



DATE OF MEETING: April 27, 2018
TO: Saturna Island Local Trust Committee
FROM: Gary Richardson
Southern Team

SUBJECT: OCP Amendment to Incorporate First Nations Interests/History

Location: Saturna Island Local Trust Area

RECOMMENDATION

1. That the Saturna Island Local Trust Committee direct staff to proceed with reviewing the Draft 1 version of the First Nations OCP amendment and to bring amended wording and associated mapping to the next LTC meeting for the LTCs consideration.

REPORT SUMMARY

This report has been prepared to obtain direction from the Saturna LTC as to how it wants to proceed with amending the Saturna OCP with regards to First Nations interests/history.

There are two different OCP amendment drafts attached for the LTCs consideration.

BACKGROUND

October 20, 2016 a staff report was presented to the LTC regarding “Long Term relationship building program with local First Nations.” The LTC passed the following resolutions at the October 20 meeting:

SA-2016-032

It was MOVED and SECONDED

that the Saturna Island Local Trust Committee embark on developing an annual plan of constructive actions that demonstrate a commitment to improving respectful relationships between residents and visitors of Saturna Island and the local First Nations with asserted interests in Saturna Island.

SA-2016-033

It was MOVED and SECONDED

that the Saturna Island Local Trust Committee direct staff to organise a public event focused on having SENCOTEN-speaking elders of knowledge-holders talk about how the WSANEC (Saanich)

people view and connect historically and culturally with the waters and land of Saturna Island and its surrounding area.

The LTC hosted a community event November 2016 where local First Nations connected with community members.

A project charter was endorsed February 17, 2017. One of the objectives in the project charter is to prepare a draft OCP amendment to reflect First Nations history on Saturna.

Draft mapping has been prepared showing First Nations place names on Saturna Island. The mapping will be advanced with the OCP wording that the LTC proceeds with.

Fiona Macrauld, Senior Policy Analyst has prepared two versions of text to amend the OCP. Both versions are in draft form and have not been reviewed by planning staff; however they have both been put on the agenda to obtain LTC direction. Once direction is given planning staff will work with Fiona Macrauld to prepare the draft wording into a form to be considered by the LTC as an OCP amendment.

Rationale for Recommendation

- The 2017 project charter envisioned a short amendment to the OCP similar to Draft 1.
- If LTC gives direction to proceed with Draft 2, a new project charter, with a longer timeline will need to be prepared.

ALTERNATIVES

1. **Proceed with First Nations OCP amendment Draft 2**

NEXT STEPS

Describe the next steps in the process, if applicable.

Submitted By:	Gary Richardson Island Planner	April 23, 2018

ATTACHMENTS

1. Draft 1 – First Nations OCP amendment
2. Draft 2 – First Nations OCP amendment
3. Project Charter

OCP AMENDMENT DRAFT 1

In the Saturna Island Local Trust Area, there is a high level of uncertainty regarding current and future First Nations ownership and management of the land base. As of 2018, many things are in a state of flux because of evolving provincial, national and international recognition of Aboriginal Title.

1. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) is an international instrument adopted by the United Nations on September 13, 2007. It describes a minimum standard of rights for the “survival, dignity and well-being of the indigenous peoples of the world.” Additionally, Article 26 states that “Indigenous peoples have the right to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired,” and it directs governments to recognize these territories. UNDRIP was endorsed by Canada in 2010 and officially adopted it in May 2016.

2. In 2015, the Truth and Reconciliation Commission issued ‘Calls to Action’ to redress the legacy of residential schools and to advance the process of Canadian reconciliation. Several of these calls to action speak to the recognition of aboriginal rights over land. In particular, action 47 calls on all levels of government, including local governments, to “repudiate concepts used to justify European sovereignty over Indigenous peoples and lands... and to reform those laws, government policies, and litigation strategies that continue to rely on such concepts.” (Truth and Reconciliation Commission of Canada, 2015).

