



Islands Trust Fund

## POLICY MANUAL

Code: TFB 03001 Policy  Procedure  Guideline

Title: DISPOSAL OF LAND

Approved By: Trust Fund Board Date: March 24, 2003 Resolution #: TFB 03/555

Revised: Date: August 9, 2006 Resolution #: TFB 06/859

Chair Signature:

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### Purpose

This policy establishes how the Trust Fund Board will dispose of lands that it owns.

### Background

The *Islands Trust Act* allows the Trust Fund Board to dispose of land as follows:

- 41 (2) (c) For the purpose of carrying out the object of the Trust, the Trust Fund Board may...subject to section 44(2), acquire, hold and dispose of land and other property.
- 41 (3) For the purposes of acquiring, holding and disposing of land and other property under (2) (c) above, the Trust Fund Board may use the money, land and other property of the Trust Fund.
- 44 (1) The Trust Fund Board must prepare and submit to the Minister, at least once every 5 years, a plan for the Trust Fund respecting
  - a) policies on acquisition, management and disposal of property of the trust fund,
  - b) policies on investment of money of the Trust Fund,
  - c) goals for major acquisitions of property by the Trust Fund, and
  - d) other matters as required by the Minister.
- 44 (2) The Trust Fund Board must not, without the prior approval of the Minister, acquire, hold or dispose of land except in accordance with a Trust Fund plan under subsection (1) that has been approved by the Minister.

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## Policy

1. The Trust Fund Board will consider a land disposition based on a proposal from another government agency, conservation agency or from Islands Trust Fund staff. The proposal to the Board will be accompanied by a staff report stating:
  - a) any legal or other impediments to transferring the land as proposed;
  - b) the land's cultural or ecological significance, including characteristics and values identified in the Regional Conservation Plan; and
  - c) whether the transfer requires special Ministerial approval or is covered under the current five-year plan referenced in Section 44 of the Islands Trust Act.
2. If the land in question is not a culturally significant area or is not an ecologically significant area as defined in the Regional Conservation Plan, the Trust Fund Board may, by resolution, approve the sale or donation of the land to the proposed recipient. Any proceeds arising from the sale remain in the acquisitions budget of the Islands Trust Fund and are not fixed to a particular budget year.
3. If the land in question is culturally significant or ecologically significant as defined in the Regional Conservation Plan, the Trust Fund Board will follow the steps listed below.
4. The Trust Fund Board will direct that a conservation covenant be registered on the title to the land before the transfer if the Trust Fund Board believes that such a covenant will further the "preserve and protect" mandate of the Islands Trust.
5. If a conservation covenant is already registered on title to the land, the Trust Fund Board will advise the covenant holder that it is considering transferring title to the land, and consider any comments provided by the covenant holder(s) in respect of the possible transfer.
6. The Trust Fund Board will consider the investments made in the land before the transfer, the investments needed after the transfer and the financial circumstances of both parties, in deciding whether to seek reimbursement from or offer payment to the recipient as part of the transfer.
7. If the land is ecologically or culturally significant or includes characteristics and values as identified in the Regional Conservation Plan, the Trust Fund Board must conduct a thorough analysis before deciding to dispose of the land. The analysis will include answers to the following questions:
  - Was the original donation done as a bequest limiting the use of the land or associated endowment, and would that prohibit the transfer?
  - What level of management expertise is needed to manage the site (high, medium, low, specific expertise)? How does the Islands Trust Fund's access to the required expertise compare to the potential transferee's access to the required expertise (e.g., ability to plan, manage and rehabilitate the key features and values of the site)?
  - What is the likely cost of maintaining the land annually, over the next 5 years, and in perpetuity? What level of resources (staff, time, money, volunteers, etc) does the Islands Trust Fund have for this land?
  - What level of resources does the potential transferee have to cover the anticipated costs in perpetuity and how does this level compare to the Board's level of resources?
  - How likely is the proposed transferee to exist in perpetuity?

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- Are there alternatives to a fee simple transfer that would achieve the goal of the proposed transfer (e.g. lease, license or covenant)? If so, what are they and what are the relative costs, benefits and other implications of these alternatives?
  - Is there an active management group managing the site on behalf of the Board? If so, would the management agreement be affected by the transfer? If yes, in what ways?
  - Would ownership by the potential transferee provide more long term public use of the site than continued Board ownership? If so, how? Is this use a positive or negative change, given the site features and values?
  - Where a tax receipt was issued for the original donation of the land to the Trust Fund Board and the donor is still living, what is the opinion of the donor on the prospective transfer? (Donor will not have veto power, except as specified in a bequest/will.)
  - After Trust Fund Board staff complete public consultation to gauge local public opinion on the prospective transfer, what are the implications of acting with or against public opinion?
8. The Trust Fund Board will only dispose of ecologically or culturally significant land after the Board determines that
- a) the property will be managed as well, or better, in perpetuity as it would be under the Board's ownership;
  - b) the interests of the Islands Trust and the Islands Trust Fund would be best served by disposing of the land, and
  - c) there is little opposition to the disposal of the land.
9. The Trust Fund Board will only dispose of ecologically or culturally significant land if appropriate legally binding agreements are put in place prior to the transfer to ensure that the land and its values will be protected in perpetuity for the residents of the Trust Area and people of British Columbia and that the land will revert to the Trust Fund Board if the land is no longer being used as specified in the agreement.

## References

*Local Government Act*, Section 186 and 187 [not binding on Trust Fund Board property, but provides guidance on process]

*Selling and Leasing Local Government Land - The Essential Checklist*, Pat Kendall, Lidstone Young Anderson, Dec. 1, 2000

*Environmental Considerations in Land Transactions - Part One: Disposing of Property*, Pat Kendall, Lidstone Young Anderson, Dec. 5, 2002