

before mention of this subdivision. In June, 1975 the APC again indicated to the Comptroller of Water Rights that the people of Denman Island wished that no additional water leases be granted on the lake. Also, a petition to this effect was signed by a majority of the islanders.

On August 16, 1975 the Denman Island trustees met with the applicant. According to an August 25, 1975 letter from the trustees to the Islands Trust Chairwoman, the trustees had not committed themselves to anything at the meeting. The applicant had verbally agreed to post a performance bond, and to have a proper survey of Graham Lake done by the Water Rights Branch within 6 months. According to the trustees, the principle concern of the applicant was permission to proceed with blacktopping of the roads. It was recognized that this was a responsibility of Highways, not of the Islands Trust. When asked whether any permits had been issued to him, the applicant replied in the negative; the Highways Branch had only approved the roads as meeting the standards of the Branch.

As a result of the trustees' objections, the Deputy Comptroller of Water Rights requested further investigation. Two field inspections were made (August 26 and September 2, 1975) of the water height in Graham Lake, and an old unauthorized dam was found. (It was later noted by the Islands Trust that August, 1975 was unusually wet.) The applicant was to be asked to submit dam improvements and plans, and to apply for a storage licence.

There followed a fairly lengthy time lag at this point. On

October 7, 1975 the Islands Trust manager indicated concern to the Highways Branch that the proposal had been arriving at the Islands Trust in different forms over the preceding months. The letter said, "I understood the developer was putting in his roads in the hope that he would get preliminary approval." The letter requested the current status of the subdivision.

In December, 1975 the Dam Inspection Engineer responded to a request by the Comptroller of Water Rights for a study to determine the optimum storage level of Graham Lake. After reviewing the file and contacting the consulting engineer, trustees, and government departments, he reported as follows:

> Due to the scarcity of available information it is impossible to determine the optimum storage level but it is feasible to determine that the existing licence and the applied for amount combined will not cause a drawdown of the lake outside the existing unauthorized storage on the lake [i.e. the storage caused by the old dam].

However, as mentioned later, this information may not have been entirely correct.

The subdivision regulations for Denman Island changed on February 23, 1976. The Comox-Strathcona Regional District adopted Subdivision Bylaw No. 188 which changed the permissible lot density in District A from a five acre minimum to a ten acre minimum. Lot density in District C was left unchanged at a one acre minimum.

In mid-1976 the Islands Trust manager informed the Highways Branch that the Denman Island Trust Committee wanted to know what the water supply for the proposal would be, and what roads would be available for access to a possible subdivision on the

south side. Apparently in May of 1975 the local trustees had found large areas of four proposed lots under water. The Manager requested winter perc tests for these lots. The letter noted that the Denman Island Trust Committee did not approve of surface water withdrawal from Graham Lake. It concluded by saying that the Trust Committee would review the proposal again upon receipt of answers to their questions, but that at that time the Committee did not approve any of the proposals.

On May 11, 1976 the Deputy Comptroller of Water Rights informed the Denman Island trustees that, based on the trustees' recommendations, a further study had been carried out to determine whether Graham Lake was capable of sustaining a further water licence of 10,000 gallons per day. The study showed that sufficient water was available to issue a licence for this quantity.

On May 19, 1976 the Highways Branch wrote to the Islands Trust indicating that the developer had been issued a permit to divert more water from the lake. The letter also said that Highways would ask for the construction of a road to provide through service to the south. It was noted that the swamp could be returned to the Crown or placed under a bare land covenant which would allow the owner to farm it.

The Graham Lake Utility Association resolved in June, 1976 to grant permission to Seaview Land Estates Ltd. to proceed with its extension into 20 lots. (Recall that the developer was the president of that association.)

An observation was noted by Water Resources Service

personnel that there had been no outflow from the lake from May through October. This resulted in the calculation that the required water storage was 26 acre/feet. The (new) Islands Trust manager calculated that under an assumption with respect to the surface area of the lake, a 26 acre/foot drawoff would result in a water level drop of about 8 inches.

On August 18, 1976 a letter from Highways to the Islands Trust requested comments.

The Denman Island Ratepayers Association wrote to the Comptroller of Water Rights on September 15, 1976 expressing concern that a permit for the withdrawal of water from Graham Lake had been issued in spite of their earlier protests. The letter noted that while, to their knowledge, permission had been given in 1975 to enforce the old existing dam (but <u>not</u> to raise the level of the dam), the developer had proceeded to raise the lake level by two feet. The association felt that the new overflow pipe was so high that trout fry would not return to the lake from the lower stream. They also noted that the spillover was now creating new streams. A request was made that the lake be restored to its original level and that no new artificial levels be created.

The Denman Island trustees wrote a similar letter to the Water Rights Branch on September 20, 1976. The letter outlined many of the environmental consequences of the increased dam height. It asked when permission had been granted to raise the water level of the lake, and why the Islands Trust had not been informed of this event.

On September 28, 1976 the Islands Trust manager met with the developer and the developer's agent to discuss the proposal, particularly with respect to water supply. The applicant indicated that 20 lots would be linked to the community water supply from Graham Lake.

On October 14, 1976 it was noted that the Denman Island trustees had never received a plan for the proposal. They only had a poor sketch of a part of the proposal. (They had had a brief look at a plan in the possession of the developer when they met with him in August of 1975.)

On November 12, 1976 the Denman Island Ratepayers Association reinforced their stand of September 15 with another letter to the Comptroller of Water Rights. They again noted the violation of the agreement between Water Rights Branch and the developer in raising the water height, the resulting damage, and their requests to return the lake to its former level, and to never again interfere with the natural level of this or any other lake on Denman Island.

The manager of the Islands Trust prepared a report for the Denman Island Trust Committee on November 17, 1976. The memo first outlined the three parts of the proposed subdivision. The first part, which involved only the rearrangement of two lots, created no problems. The second part, which involved the division of one lot (4.3 acres) into five lots having an average size of 0.86 acres, was in Subdivision Control District C. As this zone allowed an average of one lot per acre, only four lots were permitted by the bylaw. The third part involved the

creation of 48 lots ranging from 1 to 9.9 acres in District A. The average lot size of the 48 lots was 4.2 acres, while the bylaw permitted an average of one lot per ten acres, or the creation of only 20 lots. Thus, a total reduction of 29 lots was required by the current bylaw.

The report noted that while the current bylaw had not become operational until February 23, 1976 it had been worked on early in 1975, and had received second reading on July 28, 1975.

The memo concluded as follows:

> The application is unusual in that roads have been constructed prior to receipt of preliminary approval. Processing the subdivision has been prolonged as various problems such as environmental protection and water supply have been considered.
>
> As there is a fundamental non-compliance with the by-law the present plan should be refused and an amended layout prepared.
>
> While this is being prepared the problems concerning environmental protection at the lake and stream should be investigated by the appropriate Federal or Provincial Ministry.

On November 22, 1976 the Dam Inspection Engineer of the Water Rights Branch indicated to the Denman trustees, seemingly in response to their September 20 letter, that permission had not been granted to raise the dam and increase storage. Rather the existing dam had needed improvements and installation of overflow facilities. The Engineer noted that the Islands Trust had not been informed of this permission.

The Denman Island Trust Committee passed a resolution on

December 1, 1976 not approving the subdivision, for the primary reason that the proposal did not comply with existing subdivision bylaws. When this was reported to the Highways Branch, investigations into the water level problems due to dam reconstruction were requested.

On December 14, 1976 the reply from the Dam Inspection Engineer was that the work had been inspected and had been found to be satisfactory.

On March 3, 1977 the Highways Branch reported to the applicant that a plan would have to be submitted that complied with the bylaw. The subdivision application would then be resubmitted to the agencies for their comments. This position was reaffirmed to the applicant's agent by the Senior Approving Officer in a letter on October 12, 1977. The letter said that "with the regional district's refusal to treat this as an in stream subdivision, I cannot entertain approval as much as I would like to." (Recall that "in stream" is a status sometimes granted to applications which received a preliminary layout approval prior to a bylaw change. This status enables an application to proceed under former regulations.)

On September 25, 1978 legal council for Seaview Land Estates Ltd. issued a letter to the Honourable Alex Fraser, Minister of Highways and Public Works (this letter is on file in the Islands Trust office). The letter argued that it was a series of "bureaucratic tanglefoot" which had resulted in the final predicament. The letter suggested that due to the time lags and lack of communication throughout the approval process,

the current views of the Regional Board and the Islands Trust should not be considered as determinative of approval. "The only issues for determination are whether the applicant rightly believed that he had received preliminary layout approval and did receive or ought to have received it."

The Senior Approving Officer wrote to the Chairman of the Islands Trust on October 4, 1978 stating that if refusal for approval is given again the matter would likely be taken to court. He felt that precedent would show that he had acted in "bad faith" and he would be ordered to approve. He stated that the application had been in stream for a number of years and was approvable, and that he would like to approve it.

The manager of the Islands Trust reviewed the September 25, 1978 letter for the Trust Chairman on October 26, 1978, and recommended once again that the application should not be approved (see appendices). Reasons for disapproval were given as follows:

> (1) It is partially in the Agricultural Land Reserve ... .
> (2) The Regional District and the Denman Trust Committee have recommended against approval .... .
> (3) There is no certificate from the Comptroller of Water Rights to amend the existing certificate of the Graham Lake Water Supply Utility to enable them to extend their service to approximately 20 additional small lots proposed in the subdivision. It is understood that there are difficulties in this regard.
> (4) The proposal would be contrary to the Denman Island Subdivision By-law #90.
> (5) The proposal would be contrary to the Official Community Plan for Denman Island--By-law #4.
> (6) There is no evidence to indicate the environmental concerns, particularly the question of water levels referred to in the Trust's letter of December 2, 1976 have been evaluated.
> (7) There is no Preliminary Layout Approval ... for this subdivision.

These concerns are consistent with the Trust's mandate to preserve and protect the islands. However, regarding the Trust's intent to act as a control mechanism, the Manager's report noted the following:

> It should be recognized that the Approving Officer has the right to ignore all these factors except the Agricultural Land Reserve and possibly the need for a water certificate.

The response of the Chairman of the Islands Trust was made to the Senior Approving Officer on October 31, 1978. While the issue had not been referred back to the Denman Island Trust Committee, the Chairman felt that their December 2, 1976 recommendation of refusal had been reinforced by the approval of the Official Community Plan in June of 1978.

> We look upon the Approving Officer as the servant of the Denman Island Trust Committee in relation to the implementation of the Trust's By-laws and the servant of the Ministry of Highways and Public Works in relation to the standards for roads and access. It is hoped, therefore, that you will uphold the by-laws and not change your decision of refusal. Should this result in litigation we will be pleased to make all our resources available to assist in the defense of a decision which, in our opinion, is obviously in the public interest.

The Trust was notified on December 5, 1978 by Municipal Affairs Minister Vander Zalm that the Highways Minister Alex Fraser considers that "for all intents and purposes [the applicant] had received a preliminary layout approval from the District Engineer prior to the February 23, 1976 amendment to the Denman Island Subdivision Bylaw." It was thus Mr. Vander Zalm's opinion that the subdivision should be approved.

The Senior Approving Officer wrote to the developer's

lawyer on January 18, 1979 informing him that the application should be resubmitted to the District Highways Office. While he felt that he was "very much in the middle of an administrative dilemma," legal opinion was that he did, indeed, have the authority to approve the subdivision. Furthermore, he wrote, "I cannot find any reason for refusing the application in the public interest."

This statement can be explained in at least two ways. One is that the approving officer was interpreting the public interest only with respect to safety from natural hazards, which according to sections 85(3) and 86(1) of the Land Title Act (1979) is probably too narrow of an interpretation. A second explanation is that pressure may have been exerted on him from the political level to make the decision in favour of the developer.

In any case, the response of the approving officer stirred up much dissatisfaction among Denman Island residents and the Islands Trust. One of the Denman Island trustees wrote to the General Trust (February 19, 1979), explaining that while it was true that the Senior Approving Officer did have the authority to approve the subdivision, the fact that he was employed by the Highways Branch was merely a historical anomaly. Reference was made to the subdivision booklet (previously quoted) which acknowledged that the highways interest (in roads and safety) was only a small part of the total interest. Regarding the approving officer's statement about the public interest, the trustee wrote that the subdivision would result in twice the permitted lot density, the provision for water was not settled

and it relied heavily on Graham Lake, and the people of Denman had voiced at least four times that they wished no additional water leases to be granted on the lake. Concern was expressed that there were other developers who had been forced to comply with the new density regulations. Some of the developers had indicated that if this subdivision was approved, they would resubmit their previous plans, resulting in a situation where the island subdivision bylaws were totally unenforceable. The suggestion was made that approving authority must either recognize planning needs or be transferred to an independent government body so that every aspect of land development would be considered.

In the meantime, the District Highways Office was processing the latest application for the subdivision. As part of the subdivision was now in the Agricultural Land Reserve, the British Columbia Agricultural Land Commission was assessing the applicant's request to have the lots removed from the ALR.

On February 21, 1979 the Senior Approving Officer met with Denman Island Trust Committee to explain why subdivision should be approved. The Trust Committee remained unconvinced. The Committee reiterated by resolution that the bylaws should be upheld and the application should not be approved. It was also resolved that the Agricultural Land Commission be notified that the ALR land involved in the subdivision was, for drainage and agricultural purposes, part of a larger area of agricultural potential; and that the Committee had recommended against the subdivision application, but that in the event that the approval would be considered, it should be redesigned so that the ALR

land was contained in one parcel. It was pointed out that the inclusion of ALR land in one parcel was desirable because the area had drainage problems, flooded regularly, and could not be divorced from the remainder of the reserve to the south.

The Chairman of the Islands Trust expressed the Trust's concern to Municipal Affairs Minister Vander Zalm in a letter on February 28, 1979. He wrote that the "flagrant contraventions of Bylaws ... have neither been endorsed by the Committees concerned nor been satisfactorily explained by the Approving Officer." He explained the danger that planning in the trust area would be undermined and would come into disrepute with the public. "The Trust's excellent relations and cooperation with the Government would be prejudiced if it is forced in public to defend its Bylaws against erosion by a Government appointed Approving Officer." The Chairman requested the Municipal Affairs Minister to speak to the Minister of Highways to request that the Approving Officer reassess the situation. Failing this, Mr. Vander Zalm was requested to make application under Section 100 of the Land Registry Act (now 90(1) of the Land Title Act) to the Lieutenant-Governor in Council asking that the Registrar be instructed not to receive the subdivision plans for registration.

Several Denman Island residents sent letters protesting the approval to the Highways Minister and to the Municipal Affairs Minister.

On March 15, 1979 the British Columbia Agricultural Land Commission informed the agent for Seaview Land Estates Ltd. that

the Commission had allowed the request to subdivide the land into not more than 48 parcels, but had "suggested" that the plan be revised to include the land in the ALR within one legal parcel, i.e. incorporating the Trust's recommendation.

A letter from Transportation and Highways Minister Alex Fraser to Karen Sanford (MLA--Comox), on April 24, 1979 stated that the preliminary layout approval is not a legal document, but rather an administrative procedure created by the Highways Ministry to deal with the growing number of reporting agencies. In this case everything had been done "in good faith." It was explained that "public interest" is used and interpreted by the Highways Department simply with respect to natural hazards, such as soil slippage or avalanche tracks. The Minister stated that if taken to court, the Ministry "would have a very good chance of losing." Finally, it was noted that the only case where the Lieutenant-Governor in Council ordered the Registrar not to allow the deposit of a plan was in a case where the septic tanks were found not to work properly, and would have created a health hazard.

On May 2, 1979 the Denman Island trustees issued a press release, explaining the history of the proposal. This was done "as a last resort, because all other attempts to clarify the decision have ended in frustration."

On June 10, 1979 the "Denman Island Bylaw Support Group" (which included the two Denman trustees) expressed concern about the variance of the proposal with the bylaws, and disagreed that the proposal should be granted in stream status.

On June 12, 1979 the District Highways Manager issued a preliminary layout approval for the subdivision subject to many conditions. Nine of the 53 lots had not been approved by the Medical Health Officer. A letter from Community Water Services was required to the effect that 1) they were satisfied that Graham Lake as a water source would not become contaminated by sewage effluent of lots around the lake, and 2) the water system planned for 19 lots had been installed to their satisfaction. Potable water had to be proved on every lot not served by the community water system. The ALR portion had to be retained in one holding and attached to an approved lot.

The Denman Island Bylaw Support Group sent a brief to the Minister of Transportation and Highways on July 8, 1979 (see appendices) in response to the September 25, 1978 letter from the solicitor for Seaview Land Estates Ltd. The brief presented convincing evidence refuting the four basic premises of the September 25, 1978 letter which were, in the Group's words:

> 1) The developer made the assumption that he was working towards final approval and that preliminary layout approval had tacitly though not expressly been granted.
> 2) The failure to issue a P.L.A. or written approval was the result of inefficiency in the agencies involved, particularly within the Ministry of Highways and Public Works, and more particularly the Highways District Office in Courtenay.
> 3) The development conformed to by-laws and all other agencies' requirements when submitted and during the initial stages of the application.
> 4) The development has 'in stream' status and therefore is not subject to current by-laws and regulations.
> (Denman Island Bylaw Support Group to Hon. Alex Fraser, July 8, 1979)

On July 11, 1979 a meeting was held by six delegates of the Denman Island Bylaw Support Group, the Minister of

Transportation and Highways, his executive assistant, and the Deputy Minister. One of the points clarified at the meeting was that the retroactive preliminary layout approval of June 12, 1979 was issued on the basis of a single legal opinion, and a second legal opinion regarding the proposal and whether it should be accorded in stream status would be ready within 40 - 50 days.

Later in July, Denman Island residents rallied at the Legislative Buildings for "a solemn ceremony marking the overthrow of [their] bylaws to accommodate land developers" (Victoria Times, July 27, 1979).

The Senior Approving Officer on October 24, 1979 wrote a letter refusing approval for the subdivision application. Reason was given that he had received legal opinion indicating that he did <u>not</u> have discretion to approve a subdivision contrary to subdivision bylaws. In a telephone conversation in November, 1979 the Approving Officer apparently indicated that if he were not bound by the bylaws he <u>would</u> approve the subdivision provided the conditions of the preliminary layout approval had been met.

Seaview Land Estates Ltd. did take the Senior Approving Officer to court, and the case was heard February 8, 1980. It was a landmark case, having great importance with respect to discretion of the approving officer regarding subdivision bylaws throughout the Province of British Columbia.

The case argued by the appellant was that the Approving Officer has sufficiently broad discretion to approve subdivision

applications which are contrary to subdivision bylaws. Further, the appellant was seeking an order directing the Approving Officer to do so in the case of the Seaview Land Estates Ltd. subdivision.

The section of the Land Titles Act (1979, unrevised) relevant to this question read as follows:

> 87. In considering an application before him for subdivision approval in respect of land within a municipality or a regional district, the approving officer may [my emphasis] refuse to approve the subdivision plan if he considers that the subdivision does not conform to
> a) all applicable provisions of the Municipal Act,
> b) the respective municipal or regional district by-laws regulating the subdivision of land and zoning, and
> c) the official settlement plan, if any, adopted pursuant to the Municipal Act.

Council for the appellant argued that "may" indicated that discretion may be used, and pointed to several cases in the past where Approving Officers had exercised some discretion with respect to minimum lot sizes.

However, it was the judge's opinion that in these cases the variations from the strict requirements of the subdivision bylaws were minor, while the case in question was a "direct breach of a vital provision of the bylaw." The judge agreed with the counsel for the respondent that

> ... if it was the intention of the legislature that an appointed official such as the respondent should have power to waive or ignore significant provisions of a bylaw, then such authority should be expressed in clear words. There is of course no such clear authority in either [the Land Registry Act and the Land Titles Act].

The judge concluded that in this case there was nothing for the Approving Officer to consider, with respect to conformity with the bylaw; "the respondent in the circumstances had no choice

but to reject the subdivision."

According to one Highways official, this decision changed the entire subdivision approval policy; whereas Highways had previously felt comfortable approving subdivisions outside of bylaws, the court decision removed their discretion to do so.

While this decision is now being appealed, it significantly strengthens the force of the Islands Trust bylaws, as well as the bylaws of all other municipalities and regional districts.

4. Discussion of Denman Island Subdivision Case

This lengthy case study demonstrates many points concerning the Trust's role in subdivision approval procedures, the role of the Highways Branch, the relationship between the two agencies, the role of politicians in decision-making processes, the bases for decision-making of the two agencies, the scope of the Trust to act above the bylaws, the slowness of procedure, and the potential confusion of the applicant.

It appears that initially the role of the Trust was regarded as special by the Highways Branch. The application was referred to the Trust for comment and while there were long time lags, the Trust's concerns were slowly examined. The Trust's concerns encompassed the concerns of the regional district, both prior to and after the transfer of the planning function. It appears that in this case the Trust's holding of the planning function did not diminish its concerns for other matters, and neither did it initially diminish the regard by the Highways Branch for the Trust in these matters. The Trust seemed to take

a stronger position than the regional district on matters of common concern. Perhaps this was because the Trust had more energies to focus on the island than did the regional district.

The role of the Highways Branch appears to be to coordinate responses from various agencies, to communicate these to the developer, and to make decisions regarding the adequacy of various specifications and to make ultimate approval. The initial coordination of the Highways Branch with the Islands Trust was poor, but this may have been due to the newness of the Trust. The communication of the Highways Branch with the developer seemed to be sporadic and to lack thoroughness. Regarding adequacy of standards, it appears that it took the Highways Branch considerable time before it took some Trust concerns seriously (and some were not taken seriously at all). The Trust's concerns about proof of potable water on each lot and retention of ALR land in one holding were reflected in the preliminary layout approval of June 12, 1979. Concern for the drawdown of Graham Lake appeared to be left between the Trust and the Water Rights Branch. It is not clear whether Highways secured assurance that there would be no drawdown, as requested by the Trust. Neither is it clear what was done about the four lots under water in winter months or the inadequate perc tests near the swamp. Thus, it appears that the Highways Branch could have improved on its cocrdinating role.

Relations between the two agencies seemed to be satisfactory until the developer involved his lawyer in the problem (September, 1978). Until that time, Highways appeared to respect the wishes of the Trust, even as far as upholding the

bylaw was concerned. However, following that event the approving officer suddenly appeared to feel compelled to approve the subdivision. He indicated a feeling of certainty of losing if taken to court. (Whether in fact he actually felt that certainty, or was just saying that to cover some other reason for approving the application, is open to speculation.) At that time the relations between the two agencies seemed to seriously deteriorate. While the Highways Branch did incorporate some of the Trust's concerns into the preliminary layout approval which was granted, it appears that an uncomfortable tension had developed between the two agencies.

The role played by politicians in this case is not exactly clear. Trustees of the Islands Trust openly carried out their duties, consulting the developer, various government agencies, and Ministers, and involving the general public (e.g. through the Denman Island Bylaw Support Group). However, politicians at the provincial level did not act so openly, if they acted at all. One might speculate that the Minister of Transportation, Communication, and Highways ordered the approving officer to approve the subdivision, as it was very soon after the applicant's letter to the Minister that the approving officer indicated to the Trust that he wanted to give approval. It is noted that the Islands Trust's own Minister did not support the Trust in upholding its bylaws. This indicates a serious lack of support of the Trust by the provincial government.

The bases for decision-making of the two agencies reflect their mandates. The Highways Branch spent considerable time early in the process assisting the developer with roads

specifications, and little time with planning considerations. The ultimate decision was obviously not on the basis of bylaws or other planning considerations; it seemed to be on the basis of sympathy for the developer. The Islands Trust's considerations strongly reflected concern for the environment, concern for planning, and concern for wishes of the local public (as reflected through the Advisory Planning Commission, Ratepayers Association, local petitions and the local bylaws).