3. In 2014, the Supreme Court of Canada handed down a decision in the case of the *Tsilhqot’in Nation vs. British Columbia*. In that decision, the court concluded that the Tsilhqot’in Nation has Aboriginal title to over 1,750 square kilometers of their traditional lands, previously deemed Crown land. *Tsilhqot’in* also confirmed that where Aboriginal title has not been established, the Crown has a duty to consult with and accommodate First Nations with stated land claims.

4. The Saturna Island Local Trust Committee works with 13 separate First Nations with asserted Aboriginal rights and title, and treaty rights, and with different customs, history, culture and expectations of engagement.

OCP AMENMENT DRAFT 2

March 8, 2018

APPENDIX A: DRAFT OCP AMENDMENTS

DRAFT AMENDMENTS FOR CONSIDERATION

PART A – INTRODUCTION

A.1 REVIEW PROCESS FOR THE PLAN

Original Text:

Reviewing and revising the Saturna Island Official Community Plan (this Plan) has been an opportunity to bring the community together to renew its shared vision for its future. It is hoped that the Plan will stand the test of setting a reasonable and distinct limit to growth so that the unique amenities of this lovely place will not be gradually destroyed by the continuous sequential development so frequently referred to as progress. Recognition of limitation comes as a part of island life. For most residents, it is willingly chosen and its benefits are something to be celebrated. Each island is limited and limiting growth is vital to achieving the object of the *Islands Trust Act*.

Since this review process began, large tracts of private land have been purchased under the Pacific Marine Heritage Legacy for conservation and park purposes. The impact of visitors to a large scale national park will require continuous attention and monitoring to assess the overall impact of human uses on the environment of the area.

Proposed New Text:

Reviewing and revising the Saturna Island Official Community Plan (the Plan), or any Official Community Plan, is about capturing the changes and assumptions that the community members want to have considered for future land use. The Plan is meant to stand the test of time and for that reason a simple analogy may be a helpful tool for contextualizing the impetus for this review and revision: if one could see this Plan as a door that has only been partially open and the purpose of these revisions is to open the door much wider. The evolution of this Plan over the years was a reflection of the time and space in which it was written and that, with new knowledge and understanding, that door needs to be opened to more fully accommodate important factors that were previously discounted or minimized.

The Saturna community, like the rest of Canada, has become increasingly aware in recent years of the scale and nature of the institutional discrimination that Indigenous peoples in Canada have endured. Our community, also like the rest of Canada, has also seen significant court decisions that have helped clarify the rights and responsibilities of both Indigenous peoples and the Crown especially with regard to land rights and title. If the trajectory of these kinds of court cases continues – as it appears it will –

preparing for changes to the underlying assumptions about land-use in the Plan is a gesture of due diligence and respect.

The progress of helping the Saturna community understand the impetus behind these changes have taken place for over a year and are consistent with the official First Nations Engagement Principles Policy 6.1.i that was unanimously endorsed by the Trust Council of Islands Trust in December 2016 (see Schedule “H”).

A.2 THE ISLANDS TRUST ACT “OBJECT”

Original Text:

Over the years the provincial legislature has reaffirmed the Islands Trust object.

“The object of the trust is to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia.” (sec.3 *Islands Trust Act*).

The legislated object defines the purpose of providing authority to the Islands Trust for land use regulation. The challenge is how to employ the available planning powers of the *Local Government Act* to preserve, protect, and effectively maintain the rural nature, health, natural environment and vitality of the Saturna Island community.

The strength and obligation of the Trust mandate has been more clearly defined by the Court in the *Galiano Island vs. McMillan Bloedel* case. The BC Court of Appeal found that when a Local Trust Committee exercises its powers "to preserve and protect" an amenity, it is not acting in bad faith, but carrying out its assigned duty under the *Islands Trust Act*. Official Community Plans and Land Use Bylaws can be explicit and either more restrictive or permissive when furthering the “object”, than would be acceptable in other local governments in British Columbia. The Court’s decision affirmed the powers and obligation of each Local Trust Committee to further the object of the *Islands Trust Act*.

