

CITIZEN'S REPORT TO:
**THE GOVERNMENT OF CANADA
SALT SPRING ISLAND'S FIRST NATIONS
SALT SPRING ISLAND'S LOCAL TRUST COMMITTEE
THE BRITISH COLUMBIA MINISTRY OF MUNICIPAL AFFAIRS**

RECONCILIATION,
FIRST NATIONS LAND USE GOVERNANCE
AND
PROTECTION UNDER
THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

ABUSES OF REGULATORY POWER
IN SALT SPRING ISLAND'S
LAND USE LEGISLATION

*How Outlawing Extended Families,
Communal Living,
and Home-based Businesses
is Gentrifying Rural Lands
in the Name of Affordable Housing*

PREFACE

This Citizen's Report was prepared in April of 2021 by myself, Dr. Mielle Chandler, with the support of the Gulf Islands Land Stewards Association (GILSA). Based on Salt Spring Island, GILSA is a non-profit organization advocating for landholder's rights and freedoms. GILSA advocates for the privacy rights of Gulf Islands rural landholders to live how they choose—including communally and in extended families—on private landholdings. GILSA also advocates for historically, ecologically, socially and economically responsible land-based livelihoods and land uses on private rural landholdings in British Columbia's Gulf Islands.

Many thanks to my mother, Dale Chandler, who undertook the mammoth task of editing this text with its myriad of (previously) misplaced commas. Many thanks to Dori Howard and Kim Hunter who spent hours editing and discussing earlier drafts of the report. Much gratitude to the other friends, unnamed here, who so generously provided technical support, feedback, and shared their thinking, research and analysis with me. Finally, it was the directors of GILSA who, through our many conversations about these strange struggles we find ourselves in, gave me the courage to write this report.

Acknowledgement

The author and signatories of the report that follows acknowledge that we live, work, play, eat, breathe, co-create and love in the territory of the BOKÉĆEN, Cowichan Tribes, Halalt, Homalco, K'ómoks, Klahoose, Ts'uubaa-asatx, Lə́k'wəŋən (SXIMEĒĒ, Songhees, T'Sou-ke), Lyackson, MÁLEXĒ, Penelakut, Qualicum, Scia'new, sə́lilwətaʔ, SEMYOME, Shíshálh, Snaw-naw-as, Snuneymuxw, SKwxwú7mesh, SĪÁUTW, Stz'uminus, Tla'amin, Tsawwassen, We Wai Kai, Wei Wai Kum, WJOĒĒP, WSIKĒM, and x^wməθk^wəyəm.

I acknowledge that the land I so-called 'own' and refer to as 'mine' and as 'my family's' in this document, is only so under a colonial system which I, myself, do not agree with. My so-called 'property', the parcel I purchased, and pay the mortgage and taxes on, is stolen land on unceded territory.

I recognize the historic and ongoing harms of colonization, and I commit to supporting restorative justice, reparations, and reconciliation.

I believe that we humans have no right to own Mother Earth. Rather, we belong to Her, we are of Her and from Her.

I participate in the settler legal and economic system of private property ownership because it is the only option allowing me a livelihood and security in a late-capitalist economy. Having said that, in my own personal conduct, I reinterpret 'ownership' as 'stewardship' and I seek to replace the word 'owner' with 'holder' in my writing where I can. My wish is to uphold my responsibility of stewardship to this parcel, and to make my livelihood here in ways respectful to the land and First Nations.

I humbly ask the First Nations' Authorities for permission to steward and make a livelihood with and on this parcel of land.

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Executive Summary

There is a strong feeling among Salt Spring Island's farmers, artisans and tradespeople that the local land-use government (Islands Trust) is attempting to 'cleans' the Island of its 'working classes' in the interests of turning the land base into a nature preserve comprised of a conglomerate of private properties owned by a wealthy few. This report confirms that a process of gentrification is indeed proactively taking place. Drawing its research primarily from the public record, this report looks at how new legislation and abusive enforcement processes are undermining the grassroots Island culture of artists, artisans, tradespeople, and farmers. Livelihood, economic resilience, and food security are being eroded at a time when they need to be fostered.

