



No. S-256468
VANCOUVER REGISTRY

IN THE SUPREME COURT OF BRITISH COLUMBIA

Re: in the matter of the Judicial Review Procedure Act, RSBC 1996 ch. 241

BETWEEN:

ETHAN WILDING, DAVID NICHOLS DEMNER, and HEIDI KUHRT
PETITIONERS

AND:

SALT SPRING ISLAND LOCAL TRUST COMMITTEE
RESPONDENT

RESPONSE TO PETITION

Filed by: Salt Spring Island Local Trust Committee (the "SSILTC")

THIS IS A RESPONSE TO the Petition filed August 27, 2025.

The SSILTC estimates the hearing of the petition will take 3 days.

Part 1: ORDERS CONSENTED TO

The SSILTC consents to the granting of the Orders set out in the following paragraphs of Part 1 of the Petition: None.

Part 2: ORDERS OPPOSED

The SSILTC opposes the granting of the Orders set out in paragraphs 1-10 of Part 1 of the Petition.

Part 3: ORDERS ON WHICH NO POSITION IS TAKEN

The SSILTC takes no position on the granting of the Orders set out in paragraphs of Part 1 of the Petition: None.

Part 4: FACTUAL BASIS

A. Salt Spring Island Local Trust Committee and Development Permit Requirement

1. The respondent, Salt Spring Island Local Trust Committee (the "SSILTC"), is the local trust committee for the Salt Spring Island local trust area and is constituted as a corporation pursuant to the *Islands Trust Act*, R.S.B.C. 1996, c. 239.
2. The trust known as the Islands Trust is continued pursuant to the *Islands Trust Act*. The trustees of the Islands Trust include the local trustees.
3. Pursuant to the *Islands Trust Act* and Part 14 of the *Local Government Act*, R.S.B.C. 2015, c. 1, the mandate of SSILTC is to plan and regulate planning and land use within the Salt Spring Island local trust area.
4. Pursuant to its authority under ss. 488-491 of Part 14 of the *Local Government Act*, the SSILTC's Official Community Plan Bylaw No. 434, 2008 (the "Official Community Plan") designates a development permit area described as "Development Permit Area 3 – Shoreline" ("DPA 3") to protect the natural environment, its ecosystems and biological diversity and to protect development from hazardous conditions.
5. Section 489 of the *Local Government Act* prohibits an owner of land from constructing buildings and structures on land or altering land within a development permit area designated to protect the natural environment, its ecosystems and biological diversity or to protect development from hazardous conditions, without a development permit authorizing such activities.

B. Petitioners and Properties on Salt Spring Island

6. The petitioner, Ethan Wilding, is the registered owner of the land located at 434 Baker Road on Salt Spring Island, BC and legally described as: PID: 009-555-781; Lot 5, Section 6, Range 1 West, North Salt Spring Island. Cowichan District, Plan 46155 ("434 Baker Road").
7. The petitioners, David Nichols Demner and Heidi Kuhrt, are the registered owners of the land located at 235 Quarry Drive on Salt Spring Island, BC and legally described as: PID: 009-555-706; Lot 1 Sections 6 and 7 Range 1 West North Salt Spring Island Cowichan District Plan 46155 ("235 Quarry Drive").
8. A portion of 434 Baker Road and 235 Quarry Drive are located within DPA 3.
9. A portion of the following properties on Salt Spring Island, BC located adjacent or near 434 Baker Road and 235 Quarry Drive are also within DPA 3:

- (a) A property located as 239 Quarry Drive, which is owned by Patricia Lynne Sanders and Bruce Robert Sanders and legally described as: PID: 009-555-731; Lot 3, Sections 6 and 7, Range 1 West, North Salt Spring Island, Cowichan District, Plan 46155 (“239 Quarry Drive”);
 - (b) A property located at 431 Baker Road, which is owned by Jeremy Damon Sicherman and Claire Daniela Sicherman and legally described as: 000-014-656; Amended Lot 2 (DD 251903I) Section 6 Range 1 West North Salt Spring Island Cowichan District Plan 7144 Except Part in Plan 40042 (“431 Baker Road”).
 - (c) A property located at 237 Quarry Drive, which is owned by John Gordon Tulip and Anne Ragnhild Synnes and legally described as: PID: 009-555-722; Lot 2, Sections 6 and 7, Range 1 West, North Salt Spring Island, Cowichan District, Plan 46155 (“237 Quarry Drive”); and
 - (d) A property located at 241 Quarry Drive, which is owned by Ethan Todd Wilding and legally described as: PID: 009-555-765; Lot 4, Section 6, Range 1 West, North Salt Spring Island. Cowichan District, Plan 49612 (“241 Quarry Drive”).
10. A portion of Crown land, including land covered by water, within the planning and land use jurisdiction of the SSILTC, adjacent to and near 434 Baker Road and 235 Quarry Drive as well as 239 Quarry Drive, 431 Baker Road, 237 Quarry Drive, 241 Quarry Drive, parkland and roads is also located within DPA 3. The petitioners do not have a licence of occupation or lease from the Province for that portion of Crown land.