Proposed New Section Title and Text:

A.2 OPENING THE DOOR TO A BROADER CONTEXT

Without debate, we now know that the region of the Gulf of Georgia, including the local Saturna Island area was likely the most populated region north of Mexico before the 1770s due to its mild climate and rich marine resources relative to the rest of North America. This dense Indigenous population is estimated to have been between 200,000 and one million. Over the century between the 1770s and 1860s, four distinct epidemics of disease wiped out 60-90% of population each time, ending with the last smallpox epidemic in 1862-63. It is for this reason that Saturna Island, her Associated Islands have such a rich archaeological record of villages, human remains, and reveals an historical record of a rich and sophisticated culture before contact with European settlers. This place was extensively used and densely populated less than 250 years ago by Indigenous peoples. These contributing factors of depopulation also explain how the islands came to appear empty for others to settle in the late 19th century.

As a Canadian society we have also come to know some of the adversities that followed those that survived the epidemics and their descendants – forced segregation of Indigenous communities from other Canadians on small reserve lands, forced residential school traumas for the children of our local First Nations up until 1984, substandard care (and worse) in segregated Indian Hospitals, the large scale Sixty’s Scoop of Indigenous children into adoptive and foster care of non-Indigenous families, and many more deeply unfortunate social and institutionalized forms of discrimination based on race. It is this very unfortunate legacy that explains why Indigenous interests in Saturna have been so silent for so long.

So, with knowledge comes responsibility.

As Canada comes to terms with restitutions and apologies for this sustained wrongdoing, courts grapple with making wrongs right, and Indigenous communities are starting to find their voices in expressing their long-held connections to land, individual Canadians, including the community members of Saturna, are asking what implications this has for them. Many see this as the early stages of a bigger societal shift in Canada, especially with regard to how we share the land with the Indigenous people who have been denied so much for so long.

The “social contract” of the Plan that was first initiated in 1976, and further articulated in 2001, was primarily between the province, Islands Trust, the residents of Saturna and the federal government through Parks Canada’s management of large tracts of land on Saturna. It was a noble “social contract” based on the shared objective of preserving and protecting the ecological features of the Local Trust Area. However, many features of the Plan such a definitions, criteria for decision-making, and growth-limiting concepts such as residential ceiling densities and unused development allotments did not consider factors like Aboriginal title, Aboriginal rights, treaty rights or the broad range of uses Tsawout and Tseycum First Nations may chose for their 145.7 ha (360 acres) reserve lands.

PART B – THE CONTEXT

B.1 SATURNA’S FIRST PLAN (1976) - THE SOCIAL CONTRACT, and

B.2 THE SOCIAL CONTRACT RENEWED

Original Text:

B.1 SATURNA’S FIRST PLAN (1976) – THE SOCIAL CONTRACT

The policies of the 1976 Plan rested on wide agreement that the Island should not accommodate a population in excess of 2000. Using an average of 2.5 persons per household resulted in a future maximum of 800 households. It was seen to be fair that existing lot configurations and uses could continue, but that future development would need to be constrained within fixed development allotments. Existing lots already subdivided were subtracted from 800 and the balance allotted.

Concerns about fresh water supply led to the Watershed designation for catch basins, which could be dammed for fresh water storage, and gravity-fed to potential use areas. Based on its past use, Forestlands were designated to ensure forests would continue as a renewable

resource and a characteristic attribute of the land. Lands with soils suitable for agriculture were designated as Farmland. Ecological Reserves, small undeveloped islands and not easily accessed Crown lands were designated as Wilderness reserves. On larger lots, a cottage in conjunction with each household, seemed a good solution to accommodate visitors or provide rental opportunities. Islanders also supported flexibility for those establishing and managing local businesses as being appropriate to the rural character of Saturna Island.

Assurance that the Plan would be implemented so that each owner would receive no more nor less than their development allotment, was central in accepting the restrictions which the 1976 Plan imposed. To address skepticism concerning implementation, restrictive covenants were to be required in certain circumstances to ensure proper compliance. A slow but even rate of development was considered the most desirable in maintaining community stability and optimizing benefits. Belief that the 1976 Plan's development limitations were equitable and that each property's development potential was secure, has given owners the opportunity to postpone development or to develop gradually, as the community had hoped.