This gentrification is taking place by reclassifying home-based businesses as commercial operations and thus as 'unlawful land uses'. The reclassification of home-based businesses as 'unlawful land uses' is accomplished by highly discretionary enforcement and sweeping new laws. Bylaw Enforcement Officers issue a mounting onslaught of costly violation tickets seemingly aimed at closing down small businesses, or forcing them to apply for equally costly permits. When farmers and small home-based business owners attempt to apply for permits they find that either the Planning Office has failed to develop the necessary new permits, or, when a permit does exist, applicants are obligated to stop their livelihood activities while undergoing lengthy, and again costly, permitting processes.

Proactive enforcement can be taken against any home-based visitor accommodation business that advertises. A series of resolutions passed by the Local Trust Committee, Salt Spring Island's land use government, reclassifies home based visitor accommodation businesses, allowable under most of the Island's zoning, as STVRs (Short Term Vacation Rentals). Erroneously blaming STVRs for the affordable housing crisis, Trustees (the elected members of the LTC) have directed Enforcement Officers to proactively shut down visitor accommodation businesses. This, despite an Official Community Plan that clearly states that visitor accommodation is a shared community resource that is available for residents to offer. Moreover, this official plan, which is meant to guide governance, states that visitor accommodation is to be an encouraged form of home-based business. If this continues, Salt Spring Island is about to become far less affordable for and accessible to visitors.

Salt Spring Island's many unique bed and breakfast businesses, summer yurts, and hidden away little gypsy caravans are being fined and closed down. The permits that, in 2017, were to be made available to these businesses so they could continue operating legally under the new prohibitive legislation have failed to materialize at the Planning Office. In an even more repressive move, applications themselves are now being quasi-criminalized. Applying for a permit is itself, under the new enforcement direction and legislation, a potentially unlawful, and thus fineable, act.

Most disturbing is that the new STVR legislation provides a smokescreen for ongoing enforcement against communal living and extended families on Salt Spring Island's small farms

and homesteads. This amidst public attention being focused on the new Housing Action Plan and the Housing Task Force headed by Trustee Laura Patrick. In her April 11th, 2021 public address on the *Salt Spring Exchange*, Patrick writes that any housing “solutions that address urgent housing needs will be advanced immediately”. While this is what the public are told, the planning staff in charge of the Housing Task Force turn away applications from the extended and chosen families and communal farms where people are affordably housing themselves. These traditional ways of living together are, instead, ‘outlawed’ and fined. With the odd exception, likely for optics, the Housing Task Force is only taking applications for condominium and high-density subdivisions. In other words, gentrification and ghettoization are well underway. Working people are to be moved off the land base (thereby ‘preserving’ it), and, instead, workers are to be ‘densified’ in the new affordable housing being planned around the town centre.

In the fall of 2020, Trustees put a temporary halt evicting residents from their ‘nonconforming dwellings’ during the global Covid-19 pandemic. Evictions are set to start again after the pandemic. The Gulf Islands Land Stewards Association (GILSA) has formed to advocate for landholders rights to privacy and for the protection of socially and ecologically responsible home-based businesses from unfair enforcement. Written in support of GILSA, this report calls for a reimagining of land use governance on Salt Spring Island in ways inclusive of the landholders, residents, and the First Nations whose land, as per the pre-Confederate *Douglas Treaties*, it is. It also calls on the Canadian Federal Government to include a private property provision in the Canadian Constitution to protect landholders from regulatory abuses of power.