C. Development Permit Applications for Proposed Activities

11. On or about December 27, 2023, the owners of 434 Baker Road and 235 Quarry Drive, as well as the owners of 239 Quarry Drive and 431 Baker Road submitted a development permit application to the SSILTC for proposed “shore stabilization (green-shoring)” work for “multiple properties”. SSILTC staff advised the owners that separate development permit applications for each property needed to be submitted.
12. On or about April 8, 2024, the petitioner, Ethan Wilding, as the owner of 434 Baker Road applied to the SSILTC for a development permit to authorize the construction of proposed “shore stabilization (green-shoring)” work largely on Crown land adjacent to and near 434 Baker Road as well as 235 Quarry Drive, 239 Quarry Drive, 431 Baker Road, 237 Quarry Drive, 241 Quarry Drive, parkland and roads.

13. On or about April 8, 2024, the petitioners, David Nichols Demner and Heidi Kuhrt, as the owners of 235 Quarry Drive applied to the SSILTC for a development permit to authorize the construction of proposed “shore stabilization (green-shoring)” work largely on Crown land adjacent to and near 235 Quarry Drive as well as 434 Baker Road, 239 Quarry Drive, 431 Baker Road, 237 Quarry Drive, 241 Quarry Drive, parkland and roads.
14. On or about April 8, 2024, the owners of 239 Quarry Drive applied to the SSILTC for a development permit to authorize the construction of proposed “shore stabilization (green-shoring)” work largely on Crown land adjacent to and near 239 Quarry Drive as well as 434 Baker Road, 235 Quarry Drive, 431 Baker Road, 237 Quarry Drive, 241 Quarry Drive, parkland and roads.
15. On or about April 8, 2024, the owners of 431 Baker Road applied to the SSILTC for a development permit to authorize the construction of proposed “shore stabilization (green-shoring)” work largely on Crown land adjacent to and near 431 Baker Road as well as 434 Baker Road, 235 Quarry Drive, 239 Quarry Drive, 237 Quarry Drive, 241 Quarry Drive, parkland and roads.
16. Between May 2024 and March 2025, SSILTC staff requested and were provided additional information regarding the development permit applications submitted by the owners of 434 Baker Road and 235 Quarry Drive as well as the owners of 239 Quarry Drive and 431 Baker Road.
17. On or about March 7, 2025, the owners of 431 Baker Road indicated they no longer wished to move forward with their development permit application and could be cancelled.
18. On or about May 2, 2025, the Director of Planning Services for the Islands Trust including the SSILTC denied issuance of a development permit to the petitioners, David Nichols Demner and Heidi Kuhrt, the owners of 235 Quarry Drive for the proposed activities.
19. On or about May 8, 2025, the Director of Planning Services for the Islands Trust including the SSILTC denied issuance of a development permit to the petitioner, Ethan Wilding, the owner of 434 Baker Road for the proposed activities.
20. On or about May 8, 2025, the Director of Planning Services for the Islands Trust including the SSILTC denied issuance of a development permit to the owners of 239 Quarry Drive for the proposed activities.
21. On or about June 6, 2025, the owners of 235 Quarry Drive, 434 Baker Road and 239 Quarry Drive submitted a request for the SSILTC to reconsider the decisions

- of the Director of Planning Services denying development permits to the owners for the proposed activities along with certain documents.
22. On or about July 10, 2025, in a meeting open to the public, the SSILTC considered the request to reconsider the decisions of the Director of Planning Services denying development permits to the owners of 235 Quarry Drive, 434 Baker Road and 239 Quarry Drive.
 23. At the meeting, the SSILTC heard from the petitioner, Ethan Wilding, as well as from the owners' representatives in respect of the request to reconsider the decisions of the Director of Planning Services denying development permits to the owners of 235 Quarry Drive, 434 Baker Road and 239 Quarry Drive.
 24. After considering and discussing the request for reconsideration of the decisions of the Director of Planning Services on its merits, the SSILTC determined that the proposed activities do not meet the requirements for DPA 3, including various guidelines, and denied development permits to the petitioners, as the owners of 235 Quarry Drive and 434 Baker Road, as well as to the owners of 239 Quarry Drive, for the proposed activities.