This case would seem to indicate that the Highways Branch would be very reluctant to refuse an application on grounds recommended by the Trust but not clearly stated in bylaws. (If Highways employees felt so uneasy about trying to uphold bylaws in court, they would probably feel much more so about upholding a Trust recommendation that surpassed the bylaws.) The approving officer apparently considers his discretion with respect to "the public interest" as awarded in section 85(3) of the Land Title Act (1979) to be very narrow, if he cannot even use discretion to refuse in the public interest, an application which is contrary to bylaws. Thus, the approving officer must define the public interest quite differently than the Trust.

Slowness of procedure was evident throughout. This may reflect poorly on the Trust's effectiveness in coordination. However, with respect to specific subdivision applications, it is the Highways Branch which is supposed to coordinate demands of other agencies. The Trust's coordinating role is meant to be in a broader context. Nevertheless, as this was a special case, the Trust could perhaps have drawn more attention to the faulty and slow procedure. It is noted that in 1978 both the Highways

Branch and the Trust made an examination of subdivision procedures in an effort to speed up applications.

Although the applicant in this particular case may or may not have been confused about the procedure and the involvement of the Highways Branch (in this case he was an experienced developer), the study does point out the potential confusion of applicants, particularly if they are not familiar with the subdivision approval procedure. Since Highways personnel interact with applicants in the field concerning roads, applicants may be mistaken that a subdivision is tacitly approved.

Probably the most salient point demonstrated by this case study is that the implications of the Trust not having subdivision approval authority, or at least veto power over this authority, can be serious. As mentioned in chapter III, section 6(3) (unproclaimed) of the Islands Trust Act would give the Trust effective veto power over such approval. Apparently this veto power could be applied even if a development did comply with local bylaws. The Trust requested of the Minister in 1977 that it be proclaimed, but the Minister responded that for the present time the Trust's request would not be granted. The Trust reiterated the request in November of 1979, but does not appear to have heard any positive results since that time.

It must be pointed out that section 6(3) could be implemented in several ways. For example, the Trust could hold a simple veto power over the approving officer, or the Trust could overtake all the functions of the approving officer. This

latter course would require considerable increases to the Islands Trust staff, which could possibly dilute the effectiveness of the Trust. On the other hand, the addition of subdivision inspectors to the Islands Trust staff could possibly improve the quality of subdivisions, if the conservation philosophy of the Trust influenced these employees as the development philosophy of the Highways Branch seems to now.

It must also be noted that as the subdivision technicians are the public servants who meet and have to bargain with the land developers face-to-face, they are in quite a difficult and critical position. And whereas it may be desirable for them to adopt an ethic more consonant with that of the Trust, it may strengthen the Trust to keep this position separate from the Trust office; the Trust does not have to accept rebuttals if another agency has the (difficult) job of trying to implement its objectives. This is related to the concept put forth in the theory chapter that regulatory agencies tend to take on the interests of the clientele with which they frequently interact.

In conclusion, subdivision approval is an essential element which the Trust lacks in the control of development. It appears that a simple veto power over the approving authority would be most appropriate at this time.

5. Theoretical Significance of the Denman Island Subdivision Case

An attempt is made here to relate the findings of this case study to the theory suggested in chapter V. Once again the

postulates and corollaries are discussed in the order presented in the chapter summary, to the extent that they relate to this case.

If there was any connection between the developer's letter to the Minister of Highways and Public Works and the newfound compulsion of the approving officer to approve the subdivision, the initial involvement of the Minister of Highways and Public Works seemed to favour the developer. In this case, the Minister could be said to be acting in the interests of land developers of the province, and perhaps people wishing to buy property on the islands.

After the retroactive preliminary layout approval was issued, and the Trust and islanders raised such a big commotion about the ordeal, and the Denman Island Bylaw Support Group met with the Minister, a second legal opinion was issued which supported the Trust bylaws. If there was any connection between the meeting of the Minister with these Denman residents and this second legal opinion, the Minister may have changed course and decided to favour the interests of the Denman residents. This could conceivably have occurred if the Denman residents had successfully legitimized their interests to a sufficient proportion of the provincial population, which they might have done through their publicity on CBC Radio and their "funeral" for their bylaws at the Legislative Buildings. Also, the actions of the Trust would have served to legitimize interests of local residents; trustees acted in the interests of the local population in this case.

If either of the two connections suggested in the above two paragraphs existed, then the Minister of Highways and Public Works must have expended considerable energies getting the legal opinions to "come out right" and the approving officer to cooperate.

Parallel to the Bennett Bay marina case, this case showed that individuals with vested interests can rationally afford to invest more effort and resources into the decision-process than those without vested interests. In this case, the developer proceeded to build roads, apparently realizing that without a preliminary layout approval the investment would be insecure, but gambling that by making such an investment he would be assured of completing the subdivision as originally planned. Similarly, he was able to hire lawyers and agents to act on his behalf.

Also parallel to the Bennett Bay marina case was the inception of the Denman Island Bylaw Support Group, which formed to oppose the development. This could be explained by the significant difference in density which would have resulted from the subdivision, the imperfect environmental information available regarding Graham Lake, and the low cost of contributing to the group. Trustees of course had a vested interest in joining the group, as the group was basically trying to uphold their powers.

It could be argued that until the developer was proven to have unsuccessfully legitimized his interests, his very large property enabled him to exert more influence on the decision-

making process.

The statement by the approving officer that he could find no reason in the public interest not to approve the subdivision could serve as evidence that he was trying to protect his own welfare (or simply hold onto his job!) rather than to serve the public.

The Highways Branch employees and Minister did in general encourage road construction and subdivision development, as was consistent with their mandate and objectives. Similarly, the Islands Trust strived to preserve and protect the island, as was consistent with its mandate. The approving officer's interpretation of the public interest may reflect an adaptation of the process to the wishes of the clientele with which the Highways Branch most frequently interacts.

Finally, it is noted that the developer interacted very little with the Islands Trust--even though it was the Trust bylaws which were his stumbling block. Rather he interacted with the provincial agency and Minister. This may be related to the fact that he does not live in the trust area and does have property rights elsewhere in the province.

6. Fate of Islands Trust Recommendations

One of the potential weaknesses of the subdivision approval procedure is that the Highways Branch is not obligated to formally consult the Islands Trust before Trust recommendations are altered or dismissed. It appears to be left to the discretion of subdivision inspectors, technicians, or approving

officers whether to follow Trust recommendations and to what extent. It is the responsibility of the subdivision inspectors and technicians to make field inspections and to offer recommendations, and usually their reommendations are followed. (It is noted that trustees usually make field inspections as well.)

Highways sources say that the Trust staff is always consulted before Trust recommendations are altered or omitted. They also estimate that this is done with respect to about 10% of Trust recommendations.

To test the relationship between Trust recommendations and Highways responses, an examination was made of all the subdivision applications in the trust area in 1979. Of the 157 applications examined, 83 were approved unconditionally by the Trust. The remaining 74 were either approved subject to specified conditions or refused. Of these 74, 28 applications in the Trust office lacked any notification from Highways as of February 20, 1980 as to the approval or refusal of the application and the conditions to be met. (Some of these, particularly those from the later part of 1979 would have understandably still been in process, although the Highways Branch estimates that the preliminary approval stage takes from three weeks up, and the final stage takes about two weeks.) Aside from the 28 applications for which the Highways Branch had not yet sent a response to the Trust, 13 of the 74 applications appeared likely to have had Trust recommendations altered or omitted. It appears that major differences relate to the size and location of road and park dedications. Most other

Trust recommendations appeared to have been followed.

However, several significant difficulties were encountered in this study. One was that the responses given to the Trust by the Highways Branch rarely if ever provided any proof or assurance that specifications of the Trust (e.g. proof of potable water) had been attended to; the Trust was left to assume that these factors had been looked after. Another difficulty was that when the Trust requested a covenant on or dedication of a certain area, it was difficult to ascertain whether the Highways Branch had demanded the same size and location of covenant or dedication. Thus, many differences between Trust recommendations and Highways Branch specifications may have been overlooked.

It would appear that the provision of an extra step of consultation with the Trust <u>before</u> the issuance of a preliminary layout approval or final approval, in cases where the Highways Branch wishes to alter Trust recommendations, would help ensure the Trust objectives are met. The results of this extra consultation appear to be worth the extra administrative burden.

D. Conclusion

The subdivision problem is no longer of the same dimensions that it was before the Islands Trust was formed. The quality of subdivision has notably improved. However, the rate of subdivision remains high and, when considered with the number of vacant lots in the trust area, still should present some concerns.

Subdivision regulations in the form of community plans and subdivision bylaws are the principle mechanism of control of subdivision, and have made a significant difference to the scale and density of developments in recent years. While the Trust generates, amends, and implements these regulations, it cannot take full credit for their existence. In some cases regional districts were the driving force behind the original community plans.

The fact that the Trust did not initially have the planning function may have contributed to its present popularity. When the first land-use controls were implemented on the islands, it was the regional districts and not the Islands Trust that had to take the flak for the resulting loss of private property rights. By the time the planning function shifted, most islanders had come to accept land-use controls, and thus did not perceive the Islands Trust as negatively as they perceived the regional districts. If the Trust had been given the planning function from its inception, it is possible that it might not have enjoyed such wide public acceptance.

The relationship between the Islands Trust and the Highways Branch in most cases appears to be acceptable. However, as the case study in this chapter revealed, Highways employees either have different interpretations of the public interest than trustees, or are subject to political pressure from the provincial level. The coordination and communication between the two agencies with respect to subdivision applications and in particular, Trust recommendations, could stand some improvement.

The regard for the Trust by the provincial government must be questioned, due to the lack of support shown for Trust bylaws by both the Minister of Municipal Affairs and the Minister of Transportation and Highways.

Finally, an analysis is made of the extent to which the institutional system involving the Islands Trust has fulfilled the three intents summarized in chapter IV:

1. It is obvious from the case study that the Islands Trust is not the single mechanism of control of development on the islands. While the Trust has control of the bylaws, these are open to the interpretation of the approving officer in the Highways Branch. A court case has now shown that the approving officer must abide by the bylaws, but where these are open to interpretation the Trust has no control over his decision. Thus, the strength of the planning function has recently increased, and the Trust could take advantage of this by trying to remove discrepancies between plans and bylaws, and by making each plan and bylaw as specific as possible so as to remove room for discretion of the approving officer.

Consultation with the Trust by the Highways Branch could be improved, particularly with respect to the fate of Trust recommendations. The lack of support shown by provincial Ministers demonstrates a lack of cooperation with Trust objectives.

Controlling mechanisms over the rate of "improvement" of island lots appear to be very weak.

2. The Islands Trust has been fairly successful at ensuring orderly subdivision development of the islands. Environmental impacts of recent developments have not been severe, and there is generally not much evidence of social disruption. This success is largely attributable to the Trust's control of the planning function and the existence of regulatory bylaws. However, the pending development of island lots and future subdivision present great problems for the Trust to mitigate.

3. The Islands Trust has afforded local residents much expression through community plans and bylaws. It is generally felt that residents are content with these regulatory mechanisms because they had an opportunity to contribute to them. However, the control of the local residents in this regard is only to the extent that the Trust has control. Although this study did not make an in-depth examination of the extent to which the community plans and bylaws provide for provincial interests in scenic beauty, rural atmosphere, and recreational amenities, it is generally felt that bylaws provide for these in a conservative way. It is possible that the pending regional plan will further the promotion of these three interests.

In conclusion, the Islands Trust is heavily dependent on the cooperation of the Highways Branch in fulfilling its objectives with respect to subdivision. Also, support from the provincial government in this regard appears to be marginal.

Chapter VIII

FORESTRY

A. Introduction

Although the forests of the trust area are of relatively low productivity due to dryness, logging is an important part of the economic activity on the islands. (The economic base of the islands is considered to be fishing, logging, farming, retirement living, and tourism.) It also gives rise to some small scale sawmilling and shake splitting. Sawlog production is most important, but some piling and pole production is done as well. While no data are available for the other islands, logging directly provided jobs for 60 people in 1976 on the southern islands (Islands Trust "Regional Plan Background Report" [Draft, February, 1980]).

1. Tenure of Forest Land

a. Taxation tree farms

There are no Tree Farm Licenses in the trust area. Approximately 14% (26,113 acres or 10,568 hectares) of the land in the trust area is held in Taxation Tree Farms. Taxation Tree Farms are lands held privately, usually by large logging companies. They are managed according to sustained yield practices approved by the Bristish Columbia Forest Service, in return for tax concessions. They are under the jurisdiction of the Assessment Act.

Table VI lists the areas of Taxation Tree Farm on each designated island in 1975. This table points out the extensive proportions of Galiano, Valdes, Denman, Gabriola, and Saltspring islands held in Taxation Tree Farm.

b. Other private land

Apart from logging on Taxation Tree Farms, large areas of other private lands have also been (and are being) logged. Owners of these lands do not receive any tax concessions for their forest management practices. They do not have to adhere to many regulations regarding tree cutting or forest management. The federal Fisheries Act and Navigable Waters Protection Act, and the provincial Water Act and Pollution Control Act restrict deposition of debris into streams, and the provincial Forest Act specifies obligations with respect to fire suppression, hazard abatement (i.e. disposal of slash and snags), and insect and disease control. The Minister of Forests is empowered to order a private owner to reforest his land, although according to the Pearse Commission report, this power had never been exercised.

Logging under private tenure, not included in Taxation Tree Farms, is prevalent on James, Keats, North and South Pender, Galiano, and Saturna. It supports some small sawmills. According to the Islands Trust "Regional Plan Background Report" (Draft of Feb. 1980), "A lot of logs are trucked or rafted to Mainland or Vancouver Island disposal. The intensity of [logging] activity seems to be most affected by market conditions--especially the price of logs" (p.18). A current

TABLE VI

TAXATION TREE FARMS: AREA AND OWNERSHIP

Island	Permanent Population	Area in TTF (Hectares)	% of Island in TTF	Owner of TTF
Galiano	525	4575	79	MB (#19)
Saltspring	4410	1948	10	MB (#19)
		307	2	Weldwood (#39)
		2255	12	
Denman	378	1235	28	Weldwood (#39)
		162	3.4	Filberg (#9)
		36	0.76	MB (#19)
		32	0.68	Domtar (#51)
		1465	31	
Valdes	8	907	37	MB (#19)
Gabriola	1185	82	1.6	MB (#19)
		1036	20	Weldwood (#39)
		1118	22	
Bowen	590	198	3.9	MB (#19)
Hornby	420	157	1.4	MB (#19)
Gambier	85	14	0.24	MB (#19)

Data from:
-"Report on Background Information for Brief to be Submitted to Dr. Gaffney's Committee on Tree-Farm Taxation," 1975
-"Islands Trust Brief to Royal Commission on Forest Resources," October 17, 1975
-June, 1976 Population Census

trend on private lands is to harvest valuable timber and then to subdivide and sell the land (a trend also common outside the trust area). Many cases have shown that logging practices under Taxation Tree Farm are generally better than those on private lands not receiving tax concessions.

c. Crown land

There has been almost no logging on Crown lands in the trust area for the past 15-20 years. This is partly because there is not much Crown land in the trust area, and partly because existing Crown land does not have much harvestable timber on it. As there is very little to say regarding Crown land, the Trust's involvement will be mentioned here rather than in the main body of this chapter.

In 1979 the B.C. Forest Service was preparing a resource use plan for forest land on Bowen Island with the intention of opening the land for logging. The Trust notified the Forest Service that it wished to be informed of such plans so that it could make input to the disposition of forest lands. Regarding Bowen Island, it appears that the Trust successfully discouraged the Forest Service from encouraging logging at this time. Thus, there appears to have been some cooperation from the Forest Service, once the Forest Service was aware that the Trust has some jurisdiction in this matter.

Recently a proposal has been put forth by the Forest Service for a small amount of logging on Crown land on Galiano. This logging is expected to occur in the summer of 1980. The

Trust appears to have been slightly perturbed that the Forest Service had planned this timber sale before consulting the Trust; the Trust requested that the Forests Ministry "be asked to consider instituting a consultative process on proposals for tree cutting on Crown Land in the Trust Area." While it is not known what will come of this "consultative process" initial interactions appear to have been favourable. The Trust met with the Forest Service regarding the Galiano timber sale and successfully convinced the Forest Service to protect an area of "unusual wet land vegetation ... known to be of interest to the Ecological Reserves Unit" and to the Galianc community.

B. Interests in Forest Values

1. Values Provided by Forest Land

Forested lands provide extensive areas of relatively natural green space on the islands. Their scenic values are enjoyed by island residents and visitors, as well as the boating public. Forested lands which are accessible to the general public, such as most if not all Taxation Tree Farms and most Crown land (except during active logging and fire season), provide outdoor recreational values enjoyed by hikers, photographers, wildlife enthusiasts, campers, and others.

Forested lands also provide large monetary returns to those who cut and sell the trees.

2. The Interests of the Islands Trust

Scenic and recreational values are among those to be protected through the Trust mandate. Thus, it is consistent with at least some of the aims of the Trust to maintain existing forested land as such. (Note that it may well be inconsistent with other aims of the trust to maintain all existing forest land. For example, such a policy may drive up land prices, forcing the tax burden higher, and thus forcing residents in the lower income bracket off the islands.)

The interests of the Trust also include protection of community watersheds. This interest can sometimes benefit from selective logging. However, if clearcutting is done in the watershed, logging and roadbuilding standards may be critical to the water supply and water quality.

It is also in the interest of the Islands Trust to provide some jobs for local residents, which can be done through promoting small logging operations.

3. The Interests of the Landowner

Most of the forested land in the trust area is privately owned, either in Taxation Tree Farms or otherwise. The land is therefore subject to other interests, as well as those of the Islands Trust. Taxation Tree Farm land, as well as some of the other private forest land, is in the category of "exchange" property; i.e. the owners are non-resident and their priority concern is to earn a profit from use of the land. This profit is usually expected to be derived from the harvest and sale of

timber (but in some cases is also anticipated from the subdivision and sale of the land itself following logging).

While most Taxation Tree Farm holders do manifest some concern for recreational values (e.g. by permitting public access to the land), other private land holders generally do not. This concern for recreational values may be viewed as part of the companies' legitimation program.

4. The Conflict of Interests

While the quest for profit, per se, does not conflict with the interests of the Trust, the manner in which profit is derived may conflict. Logging activity can seriously affect many of the values which the Trust is trying to protect; problems may be created when forested land is ultimately logged. Also, the values of the Trust might favour small local business over large business based outside the trust area, and employment of local residents rather than non-residents.

Since private ownership of land entitles the landowner to a certain bundle of property rights, and given the interests of many forest land owners (as discussed above), forest land may be managed in quite a different manner from that most representing the interests of the Islands Trust. Thus, some trade-offs may be necessary on either or both sides. The two private tenures mentioned in this chapter provide different trade-offs. Basically the Taxation Tree Farm provides better forest management but lower taxation revenue. Possibilities exist for modifications to these two tenures, and modifications to the

procedures under which these two tenures are handled, to ensure that the interests of the Trust are better served. There may also be alternative tenures which could help alleviate the conflicts of interest.

This chapter examines problems caused by logging on the islands, and actions of the Islands Trust intended to alleviate these problems, given the two predominant tenures of forest land. The study illustrates how well the Trust has managed to fulfill its intent with respect to management of forest lands.

C. Potential Problems of Island Logging

Logging or tree-cutting on the islands of the trust area creates two main difficulties with respect to managing the resources of the islands: 1) it may interfere with the aesthetic qualities of the island environments, and 2) it may interfere with the protection of watersheds, on which residents are critically dependent.

1. Aesthetics and Recreation Problems

While people generally enjoy viewing and recreating in forested lands, few enjoy those lands during the period of several years following logging. Indeed, many people would prefer not to see <u>any</u> logging on the islands. (There is a paradox here, from the point of view of the logging companies, as the public enjoys the privilege of access to privately owned forest lands, but then may object when the company proceeds to harvest the mature timber.)

2. Water Problems

With respect to water, when an area is logged, there may be greater runoff from the area (possibly resulting in less available water storage), and greater siltation of the water. The extent to which logging interferes with groundwater supply has not yet been absolutely determined. It should be noted that trees make a large amount of groundwater unavailable for human use; much water is lost through evapotranspiration from the tree, and much is retained in the tree biomass. For this reason, selective cutting may increase the water supply. Selective cutting may also improve water quality because removal of mature timber means that the timber is not left to fall and decay within the watershed. However, the effects of any cutting on water quality depend significantly on the standards used for road construction and clean-up.

3. Alleviation of Problems Through Forest Management Techniques

Forest management practices can make a considerable difference to the effects of logging on the aesthetic values and water regime of an area. The extent of logging in each area is important. For example, in some cases selective logging may be more acceptable with respect to aesthetics and water protection than clearcutting. The quality of construction and maintenance of roads and drainage systems also plays a major role in the quality of the water regime, reforestation, and of course access to the lands.

The Islands Trust acknowledged the importance of forest

management practices in its 1975 policy statement. The statement noted:

> ... harvesting practices ... must be on a scale appropriate to the island concerned. Where possible cutting patterns and road construction should be designed to encourage recreation, preserve scenic values, and to develop good wildlife habitat and minimize erosion and run-off problems. Dumping, booming and sorting must be carried out in a manner that is the least damaging to the environment and in areas that will not conflict with other shoreline uses.

D. How the Islands Trust has Dealt with Logging on Taxation Tree Farms

The 1975 policy statement of the Islands Trust took the position that retention of Taxation Tree Farms on the islands was in the best interests of the people of the province, as they "provide large areas of open space at a minimum cost to the taxpayer". However, 1) problems may be created when the tree farms are ultimately logged (this is the point to be dealt with in this thesis), and 2) the government is paying a high price to maintain these Taxation Tree Farms in the existing tenure. Regarding the second point, if for example the MacMillan Bloedel property on Galiano Island were taxed at its value as timberland under standard private ownership, an estimate of additional tax revenues is about $310,000 annually (see appendices).

1. Islands Trust's Interaction with Respect to Management Plans

Under the Taxation Tree Farm status, forest management practices are approved by the Bristish Columbia Forest Service, in the form of 5-year management and working plans drawn up by forest companies. The main purpose of management and working

plans is to ensure that timber will be produced on a sustained yield basis, for the holding as a whole (not necessarily just on a particular island). The plans set a broad policy basis for general qualities of operations and rates of harvesting.

However, according the a regional forester of the Forest Service, while management and working plans may show areas proposed for logging, the Forest Service does not have authority to comment on these nor to approve them; the only control the Forest Service actually has pertains to fire hazard abatement (i.e. clean-up of slash). While Tree Farm Licences require 5-year development plans (which specify blocks to be harvested in a 5-year period), operational plans (which specify all details of operations in a 2-year period), and cutting permits (which specify cutting and utilization requirements and authorize specified harvesting), it appears that Taxation Tree Farms require none of these; only general policies need be stated.

Apparently, the Forest Service tries to identify alternative resource values such as water, wildlife, recreation, aesthetics, etc., and encourages the forest companies to consider these values "where feasible." However, the Forest Service does not have the resources to inspect operations on Taxation Tree Farms. As one regional forester put it, the Forest Service has "no clout" regarding operations or specific forest management practices on private lands--even under Taxation Tree Farm tenure. (This leads one to question the value of offering such tax breaks.)