Introduction

RECONCILIATION, THE CANADIAN CONSTITUTION, AND PRIVATE PROPERTY ON SALT SPRING ISLAND

Canada's Constitution, and thus its legitimacy as a nation, rests on the pre-Confederate treaties made with Canada's First Nations. The pre-Confederate *Douglas Treaties* of 1850 clearly outline that Salt Spring Island, a Gulf Island off the West Coast of British Columbia, belongs to thirteen First Nations. Salt Spring's Thirteen First Nations are Tsartlip First Nation, Tsawout First Nation, Tseycum First Nation, Pauquachin First Nation, Malahat Nation, Cowichan Tribes, Halalt First Nation, Penelakut Tribe, Lyakson First Nation, Lake Cowichan First Nation, Chemainus First Nation, Tsawwassen First Nation, and Semiahmoo First Nation.

When these treaties were signed, the Gulf Island was heavily populated by First Nations people. Today, Salt Spring is occupied by a 'very white', and also 'ethnically diverse', population of approximately 11,000 people. Smallpox killed ninety percent of the already-decimated Indigenous population shortly after the signing of the *Douglas Treaties*. The province of British Columbia then erroneously awarded land titles to non-Indigenous settlers in First Nations Salish Sea territory, including Salt Spring Island. In 1974 the province of British Columbia, through an act of legislation that it was not entitled to make, formed the Islands Trust as the land use governance body for Salt Spring and the southern Gulf Islands.

Within this context of the 'external' illegitimacy of Salt Spring's local land use government, this report primarily addresses how the Local Trust Committee (Salt Spring's land use governing body) is also *internally* illegitimate. The undemocratic regulatory abuses of power employed by Salt Spring Island's local land use government break the Social Contract upon which governance in liberal democracies rests. Under cover of a 'complaint-based system', these abuses of power are systematically outlawing the livelihoods and types of accommodation relied on by rural residents, farmers, and homesteaders.

Indigenous Canadian legal scholar, John Borrows, has an answer which both honours First Nations treaty rights and secures the currently rather insecure private property rights of the current non-Indigenous land holders: Return land use governance to the First Nations whose land it is. If the First Nations whose historic land it is are willing to recognize the private property ownership (and ability to 'alienate' land, i.e. buy and sell it) of the settlers who so-called 'own' it, then the non-Indigenous landholders can feel secure in these titles. (*Aboriginal Title and Private*

Property) This could be backed up by a private property provision added to the Canadian Constitution.

Without constitutional protection, truly participatory, inclusive, transparent, reconciliatory and consensus-based political processes, (processes quite different to the repressive and punitive overreach of Salt Spring's current Islands Trust administration, and the secretive and discretionary forms of enforcement it employs), become even more paramount to fair, stable, and democratic governance. The way forward is to reconcile First Nations rights to land use governance and to compensation for the use of their land with the property rights of rural resident landholders. Both matters are urgent and can only be adequately addressed in tandem. The undemocratic regulatory abuses of power taking place under the present Islands Trust government cannot continue in our contemporary liberal democratic Canadian society.

AUTHORSHIP

I am a retired academic-turned-homesteader. My own story provides a salient example of the harmful social and economic impacts of Salt Spring's local government's legislation and enforcement. When I decided to invest everything I had into this homestead project, I had the following: enough capital in the bank to get my services in and purchase equipment; my own hard work, education, skill-building, and training; zoning explicitly allowing the uses I intended to rely upon for livelihood; adequate water and septic potential and, social capital in the homesteader economy of work trading and skill sharing. Against its own zoning, bylaws, and mandates, local government has stymied the land project at every turn and now could bankrupt me, potentially rendering my elderly mother and me homeless and landless. In the past three years, local government has attempted to prevent me from farming a previously-farmed field, evicted me from my own sleeping trailer for 'unlawfully' sleeping in it, and brought in legislation denying our access to the much needed community resources of visitor accommodation.

Going public with my eviction helped galvanize a rapidly growing group of similarly 'outlawed' homesteaders and accommodation providers. The Gulf Islands Land Stewards Association (GILSA) was formed. The members have all experienced, and continue to experience, the 'outlawing' of the forms of accommodation our rural private properties offer. While I author this report, it is written on behalf GILSA and the research, analysis, and editing of this document are a collective effort of a dedicated group of citizens suffering the social and economic consequences of abuses of regulatory power. This report is also written with all the

academic freedom due, and appropriate academic responsibility taken by myself, a Canadian-trained Ph.D. in *Social and Political Thought*, and a retired university faculty member.