Part 5: LEGAL BASIS

A. Record on Judicial Review

25. With limited exceptions, the evidence on a judicial review is confined to the record that was before the decision-maker when the decision was made.
26. The petitioners rely on evidence that was not part of the record before the SSILTC when it made its decision to deny the development permits to the petitioners and do not state what exception specific evidence that is not part of the record would fit into.

B. Standard of Review

27. Subject to narrow exceptions, every administrative decision is to be reviewed on a standard of reasonableness. Jurisdictional questions are no longer a distinct category attracting a standard of correctness.

Vavilov Canada (Minister of Citizenship and Immigration) v. Vavilov, 2019 SCC 65
("Vavilov")

28. Since *Vavilov*, the courts have confirmed that the reasonableness standard applies to a local government decision regarding the interpretation of its authority under its enabling legislation.

1120732 B.C. Ltd. v. Whistler (Resort Municipality), 2020 BCCA 101 (“*Whistler*”)
1193652 B.C. Ltd. v. New Westminster (City), 2021 BCCA 176
 (“*New Westminster*”)

Galiano Forest Lot Owners Assn v. Galiano Island Local Trust Committee,
 2025 BCCA 15 (“*Galiano Forest Lot Owners*”)

29. The standard of review applicable to the following decisions of the SSILTC that appear to be challenged in the petition is reasonableness:

- (a) to adopt the DPA 3 provisions as they relate to that area described as being “300 m seaward of the natural boundary of the sea” in its Official Community Plan under the *Islands Trust Act* and the *Local Government Act*,
- (b) to require development permits for the petitioners’ proposed activities under the DPA 3 provisions in its Official Community Plan, and
- (c) to deny development permits for the petitioners’ proposed activities under the DPA 3 provisions in its Official Community Plan.

30. To the extent the petitioners assert that some of the DPA 3 provisions are invalid or inapplicable because they regulate “fisheries”, under *Vavilov* the standard of review applicable to this constitutional issue regarding the relationship between federal legislation and provincial legislation, including delegated decisions made pursuant to provincial legislation, is correctness.

Vavilov, para. 55

31. The standard of review applicable to issues of procedural fairness is best described as a standard of “fairness”.

Seaspan Ferries Corporation v. British Columbia Ferry Services Inc., 2013 BCCA 55
 (“*Seaspan Ferries*”)

C. Reasonableness Review of SSILTC’s Decisions

32. To determine whether a decision as a whole is reasonable, the reviewing court must ask “whether the decision bears the hallmarks of reasonableness – justification, transparency and intelligibility – and whether it is justified in relation to the relevant factual and legal constraints that bear on the decision”.

Vavilov, para. 99, 101-135

33. Relevant factual and legal constraints include: 1) the governing statutory scheme; 2) other relevant statutory or common law; and 3) the principles of statutory interpretation.

Vavilov, para. 108-135

34. *Vavilov* noted it is well established that reasons are not required for all decision-makers or decisions. Where no reasons are required, such as in this case, the reviewing court is to look to both the record and the outcome.

Vavilov, para. 137-138

Whistler, para. 84-88

35. The burden is on the petitioners to show that the SSILTC's decisions were unreasonable. The petitioners have not met that onus.

Vavilov, para. 100

D. SSILTC's Decisions Were Reasonable

36. The SSILTC's decisions to adopt the DPA 3 provisions, to require development permits for the petitioners' proposed activities under the DPA 3 provisions, and to deny development permits for the petitioners' proposed activities under the DPA 3 provisions were reasonable based on the relevant case law as well as the text, context and purpose of the *Islands Trust Act*, the *Local Government Act* and the SSILTC's Official Community Plan.

(i) SSILTC's Decision to Adopt DPA 3 Provisions

37. The SSILTC proceeded on the basis that s. 29 of the *Islands Trust Act* and s. 488 to 491 of the *Local Government Act* authorized it to enact the DPA 3 provisions in its Official Community Plan to protect the natural environment and to protect development from hazardous conditions. This was a reasonable interpretation of its enabling legislation.