The Islands Trust has made absolutely no direct input into

management plans for Taxation Tree Farms. The "approval" process has been entirely without either consultation of the Trust or attempt by the Islands Trust to have input. This would lead one to believe that either 1) there are no areas within Taxation Tree Farms that are of special interest to the Islands Trust with respect to aesthetics, water supply, or any other values, 2) the Islands Trust trusts the judgment of the B.C. Forest Service to ensure that the Islands Trust's concerns will be protected, 3) it has not occurred to the Islands Trust that it could possibly play a major role in setting standards within Taxation Tree Farms, 4) the Islands Trust lacks staff or resources to make such input, 5) the Islands Trust has simply not wanted to get involved, or 6) the Islands Trust feels that the Forest Service could not do anything about the Trust's recommendations anyway. Another possible explanation is that not only are the plans not accessible to the general public, but it appears that they are not even accessible to trustees of the Islands Trust. While there have been some logging practices on Taxation Tree Farms which disturbed trustees (e.g. on Denman Island), perhaps the fact that there has not been a crisis yet contributes to an explanation of the lack of Trust involvement. (It is noted that in the Denman logging incident, the trustees did approach the logging company and were successful in securing their demands; also, the trustees felt the Forest Service had "no clout.")

2. Islands Trust's Submission to the Pearse Royal Commission

On October 17, 1975 the Islands Trust presented a submission to the Pearse Royal Commission on Forest Resources. The statement noted that logging is an appropriate activity for the islands provided that proper management techniques are used for the regeneration of the forest resource, and that scenic values of the islands are retained.

General benefits of logging on the trust islands were listed as the provision of green space, recreational opportunities, wildlife habitat, watershed protection, and contribution to the economic base of the islands. Specific benefits of the CTF tenure (Certified Tree Farm, also called Taxation Tree Farm) were listed as 1) the assurance that "the timber resource on some privately owned land is under sound management techniques" (perhaps implying the Trust is satisfied with the judgment of the Forest Service with respect to protecting the forest resource and other values), and 2) the availability of the land for recreational use by the public (i.e. it was noted that "the two major logging companies involved in the islands have an established policy of allowing public access to their lands ...").

The Islands Trust took the position in the brief that the most difficult problem associated with the CTF's was the right of the forest companies to withdraw their land from CTF status if they chose to put the land to some other use. However, since the Trust now has control of zoning and subdivision regulations, presumably the Trust could now control the future use of the

land. It is possible that one feeling at the time was that the pressure from a company as large as MacMillan Bloedel might be too great for the zoning and subdivision bylaws to withstand, particularly as the bylaws were still under regional districts. This relates to the inference from the theoretical model that the greater the property, the greater the property rights, and also the greater the pressure which the owner can rationally afford to exert on the decision process.

With respect to harvesting procedures, the Islands Trust brief stated as follows:

> The small scale of the islands necessitates particular management techniques. Clear cutting large blocks of timber would not be acceptable on an island. Cutting in small sized patches or selective logging are more appropriate cutting patterns. We recognize that this creates economic problems particularly for the large companies who own tree-farms. ... [The] natural inclination is ... to expand the scale of operation, which encourages the cutting of large blocks at one time. Management techniques such as commercial thinning are not profitable and the cost of stand improvements becomes prohibitive. For these reasons small scale logging operations carried out by local sub-contractors who would have less overhead may be more appropriate.

Other sections of the brief commented on fire protection, removal of logs from the islands, and booming, sorting and storage of logs.

The Trust took the position that while some regulations would be required, positive incentives and legislation would be more effective than negative restrictions. It made several positive policy recommendations, some relating to CTF tenure, some to other private lands and some to both tenures. While those relating solely to private lands not in CTF will be discussed in the next major section of this chapter, those

relating to sclely CTF or to both tenures are listed here:

> 1. Any use of forested land in the islands must be considered in terms of true multiple use so that recreational and environmental values are considered as well as forest extraction values. ...
> 2. Legislation should be introduced to make it unattractive and difficult for land to be withdrawn from CTF status.

The report noted that the right of forest companies to withdraw their land from CTF tenure at any time meant that "land which has had a very low tax levied on it on the basis of its forest cover only may suddenly become developable land." This was noted to cffer high financial returns to a tree-farm owner turned developer. (Reference was made to the plan of Macmillan Bloedel in 1972 to create 2700 small lots on part of their tree farm on Galiano. "It was only after a very loud public outcry that the plan was abandoned.") With mounting pressure for subdivision, and steadily increasing economic gain from successfully doing so, it was felt that the likelihood of attempts to remove land from CTF status would increase.

Since CTF owners had agreed to reduced property taxes on the condition that the land was kept in tree production, the Trust argued:

> ... such withdrawal should require payment of a severe penalty to the Crown directly related to the length of time the land has been in tree-farm, and at least equal to the compound value of the difference between the taxes paid under the tree-farm certificate and the tax which would have been paid based on the value of the land.

Thus, the Trust felt it was equitable to recover foregone taxes.

> 5. Consclidation of CTF should be encouraged. [This would lead to more efficient management] since isolated pieces of tree-farm on separate islands are difficult and uneconomic to handle.
> 6. Management plans should be carefully scrutinized for

their impact on an island in terms of multiple use of the forested land resource. The small scale of the islands makes working plans and cutting patterns particularly important.

a) Particular attention should be directed towards the identification and protection of community watersheds. Generally large clear cuts should be prohibited. Where there are big cleared patches bordering roads or shorelines these should be screened to preserve the scenic values. Small cleared patches are compatible with the natural landscape.

b) Integrated recreation systems should be incorporated into cutting patterns and management plans. The location of trail systems, campsites and picnic areas should be rotated as part of the working plans to minimize aesthetic problems and to protect against overuse.

c) Special recognition may be desirable in some cases to protect certain areas of particular public interest, including significant ecological importance, small exceptional timber stands, unusual recreational and aesthetic values, etc.

7. Consideration should be given to a recreation lease program on forested land. Under such a scheme the lease would be for sites for temporary or portable structures only and for a limited time of perhaps five years. During periods of regeneration many areas could be used in this way without harming the process, and with little pressure on island sources. A program such as this would not permanently alienate land, would reduce pressure for subdivision elsewhere, and might provide some small revenues to help defray costs of supervision and fire protection. Consultation with community planning authorities would of course be essential.

9. Forestry and industry policies should where possible encourage:

a) Integration and coordination of all fire detection and suppression services. ...

b) Local small scale logging and processing. ...

c) Central log dumps on each island. ...

Reviewing these recommendations of the Trust with respect to the three major intents of the Trust, it appears that:

1. the Trust was not attempting to completely control all forest activities on the islands, but rather to suggest guidelines which could be incorporated into legislation through the Pearse Commission Report or at least could be used by the BCFS with respect to Taxation Tree Farms on the islands;

2. the Trust did reflect a conservationist attitude toward

orderly development of the forest resource;

3. the Trust made attempts to protect and enhance the scenic beauty and recreational amenities and opportunities of the islands.

3. Report of the Commission with respect to Taxation Tree Farms and Forest Management Planning

The report of the Royal Commission on Forest Resources did not specifically address itself to the special case of the trust area (or any other region), nor to the specific policy recommendations of the Islands Trust. Rather, it examined the problems of forestry in the province generally. The report did note that as compared with Europe and the U.S., B.C. has "conspicuously little public involvement" in the regulation of private forestry.

One of the five major priorities elucidated by the report was the need for clear resource management goals. It was noted that pressures on forest resources for environmental protection and enhancement--for such things as outdoor recreation, watershed management, and aesthetic values--now impinge on the forest industry. (This is certainly true in the trust area.) The report said,

> ... While efforts have been made to accommodate [these pressures], our present institutional arrangements and procedures for resolving conflicts are inadequate. [Without the clear specification of resource management goals to deal with multiple demands on the resource base,] both the Forest Service and industry are uncertain about how much timber can be harvested, the constraints that will be imposed on logging methods and timing, and which forest lands should be managed for subsequent crops.

> [What is required is] the specification of resource management goals and plans in terms of rate and pattern of production and other values to be served.
> (Pearse, 1976, p.60)

While there is obviously a need for such a specification in the trust area, none has yet been made for any of the islands.

Another of the five major priorities referred to by the report was in the area of public administration. Long-term planning for integrated resource use, interagency consultation, and liason among user groups were among the needs mentioned. It was pointed out that multiple demands on the resource base call for controls to be specifically adapted to the circumstances of each site. Inadequacies of staff and resources have led the Forest Service and other agencies to adopt blanket regulations on such things as logging practices, utilization standards, and reforestation. These uniform standards will inevitably be too lax or too stringent in any specific case. It appears that neither has the BCFS developed site-specific standards for the trust area, nor has the Trust encouraged the Forest Service to do so.

The report noted that the planning requirements for Taxation Tree Farms are flexible so as to accommodate a wide range of size and forest conditions." It said that through the required management and working plan, more emphasis tends to be placed on prompt reforestation, maintenance of the productivity of forest land and proper silvicultural practices than steady harvest rates. However, "[there] are no special requirements for protection or enhancement of resource values other than

timber" (p.263).

Thus, it appears that even on CTF's, which are subjected to much more regulation than other private forested lands, there is room for additional consideration of forest management practices. This additional input could be made, in the case of the trust area, by several agencies outside the Forest Service, including the Islands Trust. In fact, in the discussion of an ideal planning system, the report did suggest that management unit plans identifying resource development alternatives, would necessarily involve multidisciplinary expertise and coordination. "[These plans] would define production and use objectives consistent with the capability of the land and resources and with the demands on the area" (p.261). Thus, a possible implication of the report is that the Islands Trust should involve itself in the development and perhaps even coordination of such plans for CTF's in the trust area. (It is noted that, of course, the cooperation of the B.C. Forest Service would be an essential element in this task.)

The Commission report discussed several planning needs and alternative planning mechanisms for forest management. The "resource folio" system of planning was regarded in the report as a most significant advance in integrated resource use planning. It systematically incorporated input from all relevant resource specialists as well as the public. Because of the need for integrated resource planning in the trust area, it would appear to be desirable to implement this planning method (or some good alternative to it) in the trust area. It was noted that demands for data and procedural guidance may inhibit

the process in certain areas of the province. However, the trust area has been the focus of more resource studies than most areas of B.C., and part of the mandate of the Islands Trust is to "coordinate and assist in the determination, implementation, and carrying-out" of resource policies. Thus, it would appear that the "resource folio" system may in fact be feasible in the trust area, and that the Islands Trust could play a significant role in the coordination of such a system. As Pearse noted:

> It is ... necessary to concentrate effort where the values at stake are greatest and most sensitive, while expanding the system as fast as funds and personnel permit. Through consultation with the relevant agencies, priority must be given to careful planning of operations where resources other than timber are most valuable and environmental integrity is most threatened. (p.267)

However, folio planning is only done with respect to Crown land, not Taxation Tree Farms. There are no folio plans for the trust area.

Another mechanism for inter-agency consultation with respect to integrated resource planning are Regional Resource Management Committees. Where these committees have been instituted in the province, "[each resource agency routinely notifies the Committee] of its intent to consider preliminary proposals for relevant resource developments for which it has primary responsibility. Thus, the Forest Service [would] give notification of intent to consider folio plans ..." (p.268). In the trust area, it appears that the Islands Trust is intended to fill a role similar to that of the RRMC's.

Another planning need elucidated by the report was the need for the development of plans and objectives for management units

which would assist in realizing full resource potential consonant with regional objectives. This requirement is currently being addressed by the Islands Trust in its development of a regional plan for the trust area.

A final planning need expressed in the report was the need for institutional mechanisms to channel public participation into resource management decisions. "[There is a] need for locally based, representative external assessment of resource planning"(p.273). It should be noted that the Islands Trust itself is a composite of local representatives interested in resource planning. It is highly representative of the islands, with one representative per 365 permanent residents (1976 census). Thus the existence of Trust itself satisfies at least part of this need brought out in the Pearse report. The report suggested that resource advisory committees be constituted under Regional Development Boards. Perhaps the Islands Trust should consider establishing such committees for each island, in a parallel fashion to the advisory planning commissions for each island. Or alternatively, perhaps the responsibilities of the advisory planning commissions could be broadened from community planning to encompass resource planning. Admittedly, this need probably relates more to the management of forested Crown lands than forested private lands.

The report discussed the impacts of clear-cutting with respect to silvicultural, environmental, and aesthetic concerns. It pointed out that except on steep, exposed hillsides, complete removal of the forest canopy is usually the most appropriate harvesting technique, according to most professional foresters,

at least on silvicultural grounds. On environmental grounds, while clear-cutting does affect the flow regime and water quality, the report noted that "protection of watersheds does not necessarily preclude clear-cutting, where properly planned and executed. ...[With] proper safeguards, ... clear-cutting is not inevitably more injurious to fisheries than other harvesting techniques. With respect to wildlife, ... [clear-cutting may be beneficial to many species]" (p.281). Thus, properly planned and executed clear-cutting is the most suitable technique for most B.C. forests from points of view of both silvicultural and environmental management.

With respect to aesthetic values, it was pointed out that the forests have been adapted to periodic denudation, as a natural process. Thus, if the forests are not occasionally destroyed by either fire or logging, (i.e. if they are protected from both for aesthetic reasons), this is greater interference with natural processes than clear-cutting. In summary, "aesthetic values often conflict with both man-made and natural changes to the forest cover, and though they are nonetheless important and in some circumstances deserve priority, they should not be confused with environmental protection or the best silvicultural practice" (p.281).

Therefore, while it is important for the Islands Trust to express concerns regarding aesthetics, 1) these should be tailored to specific sites, and 2) the notion of whether or not an area should be clear-cut may not deserve as much attention as the measures taken to make the clear-cut as environmentally and aesthetically sound as possible, such as measures dealing with

quality of roads, slash disposal, and reforestation.

In fact, the report noted that "the most serious environmental problems associated with logging arise from road building. Roads are disruptive to the soil and to water runoff patterns and are also the main causes of erosion and siltation of streams" (p.282). The Commission found excessive concern about clear-cutting per se and insufficient concern about road building. For example, excessive road building required for patch logging may cause more environmental damage than if a (smaller) area was clear-cut.

It was noted that a steady rate of harvesting is less important to the protection of non-timber values than choices about timber to be removed or preserved, logging and road building techniques, patterns of clear-cut openings, and post-logging site treatment.

The Islands Trust should take note of findings such as these in the Pearse Commission report, and should assist the Forest Service and forest industry by helping to develop public understanding of these observations.

4. Actions Taken by the Trust since the Commission Report

The Trust approached the Minister of Forests on June 28, 1977 as a result of concerns regarding "Tree Farms", expressed at a Trust Council meeting. (It is not clear whether Taxation Tree Farms or other private forest lands (or both) were referenced by "Tree Farms." However, the following resolution would seem to imply Taxation Tree Farms. It is possible that

these concerns arose in part from a Bowen Island case which occurred in February of the same year, although this case did not involve a CTF. This case is discussed later in this chapter.) The resolution passed by the Trust Council and communicated to the Minister read as follows:

> The Trustees are concerned about large tracts of land on the islands held under Tree Farms, and whereas the residents of these islands depend on adequate tree cover to preserve their supply of potable water, and whereas local authorities have no control over logging practices carried out on these Tree Farms, be it resolved that representation be made to the Provincial Government to enact or amend legislation to provide the protection needed to preserve both the esthetic [sic] values and protect the watersheds, which concern was adequately expressed in the brief of the Islands Trust to the Royal Commission on Forest Resources, Page 20, Paragraph VIII.
> (Letter June 28, 1977, Holmes to Waterland)

While the letter acknowledged that local authorities have no control over logging practices on the Tree Farms, it notably did not request any local control. The request is more readily interpreted to mean that the Provincial level of government should be responsible for seeing that aesthetics and watersheds are protected. The possibility of the Trust making input into the specifics of Taxaticn Tree Farm management plans was not addressed.

Thus, while the Trust went part way in voicing to the Forests Minister that something to protect these values had to be done, (i.e. legislation to be enacted or amended), it did not offer to play a major role in the ultimate decisions of exactly what is to be protected and to what extent. Aesthetics, particularly, are very subjective, and may be "protected" quite differently by an employee of the B.C. Forests Ministry than by a trustee of the Islands Trust. While the Trust may thus be

accused of timidity or "passing the buck" in this regard, their (weak) stand in the letter may be understandable, given the very strong history of the B.C. Forests Ministry, and (at least to that date) the questionable position of the Islands Trust. (Note, even as late as March, 1977 the Hansard debates still made reference to disbanding the Islands Trust [e.g. Wallace p. 1834]).

The reply from the Forests Minister first explained that Certified Tree-Farms are managed according to Working Plans approved by the Chief Forester. Logging on MacMillan Bloedel's CTF #19 (if not on the other CTF's as well) was carried out according to these Working Plans as well as the Planning Guidelines for Coast Logging Operations, as administered by the Forest Service. The Minister indicated that he was expecting recommendations from his Forest Policy Advisory Committee late in 1977 regarding the 1976 Report of the Royal Commission on Forest Resources. Finally, the Minister said that subsequent to receipt of these recommendations, the issue most concerning the Islands Trust, i.e. logging on private tenures, would be reconsidered. (The Minister may have been implying private tenures outside Taxation Tree Farms here.) It appears, however, that the new Forest Act does not facilitate the Trust's objectives; there do not appear to be any new mechanisms of controlling logging on Taxation Tree Farms or other private lands. This is not surprising, as the theory suggests that bureaucrats and politicians of an agency will strive to forward their mission (in this case, to cut trees), rather than to restrain it (here, to impede tree cutting).

The Islands Trust has done nothing further with respect to Taxation Tree Farms since this reply. It would appear that Taxation Tree Farm owners have successfully legitimized their interests to at least some trustees.

5. Possible Future Actions Open to the Trust

The Trust does not currently have the staff capable of making a large technical contribution to the formation of management plans for Taxation Tree Farms. However, there are at least two options which the Islands Trust could pursue at this time to help remedy this situation, given that they have no foresters on staff:

1. On the islands most affected by Taxation Tree Farms (Galiano, Denman, Gabricla, and Saltspring), the trustees themselves could express particular concerns about forest management in certain conflict areas. For example, since 79% of Galiano Island is owned by MacMillan Bloedel, the plan for management of the timbered land must have a considerable effect on the island as a whole, as well as on specific areas where conflicts may exist between recreational and logging potential, e.g. Coon Bay. It appears that trustees have never interacted with the B.C. Forest Service with respect to management of Taxation Tree Farms on any of the islands and there is no indication that they ever intend to do so. (This may be another indication that Taxaticn Tree Farm owners have successfully legitimized their interests to the Trust. Alternatively, it may indicate that the BCFS does not have the power to assist the Trust, or that even if it does in a few minor respects, the

Trust may not feel that the Forest Service would; it may be that the Trust feels, as the theory suggests in this respect, that the Forest Service [a regulatory agency] has adapted its programs and demands to serve the forest companies [i.e. the clientele with which it most frequently interacts].)

2. The Islands Trust does have a "consulting" budget, under which it could hire a registered professional forester to review standards set in the Taxation Tree Farm management plans to ensure an appropriate extent of logging in conflict areas, and appropriate standards for roads, drainage, and clean-up in these areas. Since current working plans do not provide for extensive cutting on the islands in the next five years there is probably not much need for a consultant to examine current cutting plans in detail. However, it is probably important for conflict areas to be identified, and appropriate standards to be developed for these areas, so that the companies can anticipate any possible restrictions in their future management plans. It would likely be much easier to have such restrictions implemented if the company is given advance notice, than if the restrictions are applied after the company has arranged to proceed on its own terms.

The consulting budget has been used in the past for applied research studies such as water studies and identification of natural areas. It has been felt that other issues have more urgently required use of this consulting budget in the past.

One reason given by the Islands Trust for its lack of interaction with the Bristish Columbia Forest Service with respect to management plans is that since the inception of the

Trust, there has been no problem on the Taxation Tree Farm land. However, the main reason for rare evidence of problems is that as most of these lands were logged decades ago, very little logging has been in progress recently; the stands are not mature enough to be logged. In time the stands will reach maturity. If the Islands Trust anticipates possible problems with any future logging of certain Taxation Tree Farm areas, then it would seem wise to interact now with the B.C. Forest Service to recommend that the management plans be adjusted accordingly, before it becomes too late (physically or economically) to control the logging.

It is noted that both of the above suggestions would require the cooperation from the Forest Service in order to have any effect. Also, both suggestions would be significantly more effective if the Forest Service had additional regulatory powers on Taxation Tree Farm land.

Another possibility for influencing management of Taxation Tree Farms and other forest lands, which could be considered by the Trust is that of the Trust running its own tree farm. The precedent for this sort of operation has been set in Mission, B.C. The Municipality of Mission owns and operates its own tree farm under a Tree Farm Licence. If the Trust could purchase existing Taxation Tree Farms and/or other private forest lands in the trust area, it would be in full control of general cutting policies and standards, as well as site-specific resource decisions. The Trust would also have control of the scale of cutting operations and how employment was affected in the area (e.g. whether contracts went to resident or non-

resident loggers).

It is recognized that currently the Trust may not even have the power to hold lands, let alone purchase forest lands and administer logging operations. It is also recognized that

1) such a drastic increase in the Trust's functions would demand the support and cooperation of the government, as amendments to legislation would probably be required; and

2) the philosophy of the current government does not lend itself to this kind of a move.

However, this possibility offers much potential and deserves consideration as a future management tool, particularly as CTF's and other forest lands become offered for sale. (Later in the discussion of control of non-Taxation Tree Farm private lands, another likely reason why the Trust has not considered this possibility is discussed.)

6. Zoning of Taxation Tree Farms

The subject of zoning within Taxation Tree Farms deserves attention. Under section 694 of the Municipal Act, no bylaw pertaining to Official Community Plans, Advisory Planning Commissions, zoning, or subdivision of land, applies to land designated in a tree-farm licence, land constituting a forest reserve, or land designated in a tree-farm certificate, so long as the land continues to be so designated or reserved. Thus, zoning bylaws become effective only when the land is withdrawn from Taxation Tree Farm status.

Most, not all, of the areas within Taxation Tree Farms in

the trust area have been included in "Forest" or "Rural" zones. Some islands do not have a "Forest" zone, and the definitions and implications of a Forest zone may vary from island to island. Minimum lot sizes specified in subdivision bylaws range between islands from 4 ha to 20 ha for Taxation Tree Farms.

It would appear at first glance that any land use agreeable to the Forests Ministry would be legal on the Taxation Tree Farm property. This could conceivably include such things as sawmills, rental housing accommodation, or recreation-oriented facilities. In fact, a source within the Forest Service stated that even the Forest Service has no control over such activities, except for paper conversion facilities under the new Forest Act. Thus, it appears that except for the requirement of building permits (which would not be subject to zoning bylaws in this case), there is no regulation of land use of a Taxation Tree Farm, provided the principle use of the property is timber production.

E. How the Islands Trust has Dealt with Logging on Non-Taxation Tree Farm Private Lands

It has been acknowledged that forest management practices make a significant difference to the impacts of logging on aesthetics and on watershed protection, and that the Bristish Columbia Forest Service has some control of the forest management practices of Taxation Tree Farms. However, it appears that no agency can currently control forest management on private lands not held in Taxation Tree Farms (with the exceptions previously noted). Unlike Taxation Tree Farms which

have not had much active logging recently, other private lands have had extensive logging, and this has created serious problems in a number of cases. A few of these cases will be outlined shortly.

1. Actions Taken (or Attempted) by the Islands Trust Prior to October, 1975

As early as January 24, 1975 the Islands Trust requested of the Bristish Columbia Forest Service that legislation be written to provide for limiting tree-cutting on subdivision lots, with the objective of improving the subdivisions and preserving the natural beauty of the islands. The Trust noted that Ontario had legislated the "Tree Act" which would accomplish the Trust's objective.

The Deputy Minister of Forests replied that the Forest Service would view such legislative control in the same light as zoning by-laws which restrict types and standards of structures and developments. The Forest Service therefore felt that such decisions should be made at the local level, perhaps by a local authority such as the Islands Trust. They were of the opinion that since the matter did not appear to warrant province-wide application, it did not merit inclusion under the Forest Act. (The Islands Trust had stated that such legislation was probably not applicable province-wide, and so did not merit inclusion in the Municipal Act.)

