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The James Island Issue: A Solution For An Ill-Treated Island?

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The 'James Island issue' is the usual struggle between the forces of the Islands Trust preserve and protect mandate and those of human land-use and development. How best to conserve the sensitive natural areas of the island and the endangered species that live there is the main issue.

James Island, about 846 acres in size, is located approximately 1km offshore from Sidney and the Saanich Peninsula. It is the second largest by area of the 40 Associated Islands and islets in the North Pender Island Local Trust Area. The total land area of the North Pender Associated Islands is 6,201 acres, of which 1,426 acres or 22.99% is parks or protected areas.

History of Industrial Use

Archaeologists believe the Coast Salish people used James Island as a summer camp. Named after the Governor of Vancouver Island, James Island was settled and farmed from 1874 until 1910 by the Munro family of Scotland. It served as a private hunting ground after fallow deer were introduced to the island in 1908.

Canadian Industries Limited (CIL) acquired the 330 hectare island and began operating an explosives factory in 1915. During World War I, approximately 35 million tons of TNT was produced for Allied forces. Production continued through the Second World War with a small town on the island supporting the factory. Up to 1,200 men women and children lived in the company town which featured proper sidewalks, a bowling alley, a cinema and a small gauge railway.

In 1962, CIL closed the town and in 1979 it closed the munitions factory, demolishing all remaining buildings. CIL did virtually no clean-up. Following their departure, the island was left with large quantities of contaminated soil, heavy fuel oil storage tanks, crates of buried explosives and other remnants of seven decades of industrial use.

1988 James Island – A Plan for Modern Development

In 1988, CIL sold the island to Pacific Parkland Properties, a locally-owned development company with big plans. In response to a comprehensive development proposal, the North Pender Island LTC, through negotiations with Pacific Parkland, set to work drafting Rural Land Use Bylaw 47.

In a February 1989 Development Plan Report to the North Pender LTC, submitted a few months before the bylaw was passed, the developer identified a core concern about the

proposed parkland dedication to take place at time of subdivision.

Appendix A of the Development Plan Report recognized for the first time, the central issue being debated today. It said:

The proposed park areas on James Island have been established because of their ecological fragility or their special qualities that are of importance. To place them in the public's name for the enjoyment of future generations is acceptable. Unfortunately, it also raises potential problems. There are legitimate concerns for their degradation through the public's use, and possible impact upon adjacent villages such as fire hazard, security, noise, etc.

1989 Rural LUB N^o 47 Created

The North Pender LTC proceeded with the development of Rural Land Use Bylaw 47 (RLUB 47), the bylaw covering James Island today. The concerns about fragile, environmentally sensitive lands destined to be public parks were not resolved by Bylaw 47 which allowed extensive public recreation. Policies regarding the proposed parks appear in Bylaw 47 under 'Recreation' and indicate the lands are to be managed by BC Parks. RLUB 47 was given final adoption on July 19, 1989. The bylaw reflected the LTC intention to acquire parkland but contained no conservation measures despite the developer's warnings of ecological fragility in its February report.

RLUB 47 requires two covenants related to parkland and trails. The first (EC78596) restricted subdivision of the land unless the subdivision is accompanied by a Statutory Right-of-Way (SROW) creating a public footpath. The second (EC78597) restricts subdivision unless dedication of parkland and title transfer to the Crown or the Islands Trust. Both covenants were to be triggered at the time of subdivision.

The two covenants covered 10% (7.9% parkland & 2.1% trails) of the island and was an amenity rezoning of sorts, allowing residential density to be increased to 210 lots. Based on Bylaw 47, Pacific Parkland proceeded with plans to develop: 210 residential lots, an 18 hole golf course with a 64,000 square foot 'clubhouse,' a public marina, a public swimming pool facility, public tennis courts, a private passenger ferry for golfers only, a restaurant and extensive meeting facilities 'meant to satisfy owners and golfers needs only and not to be of a scale to attract visitors to the island,' and wide paved roads.

1989 – James Island Abandoned

There was a third covenant on James Island, held by the BC Ministry of the Environment, which was to play a far more

crucial role in the realization of Pacific Parklands plans. The covenant required extensive and extremely costly remediation work to be done. In spite of grand plans and a purported budget of \$100 million, by the end of 1989 Pacific Parkland was out of money. The plans envisioned by RLUB 47 were abandoned. Until 1994 the island sat unattended. Aside from the uncompleted golf course and club house foundation, fallow deer, invasive species and industrial contamination were the main features of the island.