Planning and Land Use Management Authority

38. The land, and any parts thereof covered by the waters of the Strait of Juan de Fuca, the Strait of Georgia, Johnstone Strait and Queen Charlotte Strait, between Vancouver Island and the mainland are owned by the Province.

Reference re: Ownership of the bed of the Strait of Georgia and related areas,
[1984] 1 S.C.R. 388

39. The Islands Trust, and in particular the specific legislative intent to create a local government body that is empowered by land use regulation to preserve and protect certain lands, including land covered by water, between Vancouver Island and the mainland, has been considered by the Court of Appeal in several cases.

40. Section 3 of the *Islands Trust Act* states, in part, the object of the Islands Trust, including the SSILTC, is:

[T]o 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...

MacMillan Bloedel Limited v. The Galiano Island Trust Committee, (1995), 126 D.L.R. (4th) 449 (BCCA)

41. Pursuant to s. 29 of the *Islands Trust Act* and Part 14 of the *Local Government Act*, local trust committees have been delegated the authority to adopt zoning bylaws for the trust area.

Salt Spring Island Local Trust Committee v. B & B Ganges Marina Ltd.,
2008 BCCA 544 ("*Ganges Marina*")
Fonseca v. Gabriola Island Local Trust Committee, 2021 BCCA 27
Galiano Forest Lot Owners

42. Pursuant to s. 29 of the *Islands Trust Act* and Part 14 of the *Local Government Act*, local trust committees have also been delegated the authority to adopt official community plans, including the designation of development permit areas for the trust area.

Denman Island Local Trust Committee v. Ellis, 2007 BCCA 536
Denman Island Local Trust Committee v. Stoneman, 2013 BCCA 517

43. Section 488(1)(a) of the *Local Government Act* permits local trust committees to designate development permit areas in its official community plan for various matters including the "protection of the natural environment, its ecosystems and biological diversity".

44. Section 491 of the *Local Government Act* states:

(1) For land within a development permit area designated under section 488(1)(a) [*protection of natural environment*], a development permit may do one or more of the following:

- (a) specify areas of land that must remain free of development, except in accordance with any conditions contained in the permit;
- (b) require specified natural features or areas to be preserved, protected, restored or enhanced in accordance with the permit;
- (c) require natural watercourses to be dedicated;

- (d) require works to be constructed to preserve, protect, restore or enhance natural watercourses or other specified natural features of the environment;
 - (e) require protection measures, including that vegetation or trees be planted or retained in order to
 - i. preserve, protect, restore or enhance fish habitat or riparian areas,
 - ii. control drainage, or
 - iii. control erosion or protect banks.
45. Section 488(1)(b) of the *Local Government Act* also permits local trust committees to designate development permit areas in its official community plan for the “protection of development from hazardous conditions”.
46. Section 491 of the *Local Government Act* further states:
- (2) For land within a development permit area designated under section 488(1)(b) [*protection from hazardous conditions*], a development permit may do one or more of the following:
- (a) specify areas of land that may be subject to flooding, mud flows, torrents of debris, erosion, land slip, rock falls, subsidence, tsunami, avalanche or wildfire, or to another hazard if this other hazard is specified under section 488(1)(b), as areas that must remain free of development, except in accordance with any conditions contained in the permit;
 - (b) require, in an area that the permit designates as containing unstable soil or water which is subject to degradation, that no septic tank, drainage and deposit fields or irrigation or water systems be constructed...
- (4) Before issuing a development permit for land within a development permit area designated under section 488(1)(b), a local government may require the applicant to provide a report to assist the local government in determining what conditions or requirements it will impose under subsection (2) of this section.
47. Section 489(b) of the *Local Government Act* prohibits the construction of, addition to or alteration of a building or other structure on land within a development permit area designated under s. 488(1)(a) or (b) unless the owner of the land first obtains a development permit unless an exemption applies.

48. Section 489(c) of the *Local Government Act* prohibits land within a development permit area designated under s. 488(1)(a) or (b) from being altered unless the owner of the land first obtains a development permit unless an exemption applies.