In this retirement I face being 'economically-starved off my land' in the only way allowable under a liberal democratic system—through regulatory abuses of power which render my land-based livelihood 'unlawful'. What should be a right—to sleep on the land I 'own' and provide accommodation for farmworkers, and to have friends or family members visit—is denied. Further, the recent Short Term Vacation Rental (STVR) legislation denies us, along with many other farmers and rural residents, access to the shared common resource of visitor accommodation—a mainstay in rural land-based livelihood, especially critical to economic survival given the inflated and rising costs of rural land and of construction costs in general.

The personal irony is that it was a change in local legislation against STVRs (Short Term Vacation Rentals) in Toronto that forced me to sell my Kensington Market home there. Joining the 'sharing economy' had liberated me economically, enabling me to take leave of my Toronto academic job and reconnect with family and nature in British Columbia, and, in particular, on the West Coast. Having first made sure that providing home-based tourist accommodation revenue was secured in Salt Spring's mandate and zoning, and rationalizing to myself that I would have enough capital to pay for the sizeable studies and permits that would be needed, I broke my heart and sold my Kensington Market home to buy our Gulf Island homestead.

It took some time to finally realize that Salt Spring Island's local government was actively working against the clear mandate it has been given to support and encourage forms of tourism compatible and balanced with local rural residence and ecology. Since then I have watched a 'witch-hunt' against tourist accommodation providers factionalize the community. New draconian and discretionary legislation leaves me, at the age of fifty, without a retirement plan. This, as I try to find hope in the dawning era of post-pandemic recovery.

At the community level the issue is this: the socially and economically resilient and flexible kinship structures and home-based businesses of rural residents are being rendered 'unlawful' by local government. Economic resilience and democracy are undermined. As outlined below, public appeals to elected officials have proven ineffective. The *Charter of Rights and Freedoms* must now step up to the challenge of protecting our freedoms.

On April 15th enforcement against me is set to resume unless I can demonstrate to elected officials, as per their new *Resolution 045*, that my homestead, our forms of accommodation, and our access to the shared resource of tourist accommodation, constitutes a 'community need'. Although it is springtime, I am not out planting. Neither am I providing the services I now provide—septic and mini-excavator work—to my community. I give up livelihood

and food security to research and write a citizen's report in defense of rural livelihood because it must be done.

OVERVIEW: ABUSES OF REGULATORY POWER

On Salt Spring Island, the home-based businesses, extended kinship structures, and resilient responses to rising land prices and the pandemic are being rapidly eroded by local government. Rural homes and livelihoods are destabilized and rendered 'unlawful' by local government's enforcement laws. These new laws are systematically reclassifying home-based businesses and uses allowable under zoning as 'commercial operations', and closing them down.

In the past decades, rural Gulf Island settlers have relied on a shifting constellation of home-based livelihoods—sharing farming equipment with neighbours, having friends, family, and farmworkers help with planting and building projects, farm stands and a farmer and artisan markets, seasonal 'bed and breakfast' accommodation for tourists, and paid work in the trades. It is not one economic activity which supports a homestead, it is many shifting and flexible forms of home-land-equipment-and-skill-based livelihoods that have enabled rural settlers to be economically adaptable and resilient. The 'single land use' approach of local government, paired with enforcement-driven legislation, a narrow and constraining understanding of 'family', a recent vilification of tourism, and the failure of planning staff to develop permits for allowable land uses has led to abuses of regulatory power, the erosion of democracy, and the infringement of individual rights, privacy, and livelihood

Home-based businesses, a longstanding mainstay of the economy, and protected under the community plan and bylaws, are, with the aid of new legislation extraneous to the bylaws and, written by enforcement officers, being reinterpreted as 'unlawful land uses'. The demographics negatively impacted by this are artisans, tradespeople, farmers and homesteaders, and accommodation providers. (Usually a homestead or farm is involved in some or all of these forms of economic engagement).