1994 - James Island Purchased

In September of 1994, Pacific Parkland sold James Island to JI Properties, a company owned by Seattle billionaire Craig McCaw. The price was US\$19 million and it was recognized that the cost of the required environmental remediation and restoration pushed the price even higher.

The vast quantities of contaminated soil, 1,200 emaciated deer, rampant invasive species such as scotch broom and abandoned Bunker C crude tanks presented a daunting task.

The central 'James Island issue' of ecological conservation versus parkland and a conservation-based zoning plan would wait for 5 years, pending an extensive clean-up and restoration of the island.

Restoration Work 1994-2005

JI Properties began an environmental restoration of the island. No gasoline powered vehicles would be allowed and a small fleet of electric powered vehicles were acquired. The only current exception is a firefighting vehicle. All scotch broom and other invasive species were removed. The Canadian Wildlife Service, UBC and a leading biologist were consulted and engaged in establishing a strategy to reduce and eventually eliminate the fallow deer population. Excavation of the chemically contaminated soil was undertaken and clean, compatible soil brought in its place. Buried boxes of unexploded ordinance were removed as was the large Bunker C Crude storage facility.

JI Properties stated intention was to transform James Island from an industrial past to a pristine eco-sanctuary. Their belief is that people with deep pockets will value a protected natural island environment. That belief brought JI Properties to the Islands Trust with an application to re-zone the island.

2005 Application Process—A New Vision For James Island

In August, 2005, James Island Properties submitted an application to rezone James Island. In an initial response to the application, the island planner wrote to the applicant in October 2005 saying: 'I support the ecosystem approach to site planning whereby environmentally sensitive areas and hazardous land are set aside initially and development is subsequently sited on lands with modified ecosystems.'

He explained that 'an ecosystem inventory of James Island would be considered a prerequisite to proceeding with a rezoning of the island.' The correspondence set out a long list of studies and other technical information that would be required to assess the application.

Adopting this ecosystem approach required not only an overall Conservation Assessment (subsequently done for the Nature Conservancy of Canada by Matt Fairbarns of Aruncus Consulting) but also five other technical reports. These

included:

- Groundwater for James Island Requirements, Quantity Availability & Quality
- Slope Hazard Assessment
- Conservation Assessment of the Bird and Mammal Fauna
- Survey of Rare Spring-flowering Plants and
- an Archaeological Reconnaissance.

Three of the studies illustrated the extreme sensitivity of the island ecology and the rare nature of some habitat and species. The Fairbarn Conservation Assessment recommended prohibiting human disturbance of the sensitive areas and the LTC adopted that approach. This course of action differed distinctly from the 1988/89 LTC approach, land use on James Island would be addressed in a very different way.

2006—Starting Point Ecological Conservation

The North Pender Local Trustees agreed with the conservation assessment and determined that the starting point in responding to the application was to prefer ecological conservation over public parks and access. Based on the initial assessment, 17.9% of the island was considered sensitive with fragile ecosystems and rare species. Later, the conservation area would be increased to nearly 20% of the island.

In accepting the recommendation to avoid human disturbance of the conservation areas, the LTC noted the documentation of five rare plant species. Subsequently, a rare butterfly attracted attention as biologists, retained by JI Properties, continued to study James Island. One plant in particular, the contorted-pod evening primrose is classified as 'critically imperilled' under the federal *Species At Risk Act*. It exists in only five locations in the world with the James Island population being the largest. Other populations are located in areas of semi-stabilized dunes, classified as 'active,' which are open to public use and subject to disturbance.

The Local Trustees decided to protect the conservation areas through zoning and a covenant held by the Nature Conservancy of Canada (NCC). The rationale for such an approach was based on the facts of RLUB 47. Much of the very land included in the 10% that Bylaw 47 designated for public park/access was within the 20% of land identified in the conservation assessment as in need of the greatest protection. Amending the RLUB 47 subdivision covenant of 10% parkland/trails to a nature reserve covenant would only protect half of the sensitive area. The Local Trustees failed to see the point of having two management plans, monitoring and enforcement schemes.