SSILTC'S DPA 3 Provisions

49. Pursuant to its authority under s. 29 of the *Islands Trust Act* and ss. 488 to 491 of the *Local Government Act*, the SSILTC designated DPA 3 in its Official Community Plan to protect the natural environment and to protect development from hazardous conditions.
50. DPA 3 is shown on Map 20 of the Official Community Plan and includes land within 10 m inland of the natural boundary of the sea in areas where the marine environment has been identified as being particularly sensitive to development impacts and land covered by water within 300 m seaward of the natural boundary of the sea.
51. Map 20 of the Official Community Plan identifies that portion of 434 Baker Road and 235 Quarry Drive as well as 239 Quarry Drive, 431 Baker Road, 237 Quarry Drive, and 241 Quarry Drive within 10 m of the natural boundary of the sea as located within DPA 3.
52. Map 20 of the OCP also identifies that portion of Crown land adjacent to and near 434 Baker Road and 235 Quarry Drive as well as 239 Quarry Drive, 431 Baker Road, 237 Quarry Drive, 241 Quarry Drive, parkland and roads within 300 m seaward of the natural boundary of the sea as located within DPA 3.
53. DPA 3 requires a development permit for certain activities including the "construction of shoreline stabilization works" within DPA 3.
54. The DPA 3 guidelines include the following relevant provisions to the petitioners' proposed activities:
- E.3.4.1 All work that takes place below the natural boundary of the sea should be done in a way that minimizes degradation of water quality and disturbance of the substrate.
 - E.3.4.2 All work that takes place on land within 10 m of the natural boundary of the sea should be planned and carried out in a way that is consistent with the Land Development Guidelines for the Protection of Aquatic Habitat (Appendix 7).
 - E.3.4.3 Native vegetation and trees are to be retained or replaced to control erosion, protect banks and protect fish and wildlife habitat.

- E.3.4.9 The shoreline should not be filled in to create additional land, except minor areas of fill necessary to complete the boardwalk section of the Ganges Public Pathway System in Ganges Harbour.
- E.3.4.21 Applications for shoreline stabilization should include a report, prepared by a professional Engineer with experience in geotechnical engineering, which describes the proposed modification and shows:
- a. the need for the proposed modification to protect existing structures.
 - b. where the modification is proposed to protect new structures, the locations on the property where those structures could be built and not require shoreline modification.
 - c. if any natural hazards, erosion, or interruption of geohydraulic processes may arise from the proposal modification, including at sites on other properties or foreshore locations.
 - d. the cumulative effect of shoreline stabilization works along the drift sector where the works are proposed.
 - e. whether there will be any degradation of water quality or loss of fish or wildlife habitat because of the modification.
 - f. whether conditions should be incorporate into the development permit to achieve the objectives of this Development Permit Area.
- E.3.4.22 Shoreline stabilization should be limited to that necessary
- a. to prevent damage to existing structures or an established use on adjacent upland.
 - b. to prevent damage to a proposed public land use.
55. The DPA 3 guidelines also include the following provisions referred to in the petition:
- E.3.4.5 Structures should provide for the thorough flushing of all enclosed water areas and should not restrict the movement of aquatic life or interfere with natural shoreline processes.

- E.3.4.13 Docks should not be located over shellfish beds or lead to the removal of any kelp or eel grass beds.
- E.3.4.27 Where revetments are proposed, they should not result in the loss of riparian vegetation or fish habitat. The size and quantity of materials used should be limited to that necessary to withstand the estimated energy of the location's hydraulic action and prevent collapse. Filter cloth should be used to aid drainage.
56. The DPA 3 provisions including as they relate to that area described as being "300 m seaward of the natural boundary of the sea" fall squarely within the SSILTC's land use permit authority under s. 29 of the *Islands Trust Act* and ss. 488 to 491 of the *Local Government Act* to protect the natural environment and development from hazardous conditions within the trust area.
57. The SSILTC's decision to adopt the DPA 3 provisions in its Official Community Plan was reasonable.
- (ii) SSILTC's Decision to Require Development Permits for the Petitioners' Proposed Activities under the DPA 3 Provisions was Reasonable**
58. The SSILTC also proceeded on the basis that the petitioners' proposed activities are not exempt from the requirement for a development permit under the DPA 3 provisions. This was a reasonable interpretation of the DPA 3 provisions in its Official Community Plan.
59. The DPA 3 provisions provide that certain activities are exempt from the requirement to obtain a development permit including: "vegetation removal within 10 m of the natural boundary of the sea or works below the natural boundary of the sea that have been approved in writing by the Ministry of Environment or the Department of Fisheries and Oceans" (s. E.3.1.3.f.).
60. The proposed activities in the petitioners' development permit applications have not been approved by the Ministry of Environment or the Department of Fisheries and Oceans.
61. The letter dated July 31, 2024 from the Department of Fisheries and Oceans ("DFO") cited in the petition is not an authorization from DFO to conduct the proposed activities. It is simply a response letter to the petitioners' request for a review of their project under the federal Fish and Fish Habitat Protection Program whether their proposed project is likely to result in a harmful alteration, disruption or destruction of fish habitat such that an authorization under the *Fisheries Act* needs to be applied for and obtained.