The Deputy Minister offered three possible routes which the Islands Trust could take through the Islands Trust Act. The

first was that perhaps section 6 of the Islands Trust Act could be interpreted to allow the planning authority to limit tree-cutting through land use contracts (now replaced by bylaws and development permits), plans, or bylaws, to preserve the aesthetic appeal of any existing trees and shrubs or other vegetation.

Alternatively it was suggested that the Islands Trust prepare regulations under s.11 (Islands Trust Act), which could then be approved through Order-in-Council procedure.

A third option suggested was that the Islands Trust could present an amendment to the Islands Trust Act through the Attorney-General's Department.

2. Islands Trust's Submission to the Pearse Royal Commission

In its October, 1975 submission to the Pearse Commission, the Islands Trust made the following recommendations relating specifically to forestry on private lands outside of Taxation Tree Farms (see section D.2 for other general remarks of the Islands Trust concerning forestry and recommendations relating to both CTF and other private lands, i.e. recommendations 1,6,7,9):

> 3. To obtain more efficient use of forested lands the Trust proposes the establishment of a mechanism which would allow central management of a number of small parcels of land. Under such a scheme owners of medium and larger sized parcels would consign the forest management of their parcels to a company for a suitable length of time under CTF status. The company would purchase the timber rights from a number of owners and would then treat them all as one management unit or tree-farm. This procedure could have great potential on the islands. It would give some economic return to owners of such parcels spread over a number of years,

and help to alleviate their tax burden. The larger acreage in CTF status should make it a sounder proposition for the manager. Thus the program would encourage the retentiсn of forested land with all its attendant benefits for the islands.

4. The CTF program should be reviewed to find means to persuade more large land holders to either individually apply for CTF status, or to join others as suggested in Recommendation number 3 above. It has been stated previously ... that the tree-farm program has many associated benefits for the islands, but to encourage this tenure further up-to-date tax incentives may have to be developed. For example, the Trust regrets that B.C. Forest Products has recently offered for sale some 1,100 acres on Saturna and Saltspring--land logged many years ago, but never operated as a tree-farm.

8. A modified timber mark system should be introduced to provide for supervision of logging on private land. Logging will only benefit the islands if it is done on a sound management basis with good fire protection measures. Present controls over clearing timber off private land are inadequate. New legislation is needed to provide some measure of control of logging methods on private land when the operation or production exceeds some appropriate and reasonable size.

These recommendations are generally in line with objectives of the Trust. However, while the Trust stated that present regulations with respect to logging on private lands were inadequate (outside of CTF's), and while the Trust recommended that new legislation be amended to remedy this situation, it seemed reluctant to assume any controlling role in this regard.

3. Report of the Commission with Respect to Unregulated Private Lands

The Pearse Commission report acknowledged that, while a trend is evident toward increased public regulation of private forest land in industrialized parts of the world, and while European countries and the northwest U.S. have established mechanisms of control over private forestry, there is a

conspicuous lack of public involvement in private forestry in B.C., except under property tax arrangements (i.e. Taxation Tree Farms).

> ... Private owners have little guidance in the conduct of their forest operations and the Crown has little authority to ensure that private activities do not impinge on important non-commercial values that may be affected by forest operations. ...
>
> ... The existing legislation and private remedies now governing activities on private forest lands are inadequate to protect the public interest even in obvious cases. (p. 182-3)

The Commission felt that while the public interest called for certain minimum controls, such controls in B.C. should be limited to ensuring protection of the resource base itself, and recognition of important non-timber values. No justification was seen for regulating the time pattern of harvesting plans on private land, as long as the productivity of the forest was maintained.

Legislating forest practice codes (as in the State of Oregon) was seen as impracticable in B.C. because of the formidable task of taking account of widely divergent forest conditions and the specific non-timber values of each site. The burden of requiring the preparation and approval of detailed plans for all operations was also cautioned against because the majority of situations would not warrant such an exercise; it was recommended rather that attention should be focussed only on those operations which may seriously impinge on the public interest. Other general recommendations were as follows:

> ... First, ... regulations should emphasize the desired results, rather than procedures to be followed or techniques used. Second, they should be as clearly defined as possible, to provide maximum guidance for owners and to minimize the burden on discretionary interpretation. Third, the widely ranging resource conditions in the province imply a need for decentralized institutional arrangements for designing and enforcing any controls. And finally, in view of the limited public personnel and resources available for the task, a high priority must be placed on administrative simplicity and opportunities for gradual introduction and development. (p. 184)

A set of proposals incorporating these suggestions was put forth by the Commission. It was felt that Regional District Boards together with their Technical Planning Committees, already offer potential scope for designing and administering minimal forestry standards for lands within their jurisdiction. A special note was made that in the trust area, the Islands Trust could undertake the role of Regional Boards and Technical Planning Committees in this respect. (The Islands Trust does not have a Technical Planning Committee.)

The prescription of standards by the Regional Boards (or Islands Trust) should be optional, but should be restricted to the protection of water quality, conservation of fisheries and wildlife, maintainence of soil stability, and preservation of sensitive aesthetic amenities. "It will be important to ensure that the controls do not unnecessarily inhibit silviculture and harvesting, but only assure that forest practices do not seriously damage these other values" (p. 185).

The Regional Board (or Islands Trust) could supplement the provisions in the Forest Act respecting slash disposal and reforestation, to meet local conditions.

The form of the standards should permit flexibility.

> ... By-laws should require private owners to simply notify the Board [or Islands Trust] of their intention to undertake harvesting operations of significant size: such as removal of 50% or more of the timber in stands five acres or larger. This notification need not be complicated: a description of the area to be harvested, the techniques to be used in logging and slash disposal, and a sketch showing the location of proposed roads and their relation to watercourses should be sufficient. ...
>
> ... [The Regional Board or Islands Trust] should be empowered by by-law to require the owner to submit for approval a more detailed plan for any aspect of his proposed operation. ... To avoid excessively burdensome and unnecessary planning, Boards should require these detailed plans only in cases that portend special problems, and plans should be required only in respect of those problems, such as stream crossings, slash disposal methods, road location, and so on.
>
> Regional Boards [and the Islands Trust] that adopt these procedures should publish a statement of objectives with respect to the standards required, to guide owners in submitting proposals and preparing plans required by the Board. Guidance should be sought from the Forest Service in designing these objectives .... (p. 185-6)

These recommendations make it clear that the Pearse Commission felt it entirely reasonable for the Trust to be given authority to regulate logging practices on non-Taxation Tree Farm private lands.

The B.C. Forest Service developed guidelines for coastal logging in 1972, which were intended to minimize impacts on non-timber values. While the Pearse report said that the guidelines must be adhered to in all coastal logging operations requiring Forest Service approval, it appears that these are applied generally to Crown land and Tree-farm Licences, but not to

Taxation Tree Farms. Perhaps the Islands Trust could adapt these to circumstances in the trust area, although it was Pearse's opinion that many requirements applied to operations on Crown lands were not warranted for use on private lands.

4. Bowen Island Case Study

Soon after the publication of the findings of the Pearse Commission, one of the first serious cases of inappropriate forest management on private lands in the trust area occurred on Bowen Island in 1976. This case did not involve a logging company but rather a development company. Thus, while it is recognized that forest management was not what the company was trying to do on Bowen, this case points out how forests may be affected and what kinds of regulation exist (or do not exist) to control activities affecting forests on private (non-Taxation Tree Farm) lands.

A multi-million dollar development was planned in the early 1970's by the largest landowner on the island, Union Steamships Company. The company owned 1250 prime acres of Bowen Island, and planned to build 2000 cluster-style housing units over 300 acres, "leaving 950 acres for golf course, green space, and ecological preserves around the two lakes that supply most of the island's drinking water" (Province, March 18, 1976, p.33).

The ten-acre freeze through the early 1970's prevented the plan from proceeding. While the community plan was being formed by the islanders, it was felt (e.g. the regional director from the island) that the president of the Union Steamships Company

"built up a lot of animosity on the island by refusing to participate in the community plan and remaining generally uncommunicative" (Regional director Laurie Lock, paraphrased by the Province, March 18, 1976, p.33). According to a resolution of the Islands Trust, the company's development plans were never officially filed with the GVRD or the Trust.

In 1976 a swath of timber, a half mile wide, was cut on one side of the property. The stated rationale for such cutting was unclear; the strip was called a "fire break", but the need for a fire break was not demonstrated. Nor was the timber economically worth cutting.

A possible rationale for the logging was as follows. Apparently the company had mortgaged properties on Bowen to raise money. An agreement had supposedly been made with the debtors to "begin construction" of the development by a certain date. Because the community plan had not yet been finalized and thus the ten-acre freeze had not yet been lifted, a building permit for the construction could not be issued; the company's proposal could not be approved by the regional district until the community plan had been adopted. However, logging on the private property <u>was</u> legal at that time (as it is on all private properties now--except on this particular property which is now restricted by an Order-in-Council). Thus, the area may have been logged to show that construction was starting.

The logging was perceived by the residents to be done in a very poor manner. A local logger had contracted to do the work, but he received so much scorn from the community that he quit

the job early. It was considered that the property had been "massacred" and "left in a mess." Thus, although residents knew that the company was legally within its rights, they became alerted to all development on the property, and distrustful of further actions. (This was probably exacerbated by the company's lack of participation in the community planning process for the island.)

The B.C. Forest Service ordered the company to clean the property up, as it posed a fire hazard. However, to this day the property remains as the logger left it.

In early 1977 more logging was attempted. This time it was to clear land for a golf course and clubhouse. While the land was not zoned for such an activity, the company claimed that it had to proceed without rezoning in order to again fulfill a contract made with the debtors. The intent appears to have been to clearcut 200 acres. Large bulldozers were shipped to the property for the logging operation.

It must be noted that at that time all such land clearing activities were perfectly legal, and would still be legal today (except on that particular property). The company was not obligated to state any purpose for the logging, and as long as no buildings were constructed (these would require a building permit, which would necessitate proper zoning), the company was entirely within its rights as a landowner.

However, the president of the company had generated a poor reputation in connection with other large developments elsewhere in the province. For example, a land development and housing

scheme on the Sunshine Coast resulted in bankruptcy, with people having paid for houses which were only partially completed; and another subdivision of a company called Fintree Estates in the Okanagan was promoted under a grand merchandising scheme which collapsed in disaster. The president may have also had connections with logging activity in Cypress Bowl adjacent to Vancouver, which was unpopular. Thus, the president had become known to the Premier and the provincial Cabinet for cases of unreliability.

Therefore, when on February 9, 1977 (three days after the arrival of the bulldozers), the Bowen Island Trust Committee transmitted a very strong letter to the Minister of Environment, requesting that Section 6 of the Environment and Land Use Act be used, the Cabinet already had cause to be receptive to the Trust's wishes. (See appendix for this letter and the Environment and Land Use Act.)

The Trust's request was proven to reflect the wishes of the Bowen community when, on February 11, hundreds of protestors surrounded the bulldozers in the morning before they had started the job. The crowd fairly effectively prevented the land clearing from beginning, although in the riotous situation, a few people were almost killed by a bulldozer. (It was obvious that the company had failed to legitimize its interests to the local residents.)

It was merely a coincidence that Cabinet met on that morning to consider the Trust's request. While they were completely unaware of the riot in progress, they did decide to

act under Section 6 of the Environment and Land Use Act to halt the land clearing, until such time as the project was properly evaluated. Word of this decision reached the crowd on Bowen Island through a news broadcast, and so at that point the RCMP, who had come over to the island that morning to quell the crowd, were empowered to stop the bulldozers.

This case illustrates very well the total lack of control by any government agency of tree-cutting on private lands in the trust area. If 1) the Cabinet had not previously become distrustful of the land developer, or 2) the Trust and the public had not become alerted the previous year to the potential problems caused by indiscriminate logging practices, the timing of the Cabinet's decision (or in fact the decision itself) may have been quite different. (Not to mention what might have happened if no one near the "riot" had heard the morning news broadcast!) This may have resulted in severe damage to the community water supply and to the amenities of the area in general.

5. Actions Taken by the Islands Trust Since the Bowen Case

Following the logging incident on the Union Steamship property on Bowen Island but not until November of that year, the Bowen Island Trust Committee requested that the Trust staff gather information and draft a tree cutting bylaw for consideration of the Committee. (Note again that the June 28, 1977 resolution of the Trust Council may have partly resulted from the Bowen case.)

At the next meeting of the Bowen Island Trust Committee, February 23, 1978, it was reported that implementation of a tree-cutting bylaw lies within the jurisdiction of regional districts under section 868 (f) of the Municipal Act, not within the jurisdiction of the Islands Trust. The Committee passed a resolution requesting that the draft tree-cutting bylaw be referred to the regional director of Bowen Island, for the consideration of the Greater Vancouver Regional District. (There appear to be long time lags between the Local Trust Committee meetings.) Under section 766AAA(5) of the Municipal Act, the Regicnal Board may, with respect to unorganized territory, exercise any of the powers contained in section 868(f). Section 868(f) states:

> The [Regional Board] may by bylaw regulate or prohibit the cutting of trees on lands within the [regional district] or within any area [of the regional district], and require the holding of a permit for such purpose and fix a fee for such permit, and different regulations and prohibitions may be made for different areas; but a bylaw pursuant to this clause does not apply to lands designated in a tree-farm licence, or to land constituting a forest reserve pursuant to the Forest Act, so long as the land continues to be so designated or reserved.

Although the Islands Trust is under the impression to the contrary, it appears that the power to regulate tree cutting has automatically been granted to regional districts through these two sections; it would seem that regional districts do not need to have this function added to their Letters Patent. (This opinion has recently been supported by a Municipal Affairs official.) Thus, it appears that regional districts have legal authority but are not using it.

It appears that a regional district tree-cutting bylaw may

apply to Taxation Tree Farms and to Crown land outside of forest reserves.

These sections enable regional districts to zone the islands for different permissible extents of logging. For example, in community watersheds, only minor cutting of aged trees might be permitted, while in other areas zoning may provide for selective logging, patch logging, or clear-cutting. They would also allow the requirement of permits for logging in specially designated areas, such as watersheds, scenic areas, or areas with particularly significant trees; alternatively, permits could be required for all tree-cutting. It appears that this power is precisely what the Pearse Commission report was advocating: local government control of tree-cutting on private lands.

However, it is noted that a tree-cutting bylaw is not a panacea. It is difficult to make such a bylaw effective without imposing heavy-handed restrictions and generating a large administrative job; a bylaw would be costly and bureaucratic. Also, many of the residents of the islands live on the islands to get away from restrictions of city living; strict tree-cutting regulations may impinge on a lifestyle.

According to a source within the GVRD, a draft tree cutting bylaw was being discussed by residents of Bowen Island (e.g. the Bowen APC, which includes the Bowen trustees) at the time the regional director for Bowen lost his GVRD seat: November, 1979. Apparently this bylaw made logging on private lands extremely difficult, and encouraged logging on Crown lands. It was very

unpopular among local loggers and also among the APC. (One might speculate that the unfavourable response to this bylaw on the island contributed toward the director losing the election.)

The new director is interested in a new bylaw and is hopeful of getting it passed within about six months. This bylaw would apply only to private lands, not Crown lands; a Ministry of Forests official had strongly objected to its application to Crown land--a demonstration of bureau territoriality.

It seems incredible that three full years after the Union Steamships logging fiasco, a tree-cutting bylaw has not yet been implemented. It must be noted, however, that Bowen is still the only island in the trust area which has specifically approached its regional district to have a tree-cutting bylaw drawn up and implemented. One possible reason for this is that trustees and many islanders seem to have little confidence in their regional districts. Another is that the Trust has been under the impression that since no regional districts had this power specified in their Letters Patent, none of them had this power.

Perhaps as a result of a slowness or lack of progress with the implementation of a tree-cutting bylaw on Bowen Island through the GVRD, or perhaps due to a feeling within the Islands Trust that tree-cutting control should fall under jurisdiction of the Islands Trust rather than regional districts, or perhaps due to other logging incidents, the General Trust on April 11, 1979 discussed needs, legislation, and methods in relation to tree cutting control. It requested that the Trust Manager do

further research on the matter.

The Manager produced a comprehensive report on the subject, including discussion of section 868(f) of the Municipal Act, many examples of the need for tree-cutting control, and policy and administrative problems which could result from a tree-cutting bylaw (see appendices). It was noted that "the administration of the by-law would depend upon its extent, require staff resources, enforcement procedures, and a general administrative system." Thus, the bylaw could create considerable added expense for the Islands Trust (or for the regional districts). The municipalities of North Saanich and Saanich have enacted a tree-cutting bylaw.

The memo observed, "It would seem to be illogical that a planning agency, specifically set up to preserve the island environment should not have the option of using a basic tool available to all municipalities." It concluded as follows:

> Although theoretically Regional Districts could pass the necessary by-laws with or without Trust recommendation, it is not reasonable to expect 7 Regional Districts to have the interest or resources to provide a Trust wide tree preservation control. It would appear to be more appropriate for the Trust to have the power. This could be achieved either by amending the Islands Trust Act to make Section 868(f) applicable or by issuing a Regulation under Section 11(h) of the Islands Trust Act. The Legislative Council would probably have to advise as to which method was desireable.
>
> (May 1, 1979)

(This conclusion bears much similarity with the letter from the Deputy Minister of Forests to the Islands Trust on January 31, 1975 after which time the matter appears to have been dropped until the 1977 Bowen Island case.)

After reviewing the above report, the General Trust resolved on May 9, 1979 that a request be sent to the Minister of Municipal Affairs, for a regulation, pursuant to section 11(h) of the Islands Trust Act, to be enacted to include under the jurisdiction of the Islands Trust, section 868(f) of the Municipal Act.

To this date there has been absolutely no positive response from Municipal Affairs. The Trust has raised the request several times with the Minister and with the Administrative Services Division of Municipal Affairs over the past year. The Minister has continually stalled on the issue, and it is therefore becoming quite clear that the Trust will not be granted this power.

If the Trust cannot even obtain this reasonably simple power (which is available to all municipalities and regional districts), it is much easier to understand that at this time it is totally unrealistic to expect the Trust to be granted powers to operate a tree farm of its own (as suggested in the previous section). The lack of support by the government for such a simple tool, strongly recommended by the Pearse Commission to be used by regional districts and the Islands Trust, and strongly needed to minimize resource use conflicts, must indicate a general lack of support of the Trust by the government.

6. Case Studies of Logging with respect to Serious Water Problems

Since the Islands Trust made the request for tree cutting

control to Municipal Affairs (May 9, 1979), serious water problems have been experienced on Saltspring and North Pender Islands. On Saltspring, St. Mary Lake has been the primary water source for Ganges (the largest concentration of population in the trust area). Studies have found high values of nitrogen and phosphate, and species and densities of phytoplankton characteristic of eutrophication. Water from the lake is now very turbid and may require boiling before consumption. The cause appears to be effluent from subdivisions and highly developed resorts, and run-off from farming activities around the lake; it is also possible that the lake is naturally eutrophic.

The owner of over 100 acres of property adjacent to the lake now wishes to subdivide and sell his property. As well as being concerned about increased residential use around the lake potentially causing more effluent runoff, the Trust anticipates some logging to be done as there is harvestable timber on the property.

Depending on how the logging is carried out, the water quality of the lake could be seriously affected by logging. However, as already pointed out, neither the Trust nor any other agency has any control over logging operations in this respect. (With respect to the subdivision the Trust is attempting to have the dwellings clustered away from the lake.)

North Pender Island is experiencing a number of extreme difficulties primarily as a result of the 1200 lot development of Magic Lake Estates. The permanent population of the area has

increased five times in the last ten years. While to date only about one-third of the lots have been built upon, water shortages have already been experienced. It is recognized that the last few years have been unusually dry on the islands, but the facts remain that some North Pender residents have had periods without water.

North Pender has three main water sources, two of which are man-made: Magic Lake and Buck Lake. The third main source, Roe Lake, is the only spring-fed lake on the island. It is the only water supply on the island not threatened by over-use and pollution. With the critical water shortage evident on the island, Roe Lake appears to offer the only solution. Accordingly the Water Rights Branch has reserved Roe Lake from issuance of further water licences.

While most of the Roe Lake area had been logged almost two decades ago (and most of the existing damage done to the lake at that time), a German company began logging the forested area around the lake during the summer of 1979. In June of 1979, the Islands Trust was informed "that slash and fill [were] being pushed into the lake and that the lake [was] becoming a "mudhole"." It was considered by some that the water quality of the lake was perhaps being seriously degraded.

The Islands Trust wrote on June 6, 1979 to both the Minister of the Environment and the Minister of Forests (see appendices) requesting "that an examination of the logging practices and condition of Roe Lake be undertaken and that measures be taken which would guarantee that Roe Lake would

remain as a source of potable water." The Islands Trust also requested "that no further logging be permitted in this area until such time as any problem caused by poor logging [had] been rectified and a commitment on the part of the contractor to protect the lake [had] been received."

The Trust letter further requested that section 6 of the Environment and Land Use Act be applied if the Forest Act or other legislation did not provide for action to protect the lake. The letter did point out that the Islands Trust is not opposed to logging activities carried out responsibly; the Trust views logging as an important source of local employment on some islands. Thus, even though the Trust itself was powerless to rectify the situation, it did what it could to alleviate the situation, attempting to consult with and involve appropriate agencies in the problem.

It appears that soon after, logging adjacent to the lake stopped or was finished. In any case the Environment and Land Use Act was not used here.

On July 4, 1979 the Trust Chairman wrote another letter to the Ministers of Environment and of Forests, this time discussing the general problem of protecting vital watersheds which are privately owned; no specific reference was made to Roe Lake. This letter explained that through zoning and subdivision bylaws, the Trust had done what it could to control activities within these watersheds. It was noted that "indiscriminate logging on private lands ... now constitutes a threat to domestic watersheds and groundwater recharge areas," and that

the Islands Trust has no control over such an activity. The letter requested information regarding measures available "to government at any level to ensure that logging which takes place in these watershed areas is carried out at some minimum standard in keeping with the need to maintain present water quantity and quality levels." Finally, the letter asked whether, in the case that no such minimum standards existed, there were guidelines or other forms of advice indicating desirable logging practices in watershed areas.

On July 24, 1979 the Minister of Forests replied that the only control, under the Forest Act, of logging on private lands is with respect to the abatement of fire hazard. Apparently, the Water Investigations Branch <u>had</u> developed a set of guidelines indicating desirable logging practices in watershed areas, and these were to be forwarded to the Trust. However,
1) these guidelines were designed to deal with Crown land, and
2) without any powers to deal with private lands the guidelines were not of much use to the Trust. Thus while this letter recognized that no control of logging on private lands existed, the government was doing nothing to remedy the situation.

On October 24, 1979 the Minister of Forests again replied to the July 4 letter from the Islands Trust. His letter said that his Ministry was not empowered to control or regulate logging on private lands. Regarding the tree-cutting bylaw proposed by the Islands Trust on May 9, 1979, the Minister felt that "some measure of control may be possible through [such a] bylaw, but [that] to-date this approach has not been widely applied in the province."

These letters may only be interpreted as stonewalling actions--delay tactics similar to those used by the Minister of Municipal Affairs with respect to tree-cutting control. Some recognition of the problem seems to exist, but there is great reluctance to give the Trust the power to deal with it. Public choice theory offers two possible explanations for this reluctance of the provincial Ministers. One is that the private loggers or logging companies tend to be supporters of the government (e.g. contributors). The second is that private loggers or logging companies have larger properties and more property rights and can thus afford to exert more pressure on the government to influence decisions in their favour; it is to be expected that they would lobby to prevent any sort of controls from impinging on their rights.