B.2 THE SOCIAL CONTRACT RENEWED

This Plan leaves the residential density ceiling essentially unchanged. This Plan supports slow gradual development and encourages options that postpone reaching maximum build-out. Some of its development policies provide options which are expected to reduce the overall maximums depending on the choices made by individual owners using and developing their land.

When implementing any Plan policy, the Committee will take care to ensure the result does not increase the development ceiling. A series of policies are directed to achieving this principle. This approach is considered the best way to fulfill the object of the *Islands Trust Act* while assuring property owners who delay development that their property's unused development allotment will remain available in the future.

The Plan represents a contract between the community's residents, landowners and the Saturna Island Local Trust Committee. The fundamental object of the policies of this Plan is to preserve and protect the area's community and its environment and amenities through sustainable or limited use.

Proposed New Section Title and Text:

B.1 THE SOCIAL CONTRACT, EXPANDED

There are 13 First Nations with asserted rights and title, and treaty rights in the Saturna Local Trust Area (for a list see Schedule "1"). As the BC Treaty Process progresses and courts continue to clarify Douglas Treaty rights, our understanding of the nature, scope and limitation of these rights and title will evolve. However, we can state what has been defined and has been accepted as general fact:

Aboriginal Title: although there is some legal caution around defining Aboriginal title using common law concepts, it is generally accepted that Aboriginal title to the land is based on an Indigenous group's traditional use and occupancy of an area and is a communally held right not an individual's right. In 1997, the Supreme Court of Canada ruled in the *Delgamuukw* case that Aboriginal title is a property

right to the land itself - not just the right to hunt, fish and gather. It is *sui generis*, meaning the source of authority to this land title is not from the Crown but is unique, defined and governed by the Indigenous legal principles of those who hold the Aboriginal title. In other words, making it of local relevance, Saturna Island, in its entirety, has always had Aboriginal title and always will – 10,000 years ago and 10,000 years to come – and is only limited in that the land cannot be used by the Indigenous community in such a way as to deny the benefits of the land to future generations.

Aboriginal Rights: Aboriginal rights are also collective rights that flow from Indigenous peoples' continued use and occupation of certain areas. Although these specific rights may vary between Indigenous groups, in general they include rights to the land, rights to subsistence resources and activities, the right to self-governance, and the right to practice their culture and customs, including language and religion. Aboriginal rights are protected under s.35 of the *Constitution Act, 1982*. Again, to make it of local relevance, Saturna Island has been used by Indigenous peoples for millennia – and is still used - and the activities they did here during that time have a right to continue.

Treaty Rights: Treaty rights are the Aboriginal rights explicitly set out in a treaty in exchange for something that is regarded as equivalent in value. On Saturna there are two types of treaty rights – modern treaty rights that were negotiated in the Tsawwassen Final Agreement in 2009 and the pre-Confederate treaty rights guaranteed in the Douglas Treaties that apply to the five Saanich First Nations (Tsawout, Tseycum, Tsartlip, Pauquachin and Malahat Nations) who are direct descendants of the signatories in 1850-1854. For over 60 years, the Saanich Nations have been using the courts to have their Treaty rights acknowledged and clearly defined such as the right “to hunt over unoccupied lands”, “to fish as formally” and “our village sites and enclosed fields are to be kept for our own use, for the use of our children, and for those who may follow after us”. Many of these pre-Confederate treaty rights, as they apply to the Saturna area, are still being brought to the courts to be fully acknowledged or defined.