62. The petitioners also do not have an authorization from the Ministry of Environment to conduct the proposed activities.
63. The SSILTC's decision that the petitioners' proposed activities are not exempt from the requirement for a development permit under the DPA 3 provisions was reasonable.

(iii) SSILTC's Decision to Deny Development Permits for the Petitioners' Proposed Activities was Reasonable

64. The SSILTC's decision to deny development permits for the petitioners' proposed activities under the DPA 3 provisions in its Official Community Plan was reasonable.
65. As a preliminary point, it is not clear in this case how the petitioners consider they are entitled to a development permit to undertake proposed activities on land they do not own or have an interest in. The petitioners currently do not have a licence of occupation or lease from the Province for that portion of Crown land adjacent to and near their properties and other properties where they propose to undertake the work. Nor has the Province, or other land owners, authorized in writing the petitioners to submit a development permit application for their land.

Section 489 of Local Government Act
SSILTC Development Procedure Bylaw No. 304, 1992

66. In any event, the petitioners' proposed activities do not comply with several guidelines in DPA 3.
67. Development permits have an element of discretion. While the SSILTC must consider the guidelines in relation to a development permit application, what conditions they ultimately impose in relation to those guidelines are matters solely within the discretion of the SSILTC.
68. At the meeting on July 10, 2025, the SSILTC heard from the petitioners (as well as the owners of 239 Quarry Drive) in respect of their request to reconsider the decisions of the Director of Planning Services denying development permits to them for the proposed activities.
69. After considering and discussing the request for reconsideration of the decisions of the Director of Planning Services on its merits, the SSILTC determined that the proposed activities do not meet the requirements for DPA 3, including various guidelines, and denied development permits to the petitioners (as well as the owners of 239 Quarry Drive) for the proposed activities.

70. The record before the SSILTC at the meeting on July 10, 2025 included an analysis by SSILTC staff that the petitioners' proposed activities are not consistent with the following guidelines in DPA 3: E.3.4.1, E.3.4.2, E.3.4.9, E.3.4.21 and E.3.4.22. The record also included detailed responses by representatives for the petitioners to staff's comments regarding each guideline.
71. For example, in relation to guideline E.3.4.21, applications for shoreline stabilization are to include a geotechnical report which shows the need for the proposed modification to protect existing structures. Staff commented that it is unclear what damage to the existing structures on the petitioners' properties that the proposed activities are preventing. In response, the petitioners referred to TRE Environmental Services reports dated October 15, 2023. However, those reports indicate the location of the dwelling on 235 Quarry Drive and the dwelling on 434 Baker Road are "SAFE FOR THE USE INTENDED".
72. As another example, in relation to guideline E.3.4.9, shoreline is not to be filled in to create additional land. Staff commented that the proposed activities include the deposit of 434.4 m² of aggregate materials, over about 300 m of shoreline and at an initial height of 1.0 m above existing grade level. In response, the petitioners stated the aggregate deposit follows a nature-base method and the proposed activities will be in a proposed foreshore tenure with the Province.
73. The only staff comments regarding the impact of the proposed land use activities on fish habitat were in relation to guidelines E.3.4.2 and E.3.4.21. Such comments were entirely reasonable given the SSILTC's legislative authority.
74. It was also reasonable for the SSILTC to comment on the impact of the proposed land use activities on others who do have a foreshore tenure with the Province.
75. Contrary to the petitioners' assertions, the SSILTC is not required to provide reasons for its decision. The SSILTC is not required to specifically "grapple" with every submission made by the petitioners. Nor, is the SSILTC required to advise the petitioners what they should change in respect of their proposed activities to obtain a development permit.

Vavilov, para. 137

Vanderhaeghe v. Sunshine Coast (Regional District), 2024 BCCA 169, para. 61-66

76. The SSILTC's decision to deny development permits to the petitioners for the proposed activities was reasonable and is entitled to deference.