Perhaps the Trust should attempt to assert control regardless, under section 6 of the Islands Trust Act. This would at least provide control until it was challenged in the courts, and such a case might even be successful. If nothing else it would bring the matter to a head.

F. Conclusion

In summary, there appear to be important cases in the trust area where some kind of control over the cutting of trees is warranted. This is particularly true on unregulated private lands, but may also be relevant on Taxation Tree Farms as the Forest Service seems to have little effective control of this tenure. The Islands Trust seems to be the logical body to

administer this control.

The Trust has not made much attempt to influence management plans for Taxation Tree Farms, but in light of their lack of expertise and resources to do so, and in light of the lack of cooperation demonstrated by the government on the matter of other private lands, this lack of action is not surprising. No government level currently has any control over logging on private lands outside Taxation Tree Farms, although it appears that regional districts could exercise such control if they wished. The Islands Trust has pointed out the need for this control to various Ministers and has applied (over one year ago) for such jurisdiction. To this date there has been no constructive response from the government, in spite of the fact that this sort of control was strongly recommended by the Pearse Commission.

It appears that with respect to forestry the Trust (or rather the system) has been unsuccessful in achieving the three major intents interpreted as a basis of evaluation.

1. As a single mechanism of coordination and control, the Trust has failed. With respect to Taxation Tree Farms the Trust, for various possible reasons, has not acted with the Forest Service to coordinate planning to protect and enhance values other than forestry. With respect to other forest lands the Trust has tried, but unsuccessfully, to control forest utilization. Most reasons for the Trust's failure to coordinate and control forestry on the islands appear to be beyond the Trust's power to change.

2. Regarding orderly development and negative environmental impacts, the cases discussed here illustrate that the system has failed. The Trust does not have the tools to prevent significant negative environmental impacts, and neither does it appear to have the cooperation of the Ministries which do have the necessary tools or could develop them.

3. Concerning local control (subject to the constraints of the three stated provincial interests), there appears to be very little. Taxation Tree Farms have no local input. Decisions are made outside the trust area. Other private lands have local input only to the extent that they are owned and managed by local residents; in this sense there is much local control. However, there is no local control in the sense of the local public interest. Neither is there provincial control with respect to the three stated provincial interests.

In conclusion, one must ask how the Islands Trust can be expected to fulfill the intent of its mandate with respect to forest values when it lacks essential tools, and when the B.C. Ministries of Forests and Municipal Affairs are unprepared to develop appropriate controls either for the Trust or for some other agency which is prepared to cooperate with the Trust. It is apparent that while the Trust has made attempts to control or at least influence development of forest lands of the three types (Crown land, Taxation Tree Farm, and other private land), the mandate of the Trust will only be fulfilled to the extent that the B.C. Forest Ministry, and regional districts or Municipal Affairs take action toward Trust objectives.

Chapter IX

CONCLUSION

In this concluding chapter, an analysis is made of how the Islands Trust has fared with respect to the three major intents as summarized in chapter IV. Throughout this discussion reference is made also to how the total institutional system has fared with respect to these intents.

Next the theory from chapter V, as summarized in the list of postulates and inferences, is related to the findings in an attempt to explain the results.

Then some personal conjectures are made as to why the system has performed the way it has, and as to some possible institutional changes which might improve the system.

Finally, some personal comments and criticisms are made about the Islands Trust itself.

A. Fulfillment of Intent

1. The Trust to Act as the Single Mechanism of Coordination and Control

While the Trust has attempted to monitor development and to consult with appropriate agencies in most cases as required, it cannot be said to be a single mechanism of control of island development. Each of the three subject areas examined involve

powers of control which the Trust simply does not have.

While it obviously was not originally intended for the Trust to have all these powers (e.g. administrative powers of the Lands and Housing Regional Operations Division, powers of the subdivision approving officer, administrative powers of the Forests Ministry, powers to regulate logging on non-Taxation Tree Farm private lands and veto powers for government agencies--otherwise the Trust would have been delegated these powers originally--it did seem to be intended that agencies which did have these powers would respect the Trust's role as coordinating body. This could be interpreted to mean that where policy conflicts occurred with respect to specific developments, there would be consultation and cooperation with the Trust, and high regard for the Trust's role as 1) <u>the</u> representative body of local and provincial interests in the trust area, and 2) a body with a mandate to preserve and protect the trust area as a special area of B.C. The intent would seem to be that only on very major issues (i.e. of much greater significance than those discussed in this thesis) would there be decisions made contrary to the Trust's recommendations and even under these circumstances, in full and open consultation with the Trust. The lack of serious consultation with the Trust and the demonstrated lack of respect for the Trust's role by the provincial government in this regard is clearly evidenced in this thesis. Thus the total institutional system has not produced the intended results. (This has serious implications for the notion of integrated resource management.)

In some cases the Trust has established formal consultation

procedures with other agencies. Examples include the formal agreement with the Ministry of Lands, Parks, and Housing, annual meetings with the director of the Parks Branch, and a special committee to meet with the B.C. Ferry Corporation as required. These no doubt improve coordination. However, it would seem that participation of provincial agencies is reluctant at best; no agency is eager to have its objectives or powers fettered.

Other than the advisory committee which has been assisting the Trust with the development of a regional plan, there has been little if any establishment of groups involving more than one non-Trust agency. Perhaps this is because there have been no issues arising which directly require the coordination by the Trust of more than one agency at a time (in which case the necessity of the Trust being a "fully representative coordinating body" [Report of the Select Standing Committee on Municipal Matters] is questioned).

It would appear that an established group (or groups) of several agencies coordinated by the Trust, might serve three useful purposes in the trust area. First it might increase the respect of other agencies for the Trust as the coordinating body; if the Trust explicitly coordinated the meetings and discussions between government agencies as they relate to the trust area, the Trust's implicit role as coordinator may be more easily recognized.

Second, the pooling of ideas might assist the Trust in developing creative ideas regarding the development potential of the islands, in keeping with the Trust's objectives.

And third, the interaction might solve some actual problems. For example, if the Trust coordinated annual meetings involving the Lands and Housing Regional Operations Division, the Highways Branch, the B.C. Ferry Corporation (and possibly the regional districts) strictly for discussion of subdivision on the islands, then conflicts in policy could be aired and worked through, and agencies would become openly aware of what each other's intentions are in this respect so that they could plan accordingly. Under the existing situation, the Trust seems to communicate with each agency on an individual basis and therefore is responsible for communicating the intentions of all other agencies to each agency. For these three reasons but particularly for the first one, the Trust should consider a more explicit role as coordinator of government bodies.

2. The Trust to Ensure Orderly Development

In general, it appears that the Trust has significantly protected the islands from developments which are disorderly in the natural or social sense. Since the ten-acre freeze and the inception of the Trust, the rate of change on the islands has not been as drastic as it was previous to the freeze. The quality of development has significantly improved, and the observation that in general island residents are pleased with the Trust, indicates that the Trust has largely succeeded in protecting the natural and social environments and in ensuring orderly development.

Two qualifications must be made to this evaluation. First,

while the Trust has succeeded on this point in general, there are several specific cases where it has not had much success. Examples include the Bennett Bay development, logging within community watersheds, and building rates on residential lots. Other examples for which final decisions have not yet been made, but where it now appears that the Trust's conservationist position will not carry much weight, include an airfield on Mayne Island, a copper-molybdenum mine on Gambier Island, and a fixed transportation corridor between Vancouver Island and the Mainland through the trust area. Thus, it is important to note that the Trust has had much more success in some areas than in others. In general, it appears that the Trust has been more effective handling settlement issues than resource issues.

The second qualification to be made is that the Trust cannot take all the credit for development having become more orderly in recent years. The community plans and zoning and subdivision bylaws themselves have played a key role in controlling the rate and kind of development. Admittedly the Trust did influence those plans with its "preserve and protect" attitude, particularly more so after it acquired the planning function. And according to at least some trustees, planners for the Islands Trust do seem to be more conservationist-oriented than the population of planners in general, e.g. regional district planners. (This may reflect an identification of the planners with the Trust mandate, as all current planners were recruited from urban governments or urban planning consulting companies.) However, even without the institution of the Trust, development was certain to become somewhat more orderly under

the bylaws of regional districts.

3. The Trust to Afford Significant Local Control, Ensuring Protection of Specified Provincial Interests

The implementation of the Islands Trust certainly increased the amount of local input into island matters. The Trust affords an unusually high degree of representation of local people (in the sense that the number of local people represented by each trustee is unusually low). This seems to have brought a greater variety of interests to bear on island matters than were represented through the regional districts. Also, having two trustees from each island seems to have decreased alienation previously felt by islanders toward government. (This is evidenced by good turnouts at the polls, active participation in island matters, and comparatively good numbers of people offering to run for election to the Islands Trust.)

However, the lack of powers of the Trust, together with the general lack of cooperation from the government with respect to the Trust, means that the degree of effective local control is questionable, as evidenced by this study.

With respect to the provincial interests in protecting the scenic beauty, rural atmosphere, and recreational amenities, the Trust has done a good job within its limited capacity. Its policies with respect to Crown land, subdivision, and forest management do reflect a desire to preserve these three features for the public at large rather than for individuals.

However, the total lack of control over building rights may

have very serious effects in the long run with respect to scenic beauty and rural atmosphere. If all lots currently existing on the islands were built upon and housed 2.8 people, the island population could increase from 9490 (1976 Canadian Census) to 40,000. (This number would increase if all lots were subdivided to the extent allowed in current bylaws.) Most island community plans have taken quite a strict stance on subdivision. But given this veritable time-bomb of building activity, the Trust could perhaps afford to take an even stronger position on subdivision.

The Trust has not taken many steps to encourage the development of new recreational amenities (e.g. the Bennett Bay marina). Rather it has tended toward the protection of existing recreational amenities. The Trust could stand to generate some new ideas and implement new policies to encourage various recreational activities which have a low impact on natural and social environments. This particular point has been raised and discussed by the Trust, but suggestions have not yet taken root and the Trust seems at this point to be frustrated by this task. (This is one of the major points which many trustees feel demonstrates a conflict between the local and provincial interest. This conflict is discussed later.) The power to hold land would quite definitely assist the Trust in this regard.

Summarizing the Islands Trust's fulfillment of intent, the Trust itself has generally performed very well with the tools it has been given. It has had more success with settlement issues than resource issues. The rest of the institutional system has generally not performed as intended, particularly with respect

to cooperation with the Trust. Although the Trust's lack of powers is evident, it's powers are slowly increasing and over time the institution has been strengthened rather than weakened.

B. Theoretical Explanation of Results

The first question which needs some explanation is "If trustees are locally elected, what is there to make them want to act to 'preserve and protect' the islands?" Public choice theory lends two suggestions to explain this phenomenon. The first is that since 'preserve and protect' is the mandate of the Islands Trust, it is expected that if trustees did not act to this end at least part of the time, the institution might be dissolved and the powers of the trustees stripped. The second is that since politicians are vote maximizers (i.e. assuming this postulate is true), they will tend to serve the interests of their electorate, which leads to the explanation that most people in the trustees' electorates are in favour of preserving and protecting the islands. This is a reasonable explanation, given that most people were drawn to the islands by the scenic beauty and quiet, rural atmosphere, and have little personal need for economic growth on the islands (e.g. consider the high retired population). Preserving the attractiveness of the islands also helps maintain property values. In short, it is in the interests of the majority of islanders to protect their islands, and this explains the conservationist attitude of most trustees.

Second, the thesis has demonstrated several cases where people with vested interests (and in particular property rights)

have exerted more influence on decisions than people without vested interests. This can be explained by the postulate that they can rationally afford to exert more energy into the decision-making process (because they have more to lose). Major examples of this were seen in the Bennett Bay marina case and the Denman Island subdivision case.

Pressure can be exerted on decisions in at least two ways: 1) legitimation of interests to the decision-makers' electorate, and 2) being a constituent, or a contributor (financially or otherwise) to the political party. The research did not witness much of either of these activities (except, for example, the legitimation of forest companies by allowing public use of their land, and perhaps Mr. Pinchin's advertising on Vancouver busses). However, one could easily speculate as to discussions which may have occurred between individuals and Cabinet ministers with respect to how their interests <u>do</u> coincide with the wide provincial interest. In the case where the interests of the developer on Bowen Island had been previously demonstrated <u>not</u> to accord with the interests of the province, legitimation was unsuccessful and the provincial politicians decided against the developer. Thus, the legitimation notion of the theory is supported by the thesis.

Further, the thesis demonstrated that pressure from individuals with vested interests may cause politicians to expend considerable effort to get bureaucrats to "bend the rules" in favour of these individuals. This was evidenced in two cases at the provincial level, but was not seen at the level of the Islands Trust.

One must ask why the theory seems to apply more to the provincial level than to the Trust in this respect. One possibility is that perhaps fewer individuals with vested interests are able to legitimize their interests to the trustees and their electors. Another possibility is that perhaps the assumption of self-interest as strictly defined in the theory chapter, i.e. excluding all psychological benefits except those related to holding power, does not hold to the same extent for trustees as for provincial ministers. For example, trustees may gain other personal benefits simply from protecting the aesthetics of the islands. A third possibility is that since island communities are relatively small and intimate (and since trustees therefore live very close to the decisions they make), the trustees may be more directly accountable to their electors than provincial politicians.

Another notion of the theory which is supported by the thesis is that where more than one government level or department is involved in a decision, individuals tend to seek satisfaction through each level or department, if they do not find satisfactin with the first one confronted. Furthermore they tend to move up in the hierarchy from their representative council (in the case of the Islands Trust) to higher government levels, so that the issue becomes redefined to include the interests of the larger public, and the local public and representative council lose their relative influence. This is evidenced by the Denman subdivision, the Bennett Bay case, and the ability of the Taxation Tree Farm owners to secure such firm

control over their operations on the islands. It is noted that property interests in the province of companies like MacMillan Bloedel are very broad, and therefore decisions regarding their operations on Galiano are much more likely to be made at the provincial level than by the Islands Trust (in spite of the fact that the Trust is a provincial agency).

With respect to bureaucracies, the thesis found bureaucrats very eager to promote their mandate (e.g. Lands--to subdivide and sell or lease land; Highways--to build roads and subdivide land; Forests--to encourage logging on regulated or unregulated land; Islands Trust--to preserve and protect the islands). This activity could be interpreted as promotion of bureau budget and/or staff, bureau status, and relative power; these in turn would contribute to the personal power, income, prestige, convenience, and security of the bureaucrats. The thesis also found bureaucrats apparently willing to bend rules where their ministers were involved. This can be generalized by saying that bureaucrats will cater to the hand that feeds them even if it means bending rules or acting contrary to their own dictates.

It was also apparent that each government agency tends to identify with the clientele it serves and to adapt its programs and decisions to meet the wishes of this clientele. Again this was observed with the four major agencies studied.

Finally some comment is required regarding public goods not adequately served by the system. Although rates of subdivision and building affect everyone on the islands (as well as visitors), few people have a high enough disutility for either

of these at this time to rationally warrant them doing anything about the issues. The same may be true for tree-cutting and the problem of high taxes forcing low income people off the islands. This phenomenon of low personal incentive explains why there are no organized groups to act on the issues. This may have led to the under-provision of remedies by decision-makers.

In conclusion, the public choice theory put forth proved very useful in this study; it explains quite well the observations of the thesis. Certain parts of the theory have been more helpful than others. The theory has in general been more successful in explaining phenomena at the provincial level than at the level of the Islands Trust.

C. Personal Impressions

The strongest single impression I am left with after completing this study is that the current government does not support the Islands Trust. One has to ask why not. The most plausible explanation I have found is that while the current government is development-oriented, the Islands Trust is not. The Trust was created under the assumption that a particular set of islands constituted a special area of B.C., deserving of special treatment. However, it now appears that the government does not wish to treat this area any differently from any other area of the province. Whether the change in government since the Trust was formed is sufficient to explain the orientation of the current government can only be speculated upon.

This leads to my second strongest impression which is that

an institution such as the Trust is deserving of more control than it has, and I would go further to say that other areas of the province (e.g. regional districts not including the trust area) should also be accorded more powers than they have, to deal with the provincial authority. The fact that the Trust's powers have increased rather than decreased over the years indicates that it must be gaining popularity; it must be serving some useful purpose and performing at least satisfactorily.

I feel that the Trust has handled very well the tools it has received. This indicates to me that some decentralization of authority from the provincial level to a level more responsive to local needs is a positive step. While the size of the Trust (i.e. 26 trustees in total) seems cumbersome at times, and the Trust is an expensive tax burden, the energy, enthusiasm, and responsiveness of the Trust is exciting to witness.

However, one factor which seems to hinder the Trust somewhat is an apparent split in philosophy generally between the northern and southern islands. This is perceptible at some Trust Council meetings and has surfaced in some of my discussions with trustees. At times this may have prevented the Trust from acting as a strong unified body. This may, in fact, be one factor influencing the provincial government's regard for the Trust.

Another factor which may possibly have distracted both the Trust and the provincial government is the planning function. I do feel that it is important for the Trust to have such a

critical tool, and the power of the planning function is not to be belittled. However, it seems as though many trustees regard their role as almost completely revolving arcund their community plans and zoning and subdivision bylaws. They sometimes seem to forget that they have a responsibility to make recommendations to Cabinet and government agencies regarding the trust area and to coordinate activities in the trust area generally; there is a tencency to act simply as a local government rather than as a provincial agency. Similarly, Cabinet and government agencies seem to respect the Trust only for its bylaws, if that! While the Trust has greater responsibilities and a higher profile than regional districts, it does not seem to be treated any differently; it seems to be regarded simply as a planning body.

Another point related to the planning function is that the zoning and subdivision bylaws are by definition a negative tool; while they do generally state what can be done, they are perhaps most often viewed by the public as restrictions indicating what cannot be done where. An institution such as the Trust should have some positive planning tools. However, without the power to hold land, positive planning approaches are practically impossible.

It may seem questionable whether a body which is supposed to coordinate other agencies should have the power to hold land. (Holding land would give it a vested interest to protect.) However, I feel that an institution as responsive and accountable as the Trust would be an appropriate body to hold that function. If the Trust did not use the land for purposes in the best interests of the public to which it is accountable

(i.e. the local population and indirectly the provincial population), I feel certain that the public would make its voice known to the Trust and the Trust would adapt accordingly. The power to hold land has many ramifications which have been alluded to throughout the thesis (such as the possibility of operating a tree farm, and other positive planning approaches).

The question of whether the general trustees should be appointed or elected has been another controversial issue. From the standpoint of democracy, where practicable it always seems preferable to have elected officials. However, in this case having the general trustees elected rather than appointed may be one reason why the provincial government has been reluctant to award the Trust any more powers or to cooperate generally. It is possible that the government feels that it cannot be certain that the Trust will adequately represent the provincial interest in the area because one never knows who will get elected.

Thus, if the general trustees or perhaps just the Chairman were appointed, there may be sacrifices with respect to democratic principles and conservation-orientation (because the current government is certainly more development-oriented than the Trust). However, there may be more cooperation from provincial agencies which, as we have seen, is critical to the effectiveness of the Trust.

The conflict between the local and the provincial interests in the islands must be addressed. It is a conflict of which all trustees are vitally aware--especially the general trustees who are supposed to represent both sets of interests. On the one

hand the local interest (in its extreme form) can be described as the interest in "pulling up the drawbridge" (i.e. now that these people have made it to the islands they would rather no more came). The provincial interest in the islands is predominantly concerned with scenic beauty and recreation, although there are other major interests such as the Taxation Tree Farms and the possible mine on Gambier Island. However, it is important to note that the provincial interest will not be served if the islands are subdivided and fully developed; this would ruin the interest, attractiveness and recreational opportunity for visitors. Thus, the provincial and local interests have much in common. It seems to be a matter of educating the provincial public that the natural resources of the islands are finite and that the island communities (including the diversity of lifestyles on the islands) are a valuable provincial resource to be protected.

Finally, two conclusions suggest the direction which future studies might take. The first is that economic interests in general, and property rights in particular, seem to wield a disproportionate amount of influence in decision-making processes even when other values, such as lifestyles and aesthetics, are heavily weighted by legislative mandates. The second is that where mandates given to government agencies conflict, the ultimate decision is based more often on the relative seniority, power, or "personality" of the agencies than on rational analysis and dialogue. In short, more research appears to be necessary to discover:

1) control mechanisms that can effectively temper purely

economic influences, and

2) institutional mechanisms that can effectively coordinate the specific mandates of various government agencies.

The Islands Trust has been, and remains, an extremely useful and instructive experiment in this area. Comparative studies of the Islands Trust and similar innovations elsewhere will undoubtedly lead tc more understanding of the two issues noted above. In this area. Comparative studies of the Islands Trust and similar innovations elsewhere will undoubtedly lead to more understanding of the two issues noted above.

BIBLIOGRAPHY

Allison, Graham T. Essence of Decision. Little Brown and Company, Boston, 1971.

Arrow, Kenneth. Social Choice and Individual Values. Wiley, New York, 1951.

Barr, Lorna R. "Land of the Trust Islands: A Review of Subdivision, Housing and Ownership for the Major Islands." Islands Trust, Victoria, 1978.

Bryant, R.W.G. Land Private Property Public Control. Harvest House, Montreal, 1972.

Chambers, Alan D. Simulation of Cottage Lot Subdivision: A Synthesis of Social, Economic, and Environmental Concerns. Ph.D. Thesis, Resource Science Centre, University of British Columbia, Vancouver, 1971.

Crain, W.M. "On the Structure and Stablity of Political Markets." Journal of Political Economy. Vol. 85, August, 1977, pp. 829-842.

Crain, W.M. and R. Tollison. "Campaign Expeditures and Political Competition." Journal of Law and Economics Vol. 19, April, 1976, pp. 177-188.

--and--. "Legislative Structure and Voting Rules." Journal of Legal Studies. Vol. 6, January, 1977a, pp. 235-240.

--and--. "Attenuated Property Rights and the Market for Governors." Journal of Law and Economics. Vol. 20, April, 1977b, pp. 205-212.

--and--. "The Influence of Representation on Public Policy." Journal of Legal Studies. (Forthcoming).

--and--. Monopoly Aspects of Politics. (Leiden, Martinus Nijhoff). (Forthcoming).

--, T. Deaton, and R. Tollison. "Legislators as Taxi-Cabs." Economic Inquiry. Vol. 15, April, 1977, pp. 298-302.

Downs, Anthony. An Economic Theory of Democracy. Harper and Row, New York, 1957.

--. Inside Bureaucracy. Little, Brown and Company, Boston, 1967.

--. "The Public Interest: Its Meaning in a Democracy." Social Research. Vol. 29, No. 1, Spring, 1962, pp. 1-36.

Fiorina, M.P. Congress: Keystone of the Washington Establishment. Yale University Press, New Haven, 1977.

--, and R.G. Noll. "Voters, Legislators and Bureaucracy: Institutional Design in the Public Sector." American Economic Review, Proceedings and Papers. Vol. 68, No. 2, May, 1978a, pp. 256-260.

--and--. "Voters, Bureaucrats, and Legislators." Journal of Public Economics. Vol. 9, pp. 239-254, 1978b.

Fox, Irving. "Readings for Planning 521." School of Community and Regional Planning, University of British Columbia, Vancouver, 1978.

Frey, Bruno S. and H.J. Ramser. "The Political Business Cycle: Comment." Review of Economic Studies. Vol. 42, October, 1976, pp. 553-555.

--, and Friedrich Schneider. "An Empirical Study of Politico-Economic Interaction in the U.S." Discussion Paper No. 76, University of Konstanz, 1976.

Glover, J.M. and P.J. Chataway. "Bowen: Island Park or Island Suburb?" Vancouver Sun, July 21, 1973.