Reserve Lands: Reserve land is defined as a tract of land, the legal title to which is vested in the Crown, which has been set apart by the Crown for the exclusive use and benefit of a First Nation. All the “village sites and enclosed fields” referred to in the Douglas Treaties – as identified by the Nations themselves – were regarded as their reserves, as it was an important part of Douglas's reserve policy to allow Indians to select as much land as they wanted. However, the Joint Indian Reserve Commission of 1876-78 were tasked by the province and Canada with reducing what they considered to be too generous an allotment by James Douglas. On March 3, 1877 Indian Reserve 7 on Saturna Island was set aside for the exclusive use of Tsawout and Tseycum First Nations. Some insight as why these lands on Saturna were chosen, and for whom, may be found in the special instructions to the Commission by the province “not to allow allotments of any unnecessarily large reserves such as would interfere with White Settlement... [and] as little as possible to interfere with any existing tribal arrangements; and... they were to be careful to not disturb the Indians in the possession of any villages, fishing stations, fur trading posts, settlements, or clearings which they might occupy, and to which they might be specially attached”. So, with some caution, the reserve lands on Saturna can be assumed to have been chosen due to their remoteness from land demands of the “White Settlement” of that time and the special attachment the Saanich Nations had to that place on Saturna.

B.3 NATIONAL PARK PROPOSAL

Original Text:

While the community was developing this Plan, the Federal government acquired private land adjacent to Crown land parcels under a "Pacific Marine Heritage Legacy" program to preserve representative lands of this bioregion. The program was a joint Federal/Provincial scheme with both governments contributing to land acquisition. The community recognized that the nature of the island lifestyle could change dramatically with increased visitors and potential related services for visitors to the Park.

When the national park is established, Parks Canada zoning policies will determine appropriate use of the land. As required by the *Canada National Park Act*, ecological integrity shall be the first priority when considering all aspects of the management of the national park. Federal Crown lands managed by the Crown are not subject to local government zoning and only if the lands revert to private hands will the prescriptions in this Plan apply. The Community will work with the Federal government in a Parks Management Planning process to ensure there is some certainty over future uses.

Proposed New Section Title and Text:

B.2 PARKS, LANDS AND RESERVE LANDS

All existing National Park Reserves are, by definition, proposed National Parks. This state of lands being held "in reserve" means that the Saturna lands now in the Gulf Islands National Park Reserve are intended to become full Park status once all Indigenous claims are resolved. Given the complexity of those claims based on 13 First Nations asserted Aboriginal rights and title, and treaty rights on Saturna, the assumptions made about these lands in the Plan need to consider a broader range of possibilities for future land-use than just the status quo of its current natural state, size and jurisdictional authority.

Likewise, the 145.7 hectares of unoccupied reserves lands need to be considered in the Plan in a way that assumes Tsawout and Tseycum First Nations may develop these lands in any way they choose. With regard to the reserve lands in particular, the Plan needs to consider that First Nations are statistically the fastest growing population in Canada and that, here in BC, the reserve land allocations are the smallest in the country which is creating considerable housing crises for First Nations. Also to be considered is the current desire for almost all First Nations to engage in economic development opportunities on reserve lands to try to alleviate the level of poverty the Nations have had to endure for over 150 years.

The Saturna community, with more than half of its total lands currently unoccupied and in a natural state needs to recognize that those same lands are waiting the resolution of First Nations claims or decisions. Saturna is well-positioned to engage with their local First Nations in a more meaningful way; to work together to revisit the land-use policies in the Plan that may have assumed those lands would stay in their current natural state. They may well stay in that state but the Plan needs to acknowledge that, although that may be one outcome, there may be other uses that those lands may be needed for.

B.4 PURPOSE, and

B.5 ADVOCACY POLICIES

Original Text:

B.4 PURPOSE

The purpose of the Plan is to further the object of the *Islands Trust Act* through strong long-

range policy guidelines respecting land use and servicing for the Saturna Island Local Trust Area (“the Area”). Policies are to direct and guide future actions of the Saturna Island Local Trust Committee and inform other levels of government and the general public of the community’s expectations for the use and development of the Area. The Saturna Island Local Trust Committee cannot adopt land use bylaws that conflict with either the Islands Trust Policy Statement or the policies of its Official Community Plan.