E. DPA 3 Provisions are Valid and Applicable to Petitioners' Proposed Activities Under Proper Approach for Assessing Federal and Provincial Jurisdictional Issues

77. To the extent the petitioners assert that some of the DPA 3 provisions in the Official Community Plan are invalid or inapplicable because they regulate "fisheries", the petitioners' approach is incorrect.
78. Pursuant to the *Constitution Act, 1867*, the federal government has legislative jurisdiction over "fisheries" (s. 91(12)).
79. Pursuant to the *Constitution Act, 1867*, the provincial government has legislative jurisdiction over "municipal institutions" (s. 92(8)), "property and civil rights" (s. 92(13)) and "generally all matters of a merely local or private nature" (s. 92(16)).
80. The heads of power set out in s. 91 and s. 92 are not "watertight compartments".
81. Furthermore, the matter of "environmental protection" is not a head of power allocated to either the federal government or the provincial government. Valid environmental protection legislation exists for all provinces and for Canada. There are also numerous valid and applicable local government bylaws that regulate and prohibit local activities that affect the environment.

Friends of Oldman River Society v. Canada (Minister of Transport & Minister of Fisheries and Oceans), (1992), 132 NR 321 (SCC)
114957 Canada Ltee (Spraytech, Societe d'arrosage) v. Hudson (Town),
 2001 SCC 40 ("Spraytech")

82. To the extent, the petitioners appear to assert that guidelines E.3.4.1, E.3.4.2, E.3.4.3, E.3.4.5, E.3.4.13, E.3.4.21 and E.3.4.27 in DPA 3 are invalid or inapplicable because they regulate "fisheries", a federal matter, the first step is to consider the "pith and substance" of the DPA 3 provisions.
83. In analyzing the pith and substance, the court considers both the purpose and effect of the provisions. The purpose and effect of the DPA 3 provisions is clearly to regulate the use of land, including land covered by water, in a portion of the trust area. The SSILTC has designated DPA 3 in its Official Community Plan pursuant to its authority under the *Islands Trust Act* and the *Local Government Act* to protect the natural environment and to protect development from hazardous conditions. Before undertaking certain land use activities in DPA 3, an owner of land is required to obtain a development permit from the SSILTC authorizing those activities.
84. The guidelines in DPA 3 cited in the petition all deal with development activities to the land. Contrary to the petitioners' assertions, none of the guidelines refer to

the protection of “fish”. Guidelines E.3.4.21(e) and E.3.4.27 do refer to “fish habitat” in the context of whether proposed land use activities will result in the loss of fish habitat. Guideline E.3.4.3 further states “native vegetation and trees are to be retained or replaced to control erosion, protect banks and protect fish and wildlife habitat”.

85. The SSILTC clearly has the legislative authority under the *Local Government Act* for such guidelines in DPA 3 including s. 491(1)(e) that specifically provides that for a development permit area designated for the protection of the natural environment under s. 488(1)(a), a local government may require protection measures, including that vegetation or trees be planted or retained in order to “preserve, protect, restore or enhance fish habitat or riparian areas”. Of importance, the petitioners do not challenge the validity of any of the provincial legislation in this regard.
86. The DPA 3 provisions are, in pith and substance, validly enacted under the SSILTC’s land use powers, specifically the development permit powers under ss. 488 to 491 of the *Local Government Act*.
87. The second step of the constitutional analysis is to consider whether the DPA 3 provisions: 1) would impair the operation of an aspect of the core of the federal fisheries power (interjurisdictional immunity); or 2) would conflict with federal regulations relating to fisheries, such that the DPA 3 provisions would be rendered inapplicable to the extent of the conflict (paramountcy).

*Spraytech
British Columbia (Attorney General) v. Lafarge Canada Inc., 2007 SCC 23
 (“Lafarge”)
Ganges Marina*

88. In *Lafarge*, the Supreme Court of Canada held that the doctrine of interjurisdictional immunity should generally not be applied where the legislative subject matter presents a double aspect and both federal and provincial authorities have a compelling interest in the subject matter. A provincial law (or local government bylaw) must impair the core of a federal power in order to render it inapplicable.
89. The Province and the SSILTC have a compelling interest in the use of land, including land covered by water, in the trust area. The DPA 3 provisions do not impair the core of the federal power over fisheries. An owner of land is simply required to obtain a development permit from the SSILTC before undertaking certain land use activities.