--. The Island Trust Concept: A Proposed Institutional Arrangement to Implement a Policy of Controlled Development for the Gulf Islands of British Columbia. M.Sc. Thesis, School of Community and Regional Planning, University of British Columbia, Vancouver, 1974.

Gulf Islands Driftwood. Saltspring Island, March 6 and May 23, 1979.

Hansard. (Debates of the Legislative Assembly), Province of British Columbia, 1973-1979.

Howard, Irene. Bowen Island 1872-1972. Bowen Island Historians, Bowen Island, 1973.

Ince, John G. (West Coast Environmental Law Research Foundation). Land Use Law: A Study of Legislation Governing Land Use in British Columbia. Continuing Legal Education Society of British Colulmbia, Centre for Continuing Education, University of British Columbia, 1977.

--. Environmental Law: A Study of Legislation Affecting the

Environment of British Columbia. Centre for Continuing Education, University of British Columbia, Vancouver, 1976.

Islands Trust. "A Regional Plan for the Islands Trust Area." Victoria, 1980.

Islands Trust. "The Policy of the Islands Trust." Victoria, 1975.

Islands Trust. "Land of the Trust Islands: A Review of Subdivision, Housing and Ownership." Victoria, 1978.

Islands Trust. "Islands Trust Jurisdictions." Victoria, 1978.

Islands Trust. "Islands Trust: Some Basic Statistical Data for the Designated Islands (as of April 1978)." Victoria, 1978.

Islands Trust. "Islands Trust Regional Plan Background Report (Draft)." Victoria, February, 1980.

Islands Trust. "Report on Background Information for Brief to be Submitted to Dr. Gaffney's Committee on Tree-Farm Taxation." Victoria, 1975.

Islands Trust. "Brief of Islands Trust to Royal Commission on Forest Resources." Victoria, 1975.

International Point Roberts Board. "Report to the International Joint Commission on Solutions to the Problems Facing the Residents of Point Roberts." October, 1973.

Kahn, Si. How People Get Power. McGraw-Hill Book Company, New York, 1970.

Kneese, Allen V. Economics and the Environment. Penguin Books Ltd., Markham, Ontario. 1977.

March, James G. and Herbert A. Simon. Organizations. John Wiley and Sons, Inc., New York, 1967.

Marchak, Patricia. In Whose Interests: An Essay on Multinational Corporations in a Canadian Context. McLelland and Stewart, Toronto, 1979.

Ministry of Environment. "Land Management Branch Planning Strategy." Victoria, January, 1978.

Ministry of Highways and Public Works. "What Happened to My Subdivision Application?" Planning Branch and Public Information Office, Victoria, undated.

Ministry of Lands, Parks, and Housing. "Forum on Lands Parks Housing." Vol. 1, No. 3, Victoria, July, 1979.

Ministry of Lands, Parks, and Housing. "Forum on Lands Parks Housing." Vol. 1, No. 4, Victoria, October, 1979.

Mueller, Dennis C. "Public Choice: A Survey." Journal of Economic Literature. Vol. 14, No. 2, June, 1976, pp. 395-433.

Niskanen, William A. Bureaucracy and Representative Government. Aldine, Atherton, Chicago, 1971.

--. "Bureaucrats and Politicians." Journal of Law and Economics. Vol. 18, December, 1975, pp. 617-643.

--. Bureaucracy: Servant or Master? The Institute of Economic Affairs, 1973.

Olson, Mancur. The Logic of Collective Action: Public Goods and the Theory of Groups. Harvard University Press, Cambridge, 1971.

Ostrom, Vincent and Elinor. "Public Choice: A Different Approach to the Study of Public Administration." Public Administrative Review. Vol. 31, 1971, pp. 203-216.

Ostrom, Vincent. "Basic Propositions in a Paradigm of Democratic Administration." The Intellectual Crisis in American Public Administration. University of Alabama Press, 1973.

Pearse, Peter H. (Royal Commission on Forest Resources). Timber Rights and Forest Policy in British Columbia. Victoria, 1976.

Ricker, W.H. and P.C. Ordeshook. "A Theory of the Calculus of Voting." American Political Science Review. Vol. 62, No. 1, March, 1968, pp. 25-42.

Russell, Clifford S. (ed). Collective Decision Making: Applications from Public Choice Theory. Resources for the Future, Inc., Washington, 1979.

Schumacher, E.F. Small is Beautiful. Sphere Books Ltd., London, 1973.

Sewell, W.R. Derrick. "Environmental Perceptions and Attitudes of Engineers and Public Health Officials." Environment and Behaviour. March, 1971.

Simon, Herbert A. Administrative Behavior. The Macmillan Company, New York, 1951.

Sproule-Jones, Mark. "An Analysis of Canadian Federalism." Publius The Journal of Federalism. The Centre for the Study of Federalism, Temple University, Fall, 1974.

Steiner, Peter O. "The Public Sector and the Public Interest." In Public Expenditures and Policy Analysis, edited by Robert H. Haveman and Julius Margolis. Rand McNally College Publishing Company, Chicago, 1970.

Tennant, Paul and David Zirnhelt. "Metropolitan Government in Vancouver: The Strategy of Gentle Imposition." In Canadian Public Administration. Vol. 16, No. 1, Spring, 1973, pp. 124-138.

The Province. "Fast Sea Transit Key to Bowen Development." Vancouver, March 18, 1976, pp. 33.

Thompson, A.R. and H.R. Eddy. "Jurisdictional Problems in National Resource Management in Canada." Essays on Aspects of Resource Policy, Background Study for the Science Council of Canada. Special Study No. 27, May, 1973.

Tindal, C.R. Structural Changes in Local Government. Government for Urban Regions. Institute of Public Administration of Canada, Toronto, 1977.

--, and S.N. Tindal. Local Government in Canada. McGraw-Hill Ryerson, Toronto, 1979.

Tullock, Gordon. Toward a Mathematics of Politics. University of Michigan Press, Ann Arbor, 1967.

Victoria Times. "Denman Mourns Bylaw 'Overthrow'" Victoria, July 27, 1979.

Williamson, John. "Profit, Growth, and Sales Maximization." Economica. February, 1966, pp. 1-16.

APPENDICES

APPENDIX A

[*Section 6 (3) to be proclaimed before in effect.*]

Islands Trust Act

[*Consolidated for convenience only, August 24, 1979.*]

Interpretation.

1. In this Act, unless the context otherwise requires,

"designated island" means an island designated in Schedule B under this Act or an island or group of islands in the trust area, whether or not in Schedule B, designated from time to time under the regulations;

"general affairs" means matters relating to the object of the trust and affecting

(i) more than one designated island; or

(ii) one or more islands, other than designated islands, situated within the trust area,

but does not include local affairs;

"general trustee" means the chairman and 2 vice-chairmen elected under section 2;

"island" means all land comprising an island, and includes surrounding land attached to and extending from an island, whether or not water flows over or under it;

"land" includes Crown land as defined in the *Land Act;*

"local affairs" means, in respect of a designated island, matters relating to the object of the trust and affecting only the designated island;

"local trustee" means a local trustee elected under section 4;

"minister" means that member of the Executive Council charged by Order of the Lieutenant-Governor in Council with the administration of this Act;

"municipality" means a municipality as defined in the *Municipal Act,* and includes a regional district;

"trust" means the trust established under section 2;

"trust area" means land situated within the boundaries described in Schedule A;

"trust committee" means

(i) where a decision, approval, recommendation, or other proceeding is required or permitted under this Act to be made or taken in respect of general affairs, the general trustees; and

(ii) where a decision, approval, recommendation, or other proceeding is required or permitted under this Act to be made or taken in respect of the local affairs of a designated island, a committee consisting of not less than two general trustees and one local trustee of the designated island.

1974, c. 43, s. 1; 1977, c. 51, s. 1 (*a*) (proc. eff. Jan. 1, 1978), s. 1 (*b*) (proc. eff. Dec. 1, 1978).

Establishment of trust.

2. (1) There is hereby established a trust, to be known as the Islands Trust, consisting of the chairman and 2 vice-chairmen elected in accordance with the regulations by the local trustees from among their number as soon as practicable after the general election of the local trustees, to hold office for a term of 2 years or until their successors are elected pursuant to this section.

(2) If an office of the trust becomes vacant, the local trustees shall elect one of their number to serve the balance of the term.

(3) Any two of the general trustees constitute a quorum.

(3*a*) The minister may direct the date and procedure for the first election of general trustees after the coming into force of this subsection and the date on which they will take office.

(3*b*) When the first elected general trustees take office pursuant to this section the existing appointments of general trustees terminate.

(4) A vacancy in the membership of the trust does not impair the authority of the remaining general trustees to act.

(5) Upon their election, the persons so elected constitute a corporation.

1974, c. 43, s. 2; 1975, c. 32, s. 1 (part proc. eff. June 29, 1979; *part to be proclaimed, that amendment not included*); 1977, c. 51, s. 4 (proc. eff. Jan. 1, 1978), ss. 2, 3 (proc. eff. Dec. 1, 1978), s. 5 (proc. eff. June 29, 1979); [*amended, 1977, c. 51, ss. 6, 7, to be proclaimed, amendments not included*].

2A. [*Enacted, 1975, c. 32, s. 2, to be proclaimed*].

Object of trust.

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

(2) For the purpose of carrying out the object of the trust under subsection (1), the trust committee having jurisdiction shall

(*a*) make recommendations to the Lieutenant-Governor in Council respecting the determination, implementation, and carrying-out of policies for the preservation and protection of the trust area and its unique amenities and environment;

(*b*) make recommendations to the Lieutenant-Governor in Council respecting the acquisition, use, and disposition by the Crown in right of the Province of land situated within the trust area;

(*c*) co-ordinate and assist in the determination, implementation, and carrying-out of municipal and Provincial Government policies for the preservation and protection of the trust area and its unique amenities and environment;

(*d*) subject to the *Heritage Conservation Act,* locate and identify heritage sites within the trust area;

(*e*) hear and decide upon any matter relating to general affairs or local affairs, as the case may be, that is required, under this Act, to be heard and decided upon by it;

(*f*) prescribe rules and regulations respecting meetings and hearings;

(*g*) carry out such other duties as the Lieutenant-Governor in Council may from time to time direct; and

(*h*) in respect of the trust area, have and exercise all the power and authority

(i) of a municipality under section 694 and Divisions (1), (2), (3) and (4) of Part XXI, and

(ii) of a regional district under sections 795 to 798

of the *Municipal Act*, and, for the purposes of this paragraph, a reference to a municipality, regional district, Council, or Regional Board shall be deemed to be a reference to the trust area or the trust committee having jurisdiction, as the case may be, and the Council of a municipality or the Regional Board of a regional district, as the case may be, shall not exercise the power and authority under these sections, Divisions, or sections 798A, 798B, 798C and 798CA in respect of the trust area.

(3) For the purpose of enforcing a by-law made under this Act, the trust committee having jurisdiction has all the power and authority of a municipality, and sections 220, 222, 230, 232 to 235, 237 to 239 (1), 240, 241, 243, 244, 734 and 735 of the *Municipal Act* apply.

1974, c. 43, s. 3; 1977, c. 37, s. 31 (proc. eff. Sept. 22, 1977); 1977, c. 51, ss. 8, 9 (proc. eff. Jan. 1, 1978).

Local trustees.

4. (1) There shall be two local trustees elected for each designated island.

(2) The first election of local trustees after the date this Act comes into force shall be held on such date, and in such manner, as the minister may direct.

(3) Subject to subsection (2), the provisions of the *Municipal Act* respecting the election of electoral area directors under section 772 of that Act apply, with the necessary changes and in so far as they are applicable, to the election of local trustees.

(4) [*Repealed*. 1977, c. 51, s. 10 (proc. eff. Jan. 1, 1978).]

(5) For the purposes of local affairs, any two general trustees and one local trustee constitute a quorum; but, for the purpose of determining a quorum, a general trustee who is also a local trustee may sit as either trustee but not both.

1974, c. 43, s. 4; 1977, c. 51, s. 10 (proc. eff. Jan. 1, 1978), s. 11 (proc. eff. Dec. 1, 1978).

General v. local affairs.

5. Where doubt exists as to whether a matter relates to general affairs or to local affairs, the chairman of the general trustees, upon application by a local trustee or a general trustee, shall determine whether or not the matter relates to general affairs or to local affairs.

1974, c. 43, s. 5.

Resolution without meeting.

5A. A resolution of the general trustees, or of the general and local trustees, if it is approved in writing, or by telex, telegraph, or other means of graphic telecommunication confirmed in writing or graphic communication, by a majority of those entitled to vote, is as valid as if passed at a properly called and constituted meeting.

1976, c. 32, s. 12 (proc. eff. July 8, 1976).

Land use in trust area.

6. (1) A trust committee having jurisdiction under section 3 (2) (*h*) shall not adopt a community plan, regional plan, zoning by-law, subdivision control by-law, development area by-law, or any similar plan or by-law regulating the use or subdivision of land within the trust area, unless the plan or by-law is approved by the minister under this Act or the *Municipal Act*.

(2) Subject to the regulations, no person shall construct or enlarge a building or improvement upon land situated within the trust area unless the construction or enlargement is approved by the trust committee having jurisdiction in respect of those affairs.

(3) Subject to the regulations, no registrar under the *Land Titles Act* shall accept an application for deposit of a plan of subdivision under that Act, the *Real Estate Act,* or the *Strata Titles Act,* all or part of which consists of land situated within the trust area; unless the plan is approved by the trust committee having jurisdiction in respect of those affairs.

(4) The Crown in right of the Province, or an agency of the Crown as defined in the *Public Service Labour Relations Act,* shall not develop or dispose of land situated within the trust area unless the Crown or the Crown agency first gives notice of the development or disposition to the general trustees.

(5) [*Repealed.* 1977, c. 51, s. 12 (proc. eff. Jan. 1, 1978).]

(6) For the purposes of this section, the general trustees shall act as the trust committee in respect of islands other than designated islands.

(7) Where a regional plan includes, within the trust area, land or water areas that are designated as having special importance in securing and maintaining the objects of the trust by reason of their

(*a*) scenic value, or

(*b*) recreational potential, or

(*c*) natural or scientific interest, or

(*d*) delicate ecological characteristics,

those areas shall, on approval of the regional plan by the minister and notwithstanding subsection (1), be under the jurisdiction of the general trustees for the purpose of adopting special protective zoning and subdivision by-laws or regulations.

(8) A community plan, regional plan, subdivision by-law, zoning by-law, or land use contract adopted by a municipality or regional district prior to the coming into force of section 3 (2) (*h*) remains in force insofar as it applies to land within the trust area as if it had been adopted by the trust, and may, subject to the approval of the minister under sub-

section (1), be repealed, amended, or re-enacted by the trust committee having jurisdiction.

1974, c. 43, s. 6; [*amended, 1975, c. 32, s. 3, to be proclaimed, amendment not included*]; 1977, c. 51, s. 12 (proc. eff. Jan. 1, 1978); 1978, c. 31, s. 4; 1978, c. 25, s. 332 (proc. eff. Oct. 31, 1979).

Approval procedures.

7. (1) An application to amend a by-law under section 3 (2) (*h*) or for approval by a trust committee under section 6 (2) or (3) shall be made to the chairman of the general trustees, and shall be accompanied by such information as the Lieutenant-Governor in Council may prescribe.

(2) Upon receipt of an application under subsection (1), the chairman of the general trustees shall determine whether the application relates to general affairs or to local affairs, or to both general and local affairs, and shall refer the application to the trust committee that, in his opinion, has jurisdiction in respect of the affairs to which the application relates.

(3) Where a trust committee is of the opinion that the approval of an amendment of a by-law under section 3 (2) (*h*) an application under section 6 (2) or (3) is contrary to the object of the trust, it may refuse to approve the application.

(4) The trust committee may approve the application, or may approve it subject to such terms and conditions as the trust committee considers necessary or advisable.

1974, c. 43, s. 7; 1977, c. 51, s. 13 (proc. eff. Jan. 1, 1978).

No by-laws or permits contrary to trust.

7A. A Regional Board or a Council of a municipality, all or part of which is within the trust area, shall not

(*a*) adopt a by-law, or

(*b*) undertake work, or

(*c*) issue a permit

respecting the trust area that is contrary to, or at variance with, the by-law of the trust.

1977, c. 51, s. 14 (proc. eff. Jan. 1, 1978).

***Municipal Act* s. 707 applies.**

7B. Where the trust advises a Regional Board or a Council of a municipality that it proposes to adopt

(*a*) a zoning by-law, or an amendment of it, or

(*b*) an official community plan, or an alteration, addition, or extension of it,

affecting land in the regional district or municipality, the Regional Board or Council, as the case may be, may withhold a building permit, and in that case section 707 of the *Municipal Act* applies to the trust.

1977, c. 51, s. 14 (proc. eff. Jan. 1, 1978).

Appeals.

8. Where

(*a*) a general trustee or local trustee is dissatisfied with a determination of the chairman under section 5; or

(*b*) an applicant under section 6 (2) or (3) is dissatisfied with a refusal by a trust committee to approve an application, or with an approval subject to terms and conditions,

he may appeal the determination or refusal to the minister.

1974, c. 43, s. 8; 1977, c. 51, s. 15 (proc. eff. Jan. 1, 1978).

Manager and employees.

9. (1) Subject to the *Public Service Act*, the general trustees may appoint such employees, including a manager, as they consider necessary for the affairs of the trust, and may designate the title, office, and responsibilities of an employee.

(2) Notwithstanding the *Public Service Act*, but subject to the approval of the minister, the general trustees may engage and retain such persons as they consider necessary as consultants, experts, or specialists, and may fix their remuneration.

(3) The Lieutenant-Governor in Council may direct that the *Public Service Act* or the *Public Service Superannuation Act*, or both of them, applies to a general trustee or a person engaged and retained under subsection (2).

1974, c. 43, s. 9; 1977, c. 51, s. 16 (proc. eff. Jan. 1, 1978).

Trustees not to acquire land.

10. No general or local trustee shall, while he is a trustee, and during the period of two years after the date he ceases to be a trustee, acquire an interest in land situated within the trust area unless he has the approval of the minister.

1974, c. 43, s. 10.

Regulations.

11. For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant-Governor in Council may make such regulations and Orders as are ancillary thereto and not inconsistent therewith; and every regulation shall be deemed to be part of this Act and has the force of law, and, without limiting the generality of the foregoing, the Lieutenant-Governor in Council may make regulations and Orders

(*a*) respecting the distinction between general and local affairs;

(*b*) exempting land or buildings, or classes of land or buildings, from the provisions of section 6 (2) and (3);

(*c*) amending Schedule B.

(*d*) [*Enacted, 1975, c. 32, s. 4, to be proclaimed.*]

(*e*) grouping 2 or more islands in the trust area, whether or not in Schedule B, as a designated island,

(*f*) respecting remuneration and expenses of trustees,

(*g*) respecting the election of general trustees, and

(*h*) resolving any conflict between this Act and the *Municipal Act* or making further provisions of the *Municipal Act* apply under this Act.

1974, c. 43, s. 11; [*amended, 1975, c. 32, s. 4, to be proclaimed, amendment not included*]; 1977, c. 51, s. 17 (proc. eff. Jan. 1, 1978).

11A and **11B**. [*Enacted, 1975, c. 32, s. 5, to be proclaimed*].

Land Commission Act.

11C. For the purposes of the *Land Commission Act,* the trust shall be deemed to be the regional district in respect of the trust area, and, notwithstanding that Act, the Council of a municipality or the Regional Board of a regional district, as the case may be, shall not exercise the power and authority under that Act in respect of the trust area.

1977, c. 51, s. 18 (proc. eff. Jan. 1, 1978).

Appropriation.

12. (1) Upon the requisition of the minister, the Minister of Finance shall pay out of the Consolidated Revenue Fund, or out of the Revenue Surplus Appropriation Account of the Consolidated Revenue Fund, or partly from the Consolidated Revenue Fund and partly from the Revenue Surplus Appropriation Account, such sums as may be required from time to time to carry out the purposes of this Act, up to the thirty-first day of March, 1975, and thereafter shall pay out of those funds, or any of them, such sums as may be authorized by an Act of the Legislature for those purposes.

(2) To meet part of the amount appropriated under subsection (1), the Minister of Finance, on the requisition of the minister, may levy on the assessed value on lands and improvements within the trust area, excluding property that is taxable for school purposes only by special Act, according to the basis of assessment as fixed for taxation for school purposes for the current year; but the amount so levied shall not exceed the product of a levy of 1½ mills.

(3) Subject to this Act, the *Assessment Act* and the *Taxation Act* apply to the assessment, levy, collection and recovery of taxes on lands imposed under subsection (2), and to the addition of interest to the taxes when delinquent, in the same manner as taxes imposed on lands under the *Taxation Act.*

(4) The taxes on lands assessed under this section shall, for all purposes of the *Taxation Act,* be deemed to be Provincial taxes imposed and assessed under this Act, and, on collection or recovery, shall be accounted for as such.

1974, c. 43, s. 12; 1977, c. 51, s. 19 (proc. eff. Jan. 1, 1978).

Commencement.

13. (1) This Act, excepting this section and the title, comes into force on a date to be fixed by the Lieutenant-Governor by his Proclamation, and he may fix different dates for the coming into force of the several provisions.

(2) This section and the title come into force on Royal Assent.

1974, c. 43, s. 13.

[NOTE.—Sections 1 to 5, 6 (1), (4), (5), and (6), and 7 to 12 proclaimed in force September 5, 1974, B.C. Reg. 617/74, Part II Gazette Vol. 17, p. 1000. Section 6 (2) proclaimed in force July 31, 1975, B.C. Reg. 519/75, Part II Gazette Vol. 18, p. 701.]

SCHEDULES

SCHEDULE A

All the land, except land situated within a reserve as defined in the *Indian Act* (Canada), on all the islands situated in the Strait of Georgia, Howe Sound, and Haro Strait lying to the south of a line commencing at the most easterly corner of Lot 140, Comox District, being a point on the high-water mark of Vancouver Island, on the easterly shore thereof; thence south 70° east in a straight line to the point of intersection with the middle line of Sabine Channel; thence in a general southeasterly direction along said middle line and passing to the northeast of Jervis, Paul, and Jedediah Islands and continuing southeasterly along the southeasterly prolongation of the aforesaid middle line of Sabine Channel to the point of intersection with a straight line drawn from the most southerly extremity of Young Point (Lasqueti Island) to the most southerly southwest corner of Lot 6274, Group 1, New Westminster District; thence northeasterly along said line to the most southerly southwest corner of Lot 6274 and north of a line commencing at the northwest corner of Section 74A, Lake District, being a point on the high-water mark of the Saanich Peninsula, on the easterly shore thereof; thence east to the point of intersection with the easterly boundary of the Province of British Columbia, save and except therefrom the above-described area, those islands lying within the boundaries of the City of Vancouver and the District Municipalities of Delta and Richmond.

1974, c. 43, Sch. A (eff. Sept. 5, 1974).

SCHEDULE B

Bowen Island.
Denman Island.
Gabriola Island.
Galiano Island.
Gambier Island.
Hornby Island.
Lasqueti Island.
Mayne Island.
North Pender Island.
Saltspring Island.
Saturna Island.
South Pender Island.
Thetis Island.

1974, c. 43, Sch. B (eff. Sept. 5, 1974).