B.5 ADVOCACY POLICIES

Some of the Plan’s policies address issues that are the responsibility of other levels of government and their agencies. These policies are included for the information and guidance of other levels of government when exercising their responsibilities within this community and are identified throughout the Plan as “advocacy policies”. When the responsibilities of other levels of government impact the Area’s community, this Plan directs the Saturna Island Local Trust Committee in making representations on any action, contemplated action, or enforcement activity. In this regard particular attention shall be given to the: use of Crown lands and lands acquired under the Pacific Marine Heritage Legacy; use of Crown foreshore; scale and type of roads, highways, and trails; transportation policies; and protection of the environment.

To avoid dissipating the Saturna Island Local Trust Committee’s limited resources, its attention is to be focused first on implementing and ensuring compliance with those policies where it has direct authority and a reasonable expectation to accomplish the policy objective

Proposed New Section Title and Text:

B.3 PURPOSE OF THE PLAN AND ADVOCACY

As the Plan has always stated, either implicitly or in clear language, recognition of limitation comes as part of island life and limiting growth is vital to preserving and protecting the values of this place. There is a common acceptance that there is an ultimate cap to the volume of human activities that impact the environment of this island area before those cherished values start to be lost.

The purpose of the Plan is to state guidelines that address important ecological threats to the Saturna Island Local Trust Area. These are guidelines that acknowledge there have been many changes affecting Saturna since 1976 and there continues to be broad societal shifts that will affect it going into the future. The Plan is about stating those guidelines not just for the Local Trust Committee and their decisions, but also for the larger range of stakeholders with interests in Saturna and their decisions.

If anything, recent years have reminder us that we a not “an island unto ourselves” but rather part of a much bigger company of partners who share our objective of preserving and protecting the unique qualities of Saturna. So let us put our stated guidelines for the ideal forward and invite First Nations, Islands Trust, the Capital Regional District, the province and Canada to share with us their vision of Saturna’s cherished values. Together we can craft a vision for future land use with our eyes and ears wide open to the hopes and goals of a more broadly defined “Saturna community”.

First Nations Relationship Building - Charter v1

Saturna Island Local Trust Committee

Date: February 7, 2017

Purpose: To continue to build meaningful relationships with First Nations with an interest in Saturna Island.

Background: The Saturna Local Trust Committee (LTC) initiated a project as one of their top priorities on October 20, 2016 to allow for a project that facilitates a long term First Nations relationship building program that reflects a thriving and sustainable relationship with First Nations.

Objectives

- Amend Saturna OCP to reflect First Nations history on Saturna Island
- Encourage CRD to identify appropriate locations for on-island signage or monument(s) identifying First Nations place names and/or history.

In Scope

- Research First Nations History on Saturna Island
- Prepare text amendments to the OCP explaining First Nations history on Saturna Island
- Prepare OCP map Schedule identifying First Nations place names
- Initiate a process with CRD to discuss on-island signage

Out of Scope

- Research and comment on First Nations heritage designations
- Extraordinary research
- Land Use Bylaw amendments

Workplan Overview

Deliverable/Milestone	Date1)
1) Research First Nations history on Saturna Island prepare initial report	For April 20, 2017 LTC Mtg.
2) Discuss locations with CRD for First Nations signs/monuments	May-September 2017
3) Prepare report and recommended OCP amendments	For June 15, 2017 LTC Mtg.
4) Schedule a CIM	July/August 2017
5) Prepare draft OCP amendment bylaw and final staff report for LTCs consideration	For October 19, 2017 LTC Mtg.
6) Public hearing for OCP amendment bylaw	January 2018

Project Team

Gary Richardson, Island Planner	Project Manager
Fiona MacRaidl	Senior Policy Advisor
Sharon Lloyd-deRosario	Admin Support
Regina Robinson	Admin Support

RPM Approval:

Name of RPM

Date:

LTC Endorsement:

Res #: SA-2017-02

Date: 2017-02-17

Budget

Budget Source:

Fiscal	Item	Cost
2017/2018	CIM	500.00
2017/2018	Research assistance	1000.00
2017/2018	Advertising	500.00
2017/2018	Meeting(s) with CRD (from technical budget)	500.00
2018	Public Hearing to be combined and funded from public hearing budget for LUB amendments	
	Total	2500.00