The option chosen was to release the old parkland/trails covenants (covering 10% of the island) and require JI Properties to give up development rights to twice the amount of land (nearly 20%) as would have been required under RLUB 47. Management costs and liabilities would be totally borne by the NCC and the owners.

JI Properties would still be obligated under the *Local Government Act* to a 5% parkland dedication or cash-in-lieu at the time of subdivision. JI Properties would pay cash-in-lieu of either \$1.5 million or 5% of the assessment whichever was greater.

The North Pender LTC decision was to double the protected areas and still require the applicant to meet its obligations for

parkland dedication at the time of subdivision. Although quite different from the 1988/89 approach to the 'James Island issue', the 2005/06 LTC effectively addressed the issue first raised in Pacific Parkland's Appendix A in 1989.

The decision touched off a secondary debate on the 'James Island issue'. Is 10% parkland/trails (at time of subdivision) a superior public benefit to a 20% conservation area for rare and sensitive ecosystems (as a condition of final bylaw approval)?

North Pender Local Trustees felt strongly that the long term benefit of maintaining ecological integrity and biodiversity outweighed the benefit of a public park on sensitive ecosystems, especially when the abundance of public parkland in the surrounding Associated Islands has grown considerably since 1989 through the addition of the Gulf Islands National Park Reserve.

New Proposed Bylaws

Recently introduced, OCP Bylaw 169 and LUB Bylaw 170 would replace the existing RLUB 47. They would specifically:

- Reduce residential density from 210 lots in Bylaw 47 to 80 lots and introduce a house size limit of 5,000 square feet (an accessory cottage would be permitted on the 80 lots);
- Reduce commercial density from 377,000 square feet under Bylaw 47 to 35,000 square feet.
- Put 47.5% of the island in the Agricultural zone (all this land is currently in the ALR); 29.4% in the Residential zone; 19.6% in the Conservation zone; 1.9% in the Commercial zone and 1.6% in the Community service zone;
- Require conservation covenants held by the LTC and the Nature Conservancy of Canada and drafted to the satisfaction of Islands Trust legal counsel to apply to the area zoned Conservation;
- Require, at the time of subdivision, parkland dedication under the *Local Government Act* (the applicant has agreed to pay a minimum of \$1.5 million cash in lieu);
- Require covenants for Raptor Nesting Protection (Buffer Zones); Wildlife Tree Protection (restricts removal); Educational and Research Access to conservation areas; Subdivision Control;
- Require water storage capacity be provided;
- Require the restoration of rare species and habitat;
- Require the restoration of certain rare flowering plants.

Consideration by Trustees

The path Local Trustees have chosen will reduce density, double the protected area of the island and make the applicant live up to its obligations under the *Local Government Act*. The public benefit of preserving and protecting these rare and sensitive areas with management plans, monitoring and enforcement by Canada's premiere conservation organization—the Nature Conservancy of Canada (NCC)—meets all obligations of the *Islands Trust Act* and the *Trust Policy Statement*.

In recognition of concerns raised about public access to the privately owned island and its ecologically sensitive areas, the proposed covenant provides for an Educational Access Program in co-operation with The New Marine Centre at Sidney and the Saanich and Gulf Island School districts. This arrangement seemed to be the best way to provide for public access while carefully managing the impacts on sensitive areas.

The Local Trustees recognized that regardless of who owns the land, it will be virtually impossible to completely prevent human intrusions on the protected areas. In order to address this, the Local Trustees believe that the option chosen places the financial burdens associated with management, monitoring and enforcement in the most capable of hands. As the NCC pointed out to the Executive Committee, the NCC could not levy rent charges against a crown agency such as the Trust Fund Board for a breach of covenant.

Under the zoning and covenant option, the NCC would be able to require the property owners, now or in the future, to pay for any transgressions.

The central issue on James Island is ecological conservation versus public parkland. Each case must be dealt with on the facts and within the parameters of the *Islands Trust Act*, its *Trust Policy Statement* and other legal and policy requirements.

The Proposed James Island OCP Bylaw 169 has been deemed approved by the Island Trust Executive Committee. A Public Hearing on Proposed LUB Bylaw 170 will be held on Thursday, October 4 at 10am at the Anglican Hall on North Pender Island. ☞

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