Queen's Printer for British Columbia ©
Victoria, 1980

500-180-9095

APPENDIX B

ISLANDS TRUST ACT

[Part to be proclaimed]

CHAPTER 208

Interpretation

1. In this Act

"designated island" means an island designated in Schedule B under this Act or an island or group of islands in the trust area, whether or not in Schedule B, designated under the regulations;

"general affairs" means matters relating to the object of the trust and affecting

(a) more than one designated island; or

(b) one or more islands, other than designated islands, situated within the trust area,

but does not include local affairs;

"general trustee" means the chairman and 2 vice-chairmen elected under section 2;

"island" means all land comprising an island, and includes surrounding land attached to and extending from an island, whether or not water flows over or under it;

"land" includes Crown land as defined in the *Land Act;*

"local affairs" means, in respect of a designated island, matters relating to the object of the trust and affecting only the designated island;

"local trustee" means a local trustee elected under section 5;

"municipality" means a municipality as defined in the *Municipal Act*, and includes a regional district;

"trust" means the trust continued under section 2;

"trust area" means land situated within the boundaries described in Schedule A;

"trust committee" means

(a) where a decision, approval, recommendation or other proceeding is required or permitted under this Act to be made or taken in respect of general affairs, the general trustees; and

(b) where a decision, approval, recommendation or other proceeding is required or permitted under this Act to be made or taken in respect of the local affairs of a designated island, a committee consisting of not less than 2 general trustees and one local trustee of the designated island.

1974-43-1; 1977-51-1.

Continuation of trust

2. (1) The trust known as the Islands Trust is continued consisting of the chairman and 2 vice chairmen elected in accordance with the regulations by the local trustees from among their number as soon as practicable after the general election of the local trustees, to hold office for a term of 2 years or until their successors are elected under this section.

(2) If an office of the trust becomes vacant, the local trustees shall elect one of their number to serve the balance of the term.

(3) Any 2 of the general trustees constitute a quorum.

(4) The minister may direct the date and procedure for the first election of general trustees after January 1, 1978 and the date on which they will take office.

(5) When the first elected general trustees take office under this section the existing appointments of general trustees terminate.

(6) A vacancy in the membership of the trust does not impair the authority of the remaining general trustees to act.

(7) On their election, the persons elected constitute a corporation.

[(8) The corporation, in addition to its powers under the *Interpretation Act*, may, with the prior approval of the minister, accept, hold and dispose of land; but shall not, without the prior approval of the minister, incur liabilities or borrow money.]

[(8X) The trust has all the power and capacity of a natural person of full capacity in carrying out its objects.]

[(9) The *Company Act* does not apply to the trust, but the Lieutenant Governor in Council may direct that one or more of the provisions of that Act applies to the trust.]

[(10) The trust is for all purposes an agent of the Crown, but the trust may, on behalf of the Crown, carry out its powers and duties in its own name without specific reference to the Crown.]

[(11) Unless the minister otherwise orders, the fiscal year of the trust ends on March 31 of each year.]

1974-43-2; 1975-32-1 (part); [*subsections (8X) and (9) to (11) added 1975-32-1 (part), to be proclaimed*]; 1977-51-2,3,4,5; [*subsection (8) replaces subsection (8X), 1977-51-6, to be proclaimed*]; [*subsection (10) repealed 1977-51-7, to be proclaimed*]. [*Note: subsections (4) to (11) renumbered for statute revision purposes.*]

Islands Trust Fund

3. [(1) The trust shall establish and maintain a special fund to be called the Islands Trust Fund and shall deposit in the fund money received by way of

(a) gift or will that is not subject to terms, conditions and trusts that are inconsistent with the purposes of the fund; or

(b) grants from Canada or the Province, or its ministries or agencies, or from any person or association.

(2) The Islands Trust Fund shall be used for carrying out the objects of the trust.

(3) The Islands Trust Fund shall be administered by the trust or by a committee established by the trust; but the members of the committee established need not be members of the trust.

(4) The money of the Islands Trust Fund shall be deposited and kept in a bank, trust company, credit union or the British Columbia Savings and Trust Corporation designated by the minister, or may, subject to the approval of the minister, be invested in securities authorized as trustee investments under the *Trustee Act*.

(5) The minister may require a bond under the *Bonding Act* from the members of the trust, the members of a committee established under subsection (3) and from the manager, in an amount he fixes; but the premium for the bonds shall be paid by the trust as an administrative expense of the trust.

(6) Notwithstanding the *Revenue Act*, the money of the Islands Trust Fund does not form part of the consolidated revenue fund.

1975-32-2, *to be proclaimed.*]

Object of trust

4. (1) It is the object of the trust to preserve and protect, in cooperation with municipalities and the government of the Province, the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of the Province generally.

(2) For carrying out the object of the trust under subsection (1), the trust committee having jurisdiction shall

(a) make recommendations to the Lieutenant Governor in Council respecting the determination, implementation and carrying out of policies for the preservation and protection of the trust area and its unique amenities and environment;

(b) make recommendations to the Lieutenant Governor in Council respecting the acquisition, use and disposition by the Crown in right of the Province of land situated within the trust area;

(c) coordinate and assist in the determination, implementation and carrying out of municipal and Provincial government policies for the preservation and protection of the trust area and its unique amenities and environment;

(d) subject to the *Heritage Conservation Act*, locate and identify heritage sites within the trust area;

(e) hear and decide any matter relating to general affairs or local affairs, as the case may be, that is required, under this Act, to be heard and decided by it;

(f) prescribe rules and regulations respecting meetings and hearings;

(g) carry out other duties the Lieutenant Governor in Council directs; and

(h) in respect of the trust area, have and exercise all the power and authority

(i) of a municipality under section 708 and divisions (1), (2), (3) and (4) of Part 21; and

(ii) of a regional district under sections 807 to 813

of the *Municipal Act*, and, for the purposes of this paragraph, a reference to a municipality, regional district, council or regional board is deemed a reference to the trust area or the trust committee having jurisdiction, as the case may be, and the council of a municipality or the regional board of a regional district, as the case may be, shall not exercise the power and authority under those sections, divisions, or sections 814, 815, 816 and 817 in respect of the trust area.

(3) For enforcing a bylaw made under this Act, the trust committee having jurisdiction has all the power and authority of a municipality, and sections 294, 296, 306, 308 to 310, 312, 313 (1), 314 (1) and (3), 316, 318, 750 and 751 of the *Municipal Act* apply.

1974-43-3; 1977-37-31; 1977-51-8,9.

Local trustees

5. (1) There shall be 2 local trustees elected for each designated island.

(2) The first election of local trustees after September 5, 1974 shall be held on a date, and in a manner, the minister directs.

(3) Subject to subsection (2), the *Municipal Act* respecting the election of electoral area directors under section 781 of that Act applies to the election of local trustees.

(4) For local affairs, any 2 general trustees and one local trustee constitute a quorum; but for determining a quorum, a general trustee who is also a local trustee may sit as either trustee but not both.

1974-43-4; 1977-51-10,11.

General or local affairs

6. Where doubt exists as to whether a matter relates to general affairs or to local affairs, the chairman of the general trustees, on application by a local trustee or a general trustee, shall determine whether or not the matter relates to general affairs or to local affairs.

1974-43-5.

Resolution without meeting

7. A resolution of the general trustees, or of the general and local trustees, if it is approved in writing, or by telex, telegraph or other means of graphic telecommunication confirmed in writing or graphic communication, by a majority of those entitled to vote, is as valid as if passed at a properly called and constituted meeting.

1976-32-12.

Land use in trust area

8. (1) A trust committee having jurisdiction under section 4 (2) (h) shall not adopt a community plan, regional plan, zoning bylaw, subdivision control bylaw, development area bylaw or any similar plan or bylaw regulating the use or subdivision of land within the trust area, unless the plan or bylaw is approved by the minister under this Act or the *Municipal Act*.

(2) Subject to the regulations, no person shall construct or enlarge a building or improvement on land situated within the trust area unless the construction or enlargement is approved by the trust committee having jurisdiction in respect of those affairs.

[(3) Subject to the regulations, no registrar under the land title legislation shall accept an application for deposit of a plan of subdivision under that Act, [the *Real Estate Act* or] the *Condominium Act*, all or part of which consists of land situated within the trust area; unless the plan is approved by the trust committee having jurisdiction in respect of those affairs.]

(4) The Crown in right of the Province, or an agency of the Crown as defined in the *Public Service Labour Relations Act*, shall not develop or dispose of land situated within the trust area unless the Crown or the Crown agency first gives notice of the development or disposition to the general trustees.

(5) For this section, the general trustees shall act as the trust committee in respect of islands other than designated islands.

(6) Where a regional plan includes, within the trust area, land or water areas that are designated as having special importance in securing and maintaining the objects of the trust by reason of their

(a) scenic value;
(b) recreational potential;
(c) natural or scientific interest; or
(d) delicate ecological characteristics,

those areas shall, on approval of the regional plan by the minister and notwithstanding subsection (1), be under the jurisdiction of the general trustees for the purpose of adopting special protective zoning and subdivision bylaws or regulations.

(7) A community plan, regional plan, subdivision bylaw, zoning bylaw or land use contract adopted by a municipality or regional district prior to January 1, 1978 remains in force in so far as it applies to land within the trust area as if it had been

adopted by the trust, and may, subject to the approval of the minister under subsection (1), be repealed, amended or enacted again by the trust committee having jurisdiction.

1974-43-6(1,2,4,5,6); [*subsection (3) enacted 1974-43-6(3) to be proclaimed; bracketed words in subsection (3) replace "or a strata plan under", 1975-32-3 to be proclaimed; subsection (3) further amended by part of 1977-51-12, proclaimed*] 1977-51-12; 1978-13-4.

Approval procedures

9. (1) An application to amend a bylaw under section 4 (2) (h) or for approval by a trust committee under section 8 (2) or (3) shall be made to the chairman of the general trustees, and shall be accompanied by information the Lieutenant Governor in Council prescribes.

(2) On receipt of an application under subsection (1), the chairman of the general trustees shall determine whether the application relates to general affairs or to local affairs, or to both general and local affairs, and shall refer the application to the trust committee that, in his opinion, has jurisdiction in respect of the affairs to which the application relates.

(3) Where a trust committee is of the opinion that the approval of an amendment of a bylaw under section 4 (2) (h) or an application under section 8 (2) or (3) is contrary to the object of the trust, it may refuse to approve the application.

(4) The trust committee may approve the application, or may approve it subject to terms and conditions the trust committee considers necessary or advisable.

1974-43-7; 1977-51-13.

No bylaws or permits contrary to trust

10. A regional board or a council of a municipality, all or part of which is within the trust area, shall not

(a) adopt a bylaw;

(b) undertake work; or

(c) issue a permit

respecting the trust area that is contrary to, or at variance with, the bylaw of the trust.

1977-51-14.

***Municipal Act* s. 724 applies**

11. Where the trust advises a regional board or a council of a municipality that it proposes to adopt

(a) a zoning bylaw, or an amendment of it; or

(b) an official community plan, or an alteration, addition or extension of it,

affecting land in the regional district or municipality, the regional board or council, as the case may be, may withhold a building permit, and in that case section 724 of the *Municipal Act* applies to the trust.

1977-51-14.

Appeals

12. Where

(a) a general trustee or local trustee is dissatisfied with a determination of the chairman under section 6; or

(b) an applicant under section 8 (2) or (3) is dissatisfied with a refusal by a trust committee to approve an application, or with an approval subject to terms and conditions,

he may appeal the determination or refusal to the minister.

1974-43-8; 1977-51-15.

Manager and employees

13. (1) Subject to the *Public Service Act*, the general trustees may appoint employees, including a manager, they consider necessary for the affairs of the trust, and may designate the title, office and responsibilities of an employee.

(2) Notwithstanding the *Public Service Act*, but subject to the approval of the minister, the general trustees may engage and retain persons they consider necessary as consultants, experts or specialists, and may fix their remuneration.

(3) The Lieutenant Governor in Council may direct that the *Public Service Act* or the *Pension (Public Service) Act*, or both of them, applies to a general trustee or a person engaged and retained under subsection (2).

1974-43-9; 1977-51-16.

Trustees not to acquire land

14. No general or local trustee shall, while he is a trustee, and during the period of 2 years after the date he ceases to be a trustee, acquire an interest in land situated within the trust area unless he has the approval of the minister.

1974-43-10.

Regulations

15. The Lieutenant Governor in Council may make regulations and orders including those

(a) respecting the distinction between general and local affairs;
(b) exempting land or buildings, or classes of land or buildings, from the provisions of section 8 (2) and (3);
(c) amending Schedule B;
[(d) respecting the administration of the Islands Trust Fund;]
(e) grouping 2 or more islands in the trust area, whether or not in Schedule B, as a designated island;
(f) respecting remuneration and expenses of trustees;
(g) respecting the election of general trustees; and
(h) resolving any conflict between this Act and the *Municipal Act* or making further provisions of the *Municipal Act* apply under this Act.

1974-43-11; [*subsection (d) enacted 1975-32-4, to be proclaimed*]; 1977-51-17.

Audit

16. [The Comptroller General or an auditor appointed by the Lieutenant Governor in Council for the purpose shall audit the books and accounts of the trust and the Islands Trust Fund at least once in each year, and shall report to the minister and to the trust.

1975-32-5 *to be proclaimed.*]

Annual report

17. [(1) The trust shall prepare and file with the minister annually

(a) a report of the administration of the Islands Trust Fund;

(b) an audited balance sheet and statement of revenue and expenses;

(c) a schedule of all the property and assets held in trust and its valuation; and

(d) other particulars the minister requires

for the previous fiscal year of the trust.

(2) The minister shall lay the report before the Legislative Assembly if it is then sitting, and, if it is not sitting, within 15 days after the commencement of the first session in the following calendar year.

1975-32-5 *to be proclaimed*].

Agricultural Land Commission Act

18. For the *Agricultural Land Commission Act*, the trust shall be deemed to be the regional district in respect of the trust area, and, notwithstanding that Act, the council of a municipality or the regional board of a regional district, as the case may be, shall not exercise the power and authority under that Act in respect of the trust area.

1977-51-18.

Appropriation

19. (1) On the requisition of the minister, the Minister of Finance shall pay out of the consolidated revenue fund sums required to carry out this Act authorized by an Act of the Legislature.

(2) To meet part of the amount appropriated under subsection (1), the Minister of Finance, on the requisition of the minister, may levy on the assessed value on land and improvements within the trust area, excluding property that is taxable for school purposes only by special Act, according to the basis of assessment as fixed for taxation for school purposes for the current year; but the amount levied shall not exceed the product of a levy of 1 1/2 mills.

(3) Subject to this Act, the *Assessment Act* and the *Taxation (Rural Area) Act* apply to the assessment, levy, collection and recovery of taxes on land imposed under subsection (2), and to the addition of interest to the taxes when delinquent, in the same manner as taxes imposed on land under the *Taxation (Rural Area) Act*.

(4) The taxes on land assessed under this section shall, for the *Taxation (Rural Area) Act*, be deemed to be Provincial taxes imposed and assessed under this Act, and, on collection or recovery, shall be accounted for as such.

1974-43-12; 1977-51-19.

Schedules

20. Schedules A and B shall be deemed to have come into force on September 5, 1974, and this section is retroactive to the extent necessary for that purpose.

1977-51-20.

Proclamation

21. (1) Sections 2 (8), (8X), (9), (10) and (11), 3, 8 (3), 15 (d), 16 and 17 come into force on proclamation.

(2) Section 2 (8X) is repealed on proclamation of section 2 (8).

(3) Section 2 (10) is repealed.

(4) The bracketed words in section 8 (3) are replaced on proclamation.

(5) Subsection (3) comes into force on proclamation.

1974-43-6(3); 1975-32-1,2,3,4,5; 1977-51-21.

SCHEDULES

SCHEDULE A

All the land, except land situated within a reserve as defined in the *Indian Act* (Canada), on all the islands situated in the Strait of Georgia, Howe Sound and Haro Strait lying to the south of a line commencing at the most easterly corner of Lot 140, Comox District, being a point on the high water mark on the easterly shore of Vancouver Island; thence south 70° east in a straight line to the point of intersection with the middle line of Sabine Channel; then in a general southeasterly direction along the middle line and passing to the northeast of Jervis, Paul and Jedediah Islands and continuing southeasterly along the southeasterly prolongation of the middle line of Sabine Channel to the point of intersection with a straight line drawn from the most southerly extremity of Young Point (Lasqueti Island) to the most southerly southwest corner of Lot 6274, Group 1, New Westminster District; then northeasterly along the line to the most southerly southwest corner of Lot 6274 and north of a line commencing at the northwest corner of Section 74A, Lake District, being a point on the high water mark on the easterly shore of the Saanich Peninsula; then east to the point of intersection with the easterly boundary of the Province of British Columbia, excepting from the above described area those islands lying within the boundaries of the City of Vancouver and the District Municipalities of Delta and Richmond.

1974-43-Sch.A.

SCHEDULE B

Bowen Island.	Hornby Island.	Saltspring Island.
Denman Island.	Lasqueti Island.	Saturna Island.
Gabriola Island.	Mayne Island.	South Pender Island.
Galiano Island.	North Pender Island.	Thetis Island.
Gambier Island.		

1974-43-Sch. B.

Queen's Printer for British Columbia ©
Victoria, 1979

APPENDIX D

AGREEMENT BETWEEN THE MINISTRY OF LANDS, PARKS AND HOUSING AND ISLANDS TRUST WITH RESPECT TO PLANNING AND ADMINISTRATION OF CROWN LAND WITHIN THE TRUST AREA

1. PURPOSE OF THE AGREEMENT

1.1 The purpose of this memorandum is to establish an agreement between the Ministry of Lands, Parks and Housing and the Islands Trust with respect to the roles and responsibilities of the Ministry and the Trust in planning and administration of Crown land within the trust area with the following general objectives:

(a) to facilitate cooperation between the Ministry and the Trust so that the objectives of each may be mutually achieved.

(b) to enable the optimum level of service to the public by both agencies.

1.2 This agreement is subject to the Islands Trust Act, the Municipal Act, the Ministry of Lands, Parks and Housing Act, the Land Act, and the Greenbelt Act.

1.2.1 This agreement is applicable only within the trust area.

1.3 Definitions:

1.3.1 "Application" means an application under the Land Act to establish a new use of Crown land or to renew a tenure under the Land Act upon absolute expiry.

1.3.2 "Crown land" means Crown land as defined in the Land Act and administered under the Land Act by the Ministry of Lands, Parks and Housing.

1.3.3 "Ministry" means the Ministry of Lands, Parks and Housing.

1.3.4 "Regional Director" means the Regional Director, Lands and Housing of the Ministry of Lands, Parks and Housing.

1.3.5 "Trust" means the Islands Trust established under the Islands Trust Act.

1.3.6 "Trust area" means the trust area established under the Islands Trust Act.

2. RESPONSIBILITIES AND JURISDICTION OF THE MINISTRY AND THE TRUST

2.1 The Ministry is recognized as the agency responsible for the administration of the Crown land resource of the Province under the Land Act.

2.2 The Trust is recognized as the agency responsible for the preservation and protection of the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of the Province generally.

2.3 The Ministry and the Trust agree to the procedures set out in this agreement for the planning and use of Crown land within the trust area.

2.3.1 Where the responsibilities and objectives of the Ministry and the Trust result in divergent positions on any matter affecting Crown land, the matter will be referred to the signatories of this agreement in an effort to resolve the conflict.

2.3.2 The Ministry and the Trust may upon further agreement establish joint planning or other projects to further promote the objectives of this agreement.

3. PLANNING FOR CROWN LAND WITHIN THE TRUST AREA

3.1 Where a Crown land plan within the trust area is being developed by the Ministry, the Trust will be requested to comment and participate in the planning process.

3.1.1 In the preparation of Crown land plans, or the establishment of reserves of Crown land, the Ministry will take cognizance of the policies and objectives of the Trust.

3.1.2 Where the Ministry prepares a Crown land plan, the Ministry may establish reserves under the Land Act as necessary to implement the plan and may request that an Official Community or Official Settlement Plan in existence for the land be amended so that it becomes consistent with the Ministry plan.

MEMORANDUM

TO Mr. Marc Holmes,
Chairman.

FROM ISLANDS TRUST
VICTORIA, B.C.

October 26, 1978

FILE NO. SUB-17-75

Re: SUB-17-75 - Lots E, F, and O, Plan 23218
and Remainder of Section 9, Denman Island

As you requested I have reviewed the letter, dated September 25, 1978, from Mr. John F. Wood, solicitor, to the Hon. Alex V. Fraser, Minister of Highways and Public Works. The letter (and accompanying 10 exhibits) argues that a subdivision approval should be given by the Approving Officer to the subdivision of 53 lots proposed by Seaview Land Estates Ltd. As a result of this review I have no reason to change my opinion that the Approving Officer acted correctly when, in his letter of October 12, 1977, he withheld subdivision approval.

The subdivision should not be approved because:

(1) It is partially in the Agricultural Land Reserve - see attached map. Confirmed by the Land Commission October 26th - Ms. Brightman.

(2) The Regional District and the Denman Trust Committee have recommended against approval - Trust letter, dated December 2nd, 1976, to Mr. M. F. Butler.

(3) There is no certificate from the Comptroller of Water Rights to amend the existing certificate of the Graham Lake Water Supply Utility to enable them to extend their service to approximately 20 additional small lots proposed in the subdivision. It is understood that there are difficulties in this regard.

(4) The proposal would be contrary to the Denman Island Subdivision By-law #90.

(5) The proposal would be contrary to the Official Community Plan for Denman Island - By-law #4.

(6) There is no evidence to indicate the environmental concerns, particularly the question of water levels referred to in the Trust's letter of December 2nd, 1976 have been evaluated.

(7) There is no Preliminary Layout Approval (P.L.A.) for this subdivision.

It should be recognized that the Approving Officer has the right to ignore all these factors except the Agricultural Land Reserve and possibly the need for a water certificate.

The approval process is normally one of working towards a number of sub-approvals for such subjects as water supply, sewage disposal, environmental protection, and flood control, in addition to ensuring basic compliance with the Subdivision Control By-law and the Agricultural Land Commission regulations. Each and all these requirements should be satisfied and an approval for one should not be construed as a partial commitment towards others outstanding.

The culmination of this preliminary sub-approval process is the granting of a Preliminary Layout Approval which gives the applicant some assurance that the expense and effort of going to final survey will not likely be jeopardized by failure to meet requirements. Despite this the P.L.A. form has a standard statement attached saying that the approval may be void if regulations change before final plans are submitted and approved. The present case is significant in that it does not even have a P.L.A.

It is difficult to appreciate that Mr. Frank Rainsford, the principal of Seaview Land Estates Ltd., was under the impression that he had a P.L.A. Not only is he an experienced subdivider well versed in procedures, but at a meeting with him on September 28, 1976 he admitted that there was no P.L.A. and gave every indication that he understood the implications of that lack.

If Seaview Land Estates Ltd. were under the impression that it had a P.L.A. why were final plans not submitted to the Approving Officer? It is most unusual but not illegal to have roads constructed prior to P.L.A. The applicants took a calculated risk, possibly assuming that a commitment of capital might improve their chances of approval.

There is an element of uncertainity in any form of development and obtaining the necessary approvals is a process fraught with the dangers of regulation change. The fact that the Approving Officer may grant "in-stream status" to certain applications is only indicative of the public authority's desire to cushion the effects of new laws on individuals. To not grant "in-stream status" to Seaview Land Estates Ltd. is not, therefore, depriving them of a legal right but withholding from them a discretionary dispensation sometimes granted to others. The normal criterion for consideration for "in-stream status" is a P.L.A. pre-dating the by-law. Had they received a P.L.A. they would have had a moral but not a legal ground for grievance. With the absence of a P.L.A., however, there are little, if any, reasons for the Approving Officer to deliberately ignore the Denman Island Trust Committee's Subdivision By-law.