90. The proper approach for assessing questions of jurisdiction in this case is the doctrine of paramountcy. In *Spraytech*, the Supreme Court of Canada set out the applicable standard as follows at para. 38: “A true and outright conflict can only be said to arise when one enactment compels what the other forbids”.
91. There is no conflict between the DPA 3 provisions enacted under the *Local Government Act* and any federal regulations relating to fisheries.
92. Section 35(1) of the *Fisheries Act*, R.S.C., 1985, c. F-14 cited in the petition prohibits a person from carrying on “any work, undertaking or activity that results in the harmful alteration, disruption or destruction of fish habitat”.
93. The SSILTC has only required the petitioners to obtain a development permit for the petitioners’ proposed land use activities. The DPA 3 provisions do not require the petitioners to contravene the *Fisheries Act* and so cannot be made inapplicable by the doctrine of paramountcy.
94. The SSILTC’s DPA 3 provisions are valid and applicable to the petitioners’ proposed activities.

F. SSILTC’S Process in Denying the Development Permits was Procedurally Fair

95. Where any duty of procedural fairness is owed, the decision-maker is entitled to choose its own procedures, as long as those procedures are fair. Where a court concludes that the procedures met the requirements of procedural fairness, the court will not interfere with the choice of procedures.

Seaspan Ferries, para. 48-52

96. The process at the planning level is moot. In any event, there is no merit to the petitioners’ allegations of procedural fairness in this regard. The doctrine of legitimate expectations has no application. Nor was there any unreasonable delay in processing the petitioners’ development permit applications. The petitioners’ development permit applications submitted in April 2024 were not complete and are complex. Between May 2024 and March 2025 SSILTC staff requested and received additional information regarding the development permit applications. In May 2025, the Director Planning Services made decisions regarding the petitioners’ development permit applications.
97. With respect to the petitioners’ allegation of bias by the SSILTC, there is also no merit to this allegation. A reasonable apprehension of bias does not arise simply because an elected official has expressed an opinion or even a firm viewpoint on the merits of a matter before voting on it, so long as the elected official remains

capable of being persuaded to the contrary. It is clear from the transcript of the meeting on July 10, 2025, that the trustees had open minds.

Save Richmond Farm Society et al. v. Township of Richmond et al.,
[1990] 3 S.C.R. 1213

98. Furthermore, the SSILTC cannot be estopped from interpreting and enforcing the DPA 3 requirements in its Official Community Plan. As a general rule, municipal rights, duties and powers, including the duty to carry out the provisions of a statute, are of such public nature that they cannot be waived, lost or vitiated by mere acquiescence, laches or estoppel.

Langley (Township) v. Wood, 1999 BCCA 260
Immeubles Jacques Robitaille inc. v. Quebec (City), 2014 SCC 34

99. The SSILTC's procedures were fair and met any requirements of procedural fairness.

G. Orders Sought by Petitioners Not Available

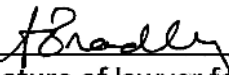
100. With respect to the relief sought at Part 1, para. 2 of the petition, such an order is not available. The petitioners do not challenge the validity of any provincial legislation.
101. With respect to the orders sought at Part 1, para. 3, 4, 5, 7 and 8 of the petition, to the extent the petitioners seek relief in relation the development permit application of the owner of 239 Quarry Drive, the petitioners do not have standing to seek such orders.
102. With respect to the relief sought at Part 1, para. 7 of the petition, an order of mandamus is not available. The requirements that must be satisfied before mandamus will issue have not been met.

Apotex Inc. v. Canada (Attorney General), [1994] 1 F.C. 742

Part 6: MATERIAL TO BE RELIED ON

1. Affidavit #1 of David Marlor made on October 31, 2025.
2. Such further and other materials as counsel may advise and the Court permits.

Dated: 31/Oct/2025


 Signature of lawyer for Respondent,
 Salt Spring Island Local Trust Committee
 Alyssa Bradley

<p>The ADDRESS FOR SERVICE of the Petition Respondent:</p> <p>Fax number address for service <i>(if any)</i>:</p> <p>Email address for service <i>(if any)</i>:</p>	<p>c/o Young Anderson 1616 - 808 Nelson Street Box 12147, Nelson Square Vancouver, BC V6Z 2H2</p> <p>604.689.3444</p> <p>bradley@younganderson.ca</p>
<p>The name and office address of the Petition Respondent's lawyer is:</p>	<p>Alyssa Bradley Young Anderson 1616 - 808 Nelson Street Box 12147, Nelson Square Vancouver, BC V6Z 2H2</p>