To: Islands Trust Executive Committee
Attention: Peter Luckham, Vice-Chair
Re: File Number: GF/AF-1COM-2011-03
Date: June 22nd, 2011

Dear Mr. Luckham,

We have your response to our complaint against the Salt Spring Island Local Trust Committee. We have the following comments:

1. You characterize our complaint as an Administrative Fairness Complaint. We think this is a mischaracterization. Our Complaint was that the minutes of the January 14th, 2011 LTC meeting were a "…very selective report of the actual events" and thus mislead readers by concealing certain facts which are in violation of the Community Charter. "Administrative Fairness" applies to the conduct of the body given the authority under the governing Statute to act in an oversight capacity upon complaints made against, in this case, the Local Trust Committee members.
2. A "wrong" may be done by omission or commission. In this case, we complain that the wrong was by omission, to wit: The minutes did not provide a "true" account of the events at the meeting, and the minutes failed to include certain facts relevant to the complaint. Your response goes to great lengths to justify, first, the 3 month delay in providing the minutes of the meeting and, second, to introduce "new guidelines" for what sort of matters under consideration should be reflected accurately and truthfully in the official, adopted minutes of the meeting and some analysis of the nature of the questions asked and responses provided. For example, you have determined that Trustee Ehring's comments at the meeting were "conversational in nature" or "irrelevant" or both and therefore did not require being recorded in the minutes. On what evidence did you come to that conclusion?
3. With respect, your comments about the kind of selective and non-objective process that the preparers of the minutes should engage in before deciding what to put into them and what to leave out, would lead to an even more unsatisfactory result and one that is sure to raise many more complaints about Local Trustees and the processes they employ.
4. We are puzzled by the whole issue of the delay in providing the minutes. First, a draft of the January 14th minutes was included in the agenda package for the LTC meeting held February 10th. This clearly suggests that the staff had time to prepare the minutes. Second, "…staff advised during the meeting that the draft was not in fact ready for the SSILTC's consideration." This statement is made without any indication of an examination on the part of the Executive Council as to the reason the draft was included in the agenda package and then withdrawn. Why would they have been included in the agenda package in the first place if they were not properly prepared? Third, you do not say when the minutes of the February 10th meeting were provided. If they were provided at the meeting, then obviously, the staff had the time to deal with minutes. Why not prepare the January minutes which were first in priority being the earlier of the two hearings? (This is Roberts Rules, which the Meeting Procedures Bylaw incorporates by reference.) When were the minutes of the March meeting provided? You don't appear to have asked those questions. We submit that the evidence that would have been provided in response was critical to a fair consideration of our claim. Such unknowns and omissions lead us to believe that you did not carry

out a full and fair examination of evidence. Fourth, you examined the minutes that were finally provided at the April 7th meeting and note that there were no changes to section 13.3. The question is, what was amended in the minutes? We submit that administrative fairness and procedural justice require the Executive Committee to satisfy us – and *itself* - that amendments were made to the January draft minutes and to know the nature of those amendments. We are entitled to know this since it goes to the very heart of our complaint. Given your justification for the 3 month delay in producing the minutes, it is reasonable for us to assume that the amendments were extensive. That lends even greater weight to our position that we are entitled to know the nature of them. If they were simply minor amendments, then, in our opinion, you have not justified the delay.

5. We fail to understand your use of (in bold) “non-fiduciary” and ask you to clarify. The implication is that if there is no financial interest, there cannot be a fiduciary relationship. If you will consult Black’s Law Dictionary on the topic of a fiduciary relationship, you will find that the important element, unless a contract is involved, is the nature of the relationship between the parties. To create a fiduciary relationship there must be elements of trust and confidence between the parties and the exercise of a corresponding degree of fairness and good faith. In declaring a possible conflict of interest, Trustee Ehring was alert to that possibility because of the nature of the relationship between himself and the owner of the property. He had in mind the very kind of relationship that is referred to in Black’s Dictionary as creating a fiduciary relationship. With respect, the use of the phrase “non-fiduciary” has no meaning and should not be used in the minutes or your response to us at all. That Mr. Ehring did not stand to gain financially from the granting of a permit for a storm water management plan for the BC Ambulance Service’s facility at 275 Park Drive is not relevant. This is not the only possible gain or benefit to be derived from Trustee Ehring’s presence on the Council that is entrusted with making the decision in favour of granting the permit.
6. Please clarify and justify the argument that conflict of interest law only applies strictly in the case of changes in use or density and that this was “only ... a development permit.” We are unable to find any support in law or policy for this distinction. Is this unwritten Trust policy? Is this common province-wide? Does the Minister support this distinction?
7. We ask for clarification regarding the issuance of development permits where an applicant is an arm of the Crown and therefore exempt from guidelines in an OCP. Your response implies that, because the Crown is exempt in ways that other landowners are not, that issuance of a development permit for such a parcel does not trigger the conflict of interest rules in the Community Charter. On the face of it, this is incredibly dangerous. Is this Trust policy? Does the Minister support this view?

Thank you for your suggestions as to further remedies that are available to us. We are considering our options.

Yours sincerely,

Susan Cunningham, Arlene Dashwood, Jean Elder, Peter Lake, Mark Lucich,
Brandi McKinnon, John Macpherson, Shelley Nitikman, Patsy Siemens