It is difficult to comment on whether the time taken to process the application was reasonable or unreasonable. The Approving Officer's staff can verify the complexity of the system and should advise him whether the applicant complained of delay or asked for a speed-up in the process. It is not uncommon for applicants for larger developments to encourage a deliberate slow down in the process to synchronize their development program with fluctuating market conditions or other corporate requirements. It is noted that about a year has passed between the

APPENDIX H

DENMAN ISLAND BYLAW SUPPORT GROUP

Denman Island, B.C.
VOR ITO.
July 8, 1979

RECEIVED
JUL 11 1979
ISLANDS TRUST

The Honourable Alex Fraser
Minister of Highways and Public Works
Province of British Columbia
Parliament Buildings
Victoria, B. C.

Dear Sir:

Re: Proposed Subdivision of Lots E, F, and O,
Plan 23218 and remainder of Section 9,
Denman Island, Nanaimo District

We are writing in response to the letter from Mr. John Wood, Solicitor for Seaview Land Estates Ltd., dated September 25, 1978. It appears that the arguments put forward by Mr. Wood have contributed largely to your Ministry's decision to grant this development 'in stream' status and hence immunity from existing by-laws. We wish to comment briefly upon the principal points which Mr. Wood uses to substantiate his client's claim to expect approval for the above mentioned subdivision.

There are four basic premises put forth in Mr. Wood's thesis. He argues that: (1) The developer made the assumption that he was working towards final approval and that preliminary layout approval had tacitly though not expressly granted.

(2) The failure to issue a P. L. A. or written approval was the result of inefficiency in the agencies involved, particularly within the Minsitry of Highways and Public Works, and more particularly the Highways District Office in Courtenay.

(3) The development conformed to by-laws and all other agencies' requirements when submitted and during the initial stages of the application.

(4) The development has 'in stream' status and therefore is not subject to current by-laws and regulations.

These arguments might seem cogent enough at first glance. But we respectfully submit that the information at hand - including the recently discovered file

..2

in the Courtenay District Office - clearly demonstrates that these arguments are without substance, and that a decision to give the development a retroactive P. L. A. upon the basis of these arguments is a serious error.

Mr. Wood argues that the subdivision should be approved because the developer "reasonably assumed" that he had preliminary approval. We suggest that, in light of subsequent events, if the developer made such an assumption it was neither a reasonable nor a correct inference to make from the facts available to himself and his agents. The solicitor writes: "The applicant would have acted quite differently if he had known what he should have known, but did not know" and "the applicant, in ignorance, was entitled to think and thought that he had met the officials of the District Engineer's Office requirements for P. L. A. and that he had it". We submit that the only 'approval' the applicant received consisted of statements that his roadworks were up to Department standards. What Seaview Land Estates "should have known" and "in ignorance" assumed are hardly grounds for approval. In a letter from the Islands Trust dated October 26, 1978 (Exhibit no. 11) it is acknowledged that Mr. Rainsford, the developer in question, is "an experienced subdivider well-versed in procedures" and "at a meeting with him on September 28, 1976 he admitted that there was no P. L. A. and gave every indication that he understood the implications of that lack". Ignorance of procedure, if there was such, is not sufficient reason to grant approval to any subdivision.

Similarly, after considering another aspect of the same argument - if the developer's assumptions, though incorrect, were reasonable - we conclude that he was never given reason to assume P. L. A. had been granted. A letter from the District Office to Mr. Wagner, the applicant's agent, on July 23, 1974, states "Before the approving officer will consider the application" certain requirements must be met (Exhibit no. 2). Accordingly, Mr. Wagner resubmitted "for tentative approval" on October 3, 1974, promising the required percolation test data "within 10 days" (Exhibit no. 3). Mr. Wagner finally submitted perc test results

...3

on June 18, 1975 - eight months later. In this same letter (Exhibit no. 5) Mr. Wagner admits P.L.A. has not yet been granted when he asks for "separate approval" for two sections of the proposed subdivision. At this point in time, and not before, the subdivision plan could have been considered for P.L.A.. However, on June 20, 1975, the Islands Trust commented "As the present application stands the Trust cannot approve this application". (Exhibit no. 12). On the same date a letter from the District Office requires incorporation of connecting roads with another subdivision (Exhibit no. 6). Perhaps it is worth noting here that shortly thereafter - on July 28, 1975 - By-law No. 188 received second reading. On February 23, 1976, By-law No. 188 was enacted. Within those six months the applicant had not received approval to proceed, and on April 15, 1976 the Islands Trust recommendation was that "The present plan should be refused and an amended layout prepared" to meet the by-law requirements (Exhibit No. 14). On October 12, 1977, the plan was definitively rejected by the Senior Approving Officer who, after consultation with the Comox-Strathcona Regional Board, writes to consultants for Seaview Land Estates -"I cannot entertain approval as much as I would like to" (Exhibit no. 10). On the basis of this evidence, the applicant cannot reasonably maintain that P.L.A. had been granted, in effect or in fact. And, if he believed that P.L.A. had been granted - albeit with the "technical flaw" that "it is not expressed" - why did the applicant admit to Trust Officials on September 28, 1976, that he knew that no P.L.A. had ever been granted? Furthermore, if the applicant believed that P.L.A. had been granted, why has he not, to date, submitted his final plans for approval - a period of five years of inaction on his part?

The Trust Manager on October 26, 1978, writes, "The approval process is normally one of working towards a number of sub-approvals for such projects as water supply, sewage, etc..., in addition to ensuring basic compliance with the Subdivision Control Bylaw and the Agricultural Land Commission regulations. Each and <u>all</u> these requirements should be satisfied and an approval for <u>one</u> should not be construed as a partial commitment towards others outstanding." He continues:

...4

" The culmination of this subapproval process is the granting of a P.L.A.". (Exhibit no. 11). At this point only is the developer assured that time and money spent in the future will probably not be spent in vain, and that in all likelihood final approval will be granted. Mr. Wood argues that, in effect, by submitting a plan that is in basic compliance with the by-laws, one is automatically granted P.L.A. with certain 'riders' from the reporting agencies attached which the developer must comply with at some later date, before final approval will be granted. There are two basic issues here. Firstly, does the developer have P.L.A. the moment he submits a plan that complies with by-laws, but not with other regulations and requirements; and, secondly, is P.L.A. assumed to be granted or must it be given expressly in writing. It is our understanding, from your Ministry's own publications, that the "requirements, regulations and concerns" of the reporting agencies must all be accomodated prior to the issuance of preliminary approval. It is also recognized that Denman Island, at that time, had subdivision by-laws to control not only density but also had stipulations for provision of water to lots. We submit that although he had met the density requirements of our by-laws, the developer had not complied with our by-law which required provision of water to all lots (Exhibit 8). Nor had he met the requirements of all reporting agencies up to and beyond February 23, 1976 - when By-law No. 188 was inacted. Additionally, the letter from the planning director of the Regional District of Comox-Strathcona of December 22, 1976 is quite explicit in stating that the "application has not as yet received P.L.A." and that "under no circumstances could the present proposal be deemed 'in stream', as no written approvals of any sort have been issued". (Exhibit 15) Mr. Wood himself states "P.L.A. is an administrative procedure whereby an applicant for subdivision approval is advised in writing". Thus not only do we have a situation whereby no P.L.A. could have been granted as all reporting agency requirements and original by-law requirements had not been met, but also we have no documentation to suggest a P.L.A. had been granted in any form. Even if we accepted the argument that an

...5

'assumed' P.L.A. had been granted, we would still be left with the situation of the applicant having failed to meet the requirements for potable water, percolation tests, flood plain problems and so on, within the 180 days allotted before expiry of a normal P.L.A.. Thus there was no P.L.A. and even if the applicant 'assumed' he had P.L.A. he certainly did not meet reporting agency requirements before it lapsed, nor did he apply for renewal.

We ask you to seriously reconsider the argument as stated by Mr. Wood that "the applicant rightly believed he had been granted P.L.A. and did receive it or ought to have received it." We suggest from the evidence available that it is utterly inconceivable that the applicant 'believed' he had received P.L.A..

Mr. Wood's second argument is directed at the government agencies involved, in particular your Ministry and the Islands Trust, and especially the Department of Highways District Office in Courtenay. He makes suggestions of inefficiency, "unproductive correspondence", "confusion, inaction and silence" and the "almost impossible bureaucratic tanglefoot". These comments demean the performance of the District Office staff and are simply incorrect. Mr. Wood writes: "...it would appear from the records that the approving processes of your Department for the applicant's subdivision within this period of two years and five months completely broke down and left the applicant without any guidance or direction. Your Ministry officials...simply abandoned the applicant". The dates given are from October 29, 1974 until March 3, 1977. It is significant that there is no documentation indicating that the developer complained of this abandonment. We have no evidence of any demand for a speed-up in the process until his agent's communication with you, November 17, 1977. Mr. Wood argues:"Surely within this period of time, if there were defects or omissions in our client's application, they should have been identified and solutions determined and made". We contend that the defects were identified and the solutions were determined. The developer and his agent simply failed to resubmit the plan with these defects corrected. P.L.A. was denied on June 14, 1973 in response to the original proposal. A new application

...6

was submitted on October 3, 1974 (Exhibit 3), but could not be considered until perc test information was in hand. On October 3, 1974 Mr. Wagner promises perc data within 10 days (Exhibit 3), yet the information is not supplied until eight months later (Exhibit 5). Although Mr. Wood argues "there was no communication in writing from your Ministry to our client from October 29, 1974 until March 4, 1977" that is clearly not the case. Exhibit number 6 is dated June 20, 1975 and is addressed to the applicant's agent. The proposal could not even be considered for P.L.A. until June 18, 1975 when the perc data was finally supplied, and Exhibits number 6 and 12 indicate that responses were sent by both your Ministry and Islands Trust on June 20, 1975, two days later. The District Office response included the request for a road realignment (Exhibit 6). If normal procedure had been followed at this point the developer would have made the corrections and resubmitted the plan. This correction and resubmission had not been made as of February, 1976 when the new by-law came into effect. The District Office did not pursue the matter in the intervening eight months because a resubmission from the applicant was necessary before P.L.A. could be considered. It is not unusual for a developer to allow an application to lie inactive for a period of time, or to abandon a project entirely. It would be unrealistic to expect the District Office to continue to correspond with developers whose applications have become inactive. If Seaview had wished its application to remain active, it should have corrected and resubmitted its proposal. This was not done until 1979 - a space of nearly four years. Furthermore, as of June 12, 1979 the Medical Health Officer has still not approved nine of the fifty-three lots (Exhibit 16). The developer and his agent have moved slowly, if at all, to comply with the requirements of the reporting agencies and our Island's by-laws, and responsibility for their inaction lies clearly with themselves.

Mr. Wood's third argument - that the development complied with by-laws and agency regulations when submitted originally and throughout the ensuing two year

...7

period is also incorrect. The application certainly did not conform to, or even acknowledge, consideration of water supply to the lots. On November 6, 1974, Seaview was required to "provide water to all lots" (Exhibit 8). To date, four and a half years later, this requirement has not been met, nor proof of satisfactory potable water supply arangements given. In a letter from the Trust to the District Office, dated April 15, 1976 (Exhibit 13), the application is rejected because four lots are under water during the winter and road access problems have not been settled. These lots were not redesigned until recently. Thus at no time between original submission and amendment of By-law 188, did this development meet all agency specifications, nor did it even meet basic requirements of the existing subdivision by-law. Consequently, at no point within that period could P.L.A. have been granted.

Mr. Wood's fourth argument essentially states that the development has 'in stream' status and is therefore not subject to current by-laws and regulations. If the applicant had obtained P.L.A. there would exist a moral argument for such special status. The Islands Trust Manager, in his review of the matter on October 26, 1976 (Exhibit 11), states: "The normal criterion for consideration for 'in stream' status is a P.L.A. pre-dating the by-law...With the absence of a P.L.A., however, there are little, if any, reasons for the Approving Officer to deliberately ignore the Denman Island Trust Committee's subdivision by-law (of 1976)". Due to incorrect and unreasonable assumptions, the applicant did not obtain P.L.A., nor did the subdivision plan comply sufficiently with regulations for the District Office to ever issue P.L.A.. On October 12, 1977, the Senior Approving Officer admits this: "I regret to say that with the Regional District refusal to treat this as an 'in stream' subdivision, I cannot entertain approval." (Exhibit 10). The development cannot claim to have 'in stream' status by its very definition.

In summary, this developer, well-versed in procedure, cannot claim ignorance as a protection. Nor can he claim to enjoy 'in stream' status. The P.L.A. form has a standard statement attached stating that the approval may be void if

...8

APPENDIX I

GALIANO ISLAND TAXATION

Land Tenure	Acres
Crown Land	1,101
Agricultural Land Reserve	945
Taxation Tree Farm (MacMillan Bloedel)	11,297
Other Private Holdings	1,048
Total Land Area	14,300

MacMillan Bloedel Property Taxes

A. Taxation Foregone if Land Used for Timber Production

1. If valued as "tree farm" land at $111/acre:

11,297 acres x $111/acre..... $1,253,967.00

Tax Schedule

general	60% @ 10 mills.....	$ 7,523.80
school	60% @ 50.7 mills.....	38,145.67
other	60% @ 10.8 mills.....	8,125.71
Total Taxes		$53,795.18

2. If valued as "timber" land at $1,500/acre:

11,297 acres x $1,500/acre.....$16,945,500.00

Tax Schedule

general	30% @ 10 mills.....	$ 50,836.50
school	30% @ 50.7 mills.....	257,741.06
other	30% @ 10.8 mills.....	54,903.42
Total Taxes		$363,480.98

MacMillan Bloedel Property Taxes (cont'd)

Difference:

MB property valued as timber land.....	$363,480.98
MB property valued as tree farm land.....	53,795.18
	$309,685.80

B. Taxation Foregone if Land Used for Other Purposes

Total assessed value of private land on the island excluding the Taxation Tree Farm (Rural, farm, and wild land): $3,516,820

divided by total private acreage excluding the Taxation Tree Farm (945 + 1048 = 1993)

gives average assessed value per acre of private land of ..... $ 1,765

It was not possible to obtain separate average assessed values for waterfront and view lands, as acreages in each category were not available. It was therefore assumed that the proportion of tree farm land in these categories was the same as elsewhere in the island, so that the average figure of $1765/acre could be applied. The potential assessed value of tree farm land was then worked out under two different scenarios.

Scenario 1: All land is assessed at its value for private ownership, with the same breakdown between farm and other land as on the rest of the island.

MacMillan Bloedel Property Taxes (cont'd)

Farm: $\frac{945}{1993}$ x 11,297 acres x $1765/acre x 10% tax rate $945,436.46

Other: $\frac{1048}{1993}$ x 11297 acres x $1765/acre x 14.5% tax rate $1,520,301.85

$2,465,738.31

At total mill rate of 71.5 ..... $176,300.29

Less tax actually paid on Tree Farm 53,795.18

Estimate of Annual Tax Foregone $122,505.11

Over 25 years with a constant tax structure, this implies a total tax foregone of $3,062,627.73 (1980 dollars).

Scenario 2: Some of the tree farm land is used for provincial purposes and is therefore tax-exempt. Breakdown of land between provincial, farm and other uses is the same as the current breakdown for the rest of the island.

Farm: $\frac{945}{3003}$ x 11,297 acres x $1765/acre x 10% tax rate $627,457.50

Other: $\frac{1048}{3003}$ x 11297 acres x $1765/acre x 14.5% tax rate $1,008,978.22

$1,636,435.72

At total mill rate of 71.5 ..... $117,005.15

Less tax actually paid on tree farm 53,795.18

Estimate of Annual Tax Foregone $63,209.97

Over 25 years with a constant tax strucure, this implies a total tax foregone of $1,580,249.25 (1980 dollars).

Data and calculations adapted from class project for Robert Williams' Planning 520 Class, U.B.C., March, 1980.

Environment and Land Use Act

[*Consolidated for convenience only, January 20, 1978.*]

Interpretation.

1. In this Act, unless the context otherwise requires,

(*a*) "committee" means the Environment and Land Use Committee established under this Act;

(*b*) "environment" means all the external conditions or influences under which man, animals, and plants live or are developed.

1971, c. 17, s. 1.

Committee established.

2. (1) There is established a committee to be known as the "Environment and Land Use Committee" (herein called the "committee"), consisting of a chairman and such other members of the Executive Council as the Lieutenant-Governor in Council may appoint.

(2) The chairman and the other members of the committee shall be appointed by the Lieutenant-Governor in Council for such term as he may determine.

(3) The committee may determine its own procedure and may elect an acting chairman to act in the absence of the chairman.

(4) If the membership of the committee exceeds three members, the quorum is three members.

1971, c. 17, s. 2.

Duties of the committee.

3. Upon establishment of the committee, it is the duty of the committee, and it is empowered, to

(*a*) establish and recommend programmes designed to foster increased public concern and awareness of the environment;

(*b*) ensure that all the aspects of preservation and maintenance of the natural environment are fully considered in the administration of land use and resource development commensurate with a maximum beneficial land use, and minimize and prevent waste of such resources, and despoliation of the environment occasioned thereby;

(*c*) if considered advisable, make recommendation to the Lieutenant-Governor in Council respecting any matter relating to the environment and the development and use of land and other natural resources;

(*d*) inquire into and study any matter pertaining to the environment, or land use; and

(*e*) prepare reports, and, if advisable, make recommendations for submission to the Lieutenant-Governor in Council.

1971, c. 17, s. 3.

Right to hold public inquiries, etc.

4. The committee may

(*a*) hold a public inquiry whenever it appears to the committee that the proper determination of any matter within its jurisdiction necessitates an inquiry, and, for that purpose, the chairman of the committee or a member of the committee authorized by

the committee to hold a hearing has all the powers and jurisdiction of a Justice of the Peace under the *Summary Convictions Act;*

(*b*) appoint technical committees; and

(*c*) subject to the approval of the Lieutenant-Governor in Council, provide for the remuneration of experts, specialists, and researchers and, pursuant to the *Civil Service Act,* of such clerks and other employees as may be required.

1971, c. 17, s. 4.

Provision for expenses of committee members.

5. No member of the committee is entitled to remuneration as a member of the committee, but he may be paid and receive such travelling and out-of-pocket expenses as the Comptroller-General may approve.

1971, c. 17, s. 5.

Orders of Lieutenant-Governor in Council.

6. The Lieutenant-Governor in Council, on the recommendation of the committee, may make such orders respecting the environment, or land use, as he may consider necessary or advisable, and he may make such orders under this Act, notwithstanding any other Act or regulation, and no Minister, ministry of Government, or agent of the Crown specified in the order shall exercise any power granted under any other Act or regulation except in accordance with the order.

1971, c. 17, s. 6; 1977, c. 75, s. 1 (proc. eff. Oct. 21, 1977).

Regulations.

7. For the purpose of carrying out the provisions of this Act according to their intent, the Lieutenant-Governor in Council may make such regulations or orders as are ancillary thereto and not inconsistent therewith and as are considered necessary or advisable; and every regulation or order made under this section shall be deemed part of this Act and has the force of law.

1971, c. 17, s. 7.

Printed by K. M. MACDONALD, Printer to the Queen's Most Excellent Majesty
in right of the Province of British Columbia.
1978

500-378-8014

APPENDIX K

9th February 1977

Honourable J.A. Nielsen,
Minister of the Environment,
Parliament Buildings,
Victoria, B.C.

Dear Mr. Minister:

I have been asked by the Bowen Island Trust Committee to transmit the following resolution to you for your consideration:

> WHEREAS the Bowen Island Trust Committee deplores the land clearing activities presently taking place on approximately 200 acres of property on Bowen Island owned by Union Steamships and,
>
> WHEREAS the Company has officially filed no development plans nor acquired any permits and unofficially it is understood that the company intends to build a golf course and housing development and,
>
> WHEREAS We believe this project is in contravention of the proposed Community Plan. It may be against the purposes of the Islands Trust Act to protect and preserve the unique amenities and environment of the Islands for the benefit of the residents of the Trust Area and the Province generally, and
>
> WHEREAS There is a strong probability of extreme environmental damage, a danger to the islands largest water supply system, and a complete disregard for the wishes of the citizens and the planning process.
>
> THEREFORE be it resolved that the Bowen Island Trust Committee requests the Minister of the Environment to immediately act under Section 6 of the Environment and Land Use Act and issue an order to cease and desist or take other suitable action until such time as this project can be properly evaluated."

Yours truly,

Marc Holmes,
Chairman
Islands Trust

MEMORANDUM

TO GENERAL TRUSTEES

FROM ISLANDS TRUST
VICTORIA, B.C.

May 1, 1979

FILE No.

APPENDIX L

Re: Tree Cutting Control

As you requested at your April 11th, 1979 meeting, the following are some notes on the subject of tree cutting control.

LEGISLATION

The legislation enabling a municipality to control tree cutting is found in Section 868 of the Municipal Act. An extraction from this section is as follows:

Division (5)—Sundry Regulations and Provisions

Sundry regulations and powers.

868. The Council may by by-law regulate or prohibit

(f) the cutting of trees on lands within the municipality or within any area within the municipality, and require the holding of a permit for such purpose and fix a fee for such permit, and different regulations and prohibitions may be made for different areas; but a by-law pursuant to this clause does not apply to lands designated in a tree-farm licence, or to land constituting a forest reserve pursuant to the *Forest Act*, so long as the land continues to be so designated or reserved. 1957, c. 42, s. 873; 1962, c. 41, s. 48; 1964, c. 33, s. 70; 1971, c. 38, s. 70; 1973 (2nd Sess.), c. 133, s. 90.

The Islands Trust Act does not give the Trust this power to control tree cutting. The power is, however, open to all municipalities and to Regional Districts. In the case of Regional Districts, however, the region may have to amend its Letters Patent to give it the powers of the section.

Although not widely used a number of municipalities have passed by-laws regulating tree cutting. A by-law is now in force in the Municipality of North Saanich and the Municipality of Saanich is in the last stages of a long process of drafting a tree by-law. A copy of this Saanich draft is being forwarded to the Trust and will be distributed when received.

NEED

There are many situations under which the control of tree cutting in the public interest would be desireable. Some examples:

a) A selected area may provide a good example of a type of plant ecology. To preserve the range of plant growth, trees would need protection. This might be likened to the local equivelant of a Provincial Ecological Reserve protecting typical or interesting tree and plant communities.

.../2

b) Trees may need protection if they provide an essential element in a landscape which if removed, would materially depreciate the natural scene. This may happen on a small scale, for example, the loss of the large arbutus tree which gives the smaller Arbutus Island its name, would be serious. On the larger scale, a significant hillside forming part of a known scenic vista may need protection.

c) Historic or unusual trees.

d) Park areas where a regional or community plan provides for future public park. It may be necessary to protect the tree cover prior to public acquisition. The clearing of very large stands of first growth timber behind Long Beach was an action which depreciated the value of the National Park when it was acquired.

e) Preservation of trees may be necessary to protect coastland or other steep areas against erosion. There are examples on Sayward Beach in Victoria where the cutting of trees resulted in erosion primarily from surface run-off.

IMPLICATIONS

The introduction of a tree cutting by-law system can result in policy and administrative problems. A selection of these are:

a) The possibility of financial hardship where income from tree cutting is lost.

b) The need in some occasions, particularly on the waterfront for tree clearing to provide views for new dwellings.

c) The need to ensure that dangerous trees are, if necessary, felled.

d) The issue of whether tree preservation can be defended on ALR land.

e) The conflict between tree preservation and policies in some Community Plans which support small scale logging as an acceptable rural pursuit, income supplement and alternative fuel supply.

f) It is desireable that specialized studies take place to identify trees and tree areas in need of priority protection.

g) The administration of the by-law would depend upon its extent, require staff resources, enforement procedures, and a general administrative system.

COMMENTS

It would seem to be illogical that a planning agency, specifically set up to preserve the island environment should not have the option of using a basic tool available to all municipalities.

Use of a tree cutting control by-law would bring its own set of problems, however, these need not be as acute as might be expected. For example, the

.../3