The public record, and an analysis of the legislation itself, shows that, rather than preventing *bona fide* Short Term Vacation Rentals (STVRs), the STVR legislation is aimed at enforcing against affordable accommodation on rural properties, increasing the local government's (Local Trust Committee, LTC) legal clout in court cases and adjudication processes, and reclassifying home-based visitor accommodation businesses as 'commercial' and thereby 'unlawful', (rather than the more benign 'non-conforming'). This reclassification of

home-based businesses as unlawful commercial ones is spurred by a small group of conservative conservationists.

The most problematic piece of legislation is *Resolution 153*. On the face of it, this resolution was brought in to enforce against the Short Term Vacation Rentals (STVRs) purported to be harming the rental stock available for long-term residents. The public record reveals, however, that affordable housing is only a convenient smokescreen, and not aided by the proactive enforcement measures. Instead, lawful and non-conforming bed and breakfast home-based businesses are targeted. This is undermining the home-based businesses and livelihoods of farmers, homesteaders, and others. The new legislation relied upon is punitive, unduly restrictive, and counterproductive to protecting and fostering the creativity and resilience of Salt Spring's rural community.

Systemic abuses of regulatory power threaten to make it less affordable for working farmers to continue to afford to hold rural lands. These changes in legislation and abuses of power threaten food security. When land prices are high, it is not the sale of produce which pays a farm's bills. Access to the 'shared community resource' of tourist accommodation income, as a home-based business, is necessary to support a robust farming and homesteading community. Also required is a permanent halt to discretionary enforcement against farmworker accommodation.

At present, the local political process on Salt Spring Island is failing to protect privacy, family, community and livelihoods on rural lands from the overreach of local government. The concerned citizens and signatories to this report therefore call on Canada's Prime Minister, Justin Trudeau, to add protections for private property and rural land-based livelihoods under the *Canadian Charter of Rights and Freedoms*. Local legislative changes and systemic abuses of power are infringing rights to privacy, family, and livelihood. Ecologically responsible rural livelihoods are at risk, and local rural residents are being denied access to an important shared community resource—tourist accommodation.

By undermining democracy, livelihood, and security of home, and by enacting legislation contrary to the explicit will of the people, Salt Spring's local government breaks the Social Contract upon which legitimate governance rests. This illustrates the importance of the federal government to step up to the challenge of defending the rights and freedoms of its citizens by adding provisions for private property and rural land-based livelihoods to the constitution. Returning the land use governance of Salt Spring Island to the legitimate owners and stewards, thirteen First Nations, in a way commensurate with the freedoms, livelihoods, and democratic

inclusion of private landholders, would both redress historic and ongoing wrongs and secure private property rights.

RESEARCH AND FINDINGS

Accommodation on Salt Spring—both long and short term accommodation—has, in recent years, become increasingly subjected to abuses of regulatory power. This is especially apparent when looking at recent legislation. *Resolution 147 Enforcement Policy during COVID-19 Public Health Emergency*, struck to protect residents from eviction during the Covid pandemic, offers temporary protection for rural and homestead long-term accommodation from enforcement. The enforcement against short-term accommodation, however, continues unabated.

Short-term rental income is a longstanding Salt Spring tradition, one that has for many decades been relied upon by rural residents and small farms for economic survival. The Patrick-Grove Administration's legislation on Short Term Vacation Rentals (STVRs) misappropriates the definition "STVR" with 'gentrifying' consequences in that it renders it increasingly unaffordable for people whose livelihoods depend on home-based businesses to pay for their land. When understood alongside the promised 'affordable' condo rental developments, the consequences are likely to be 'ghettoizing' as the classes of people who are 'gentrified-off' the land are 'densified' into the core.

In order to respect the public mandate of the Official Community Plan (OCP), visitor accommodation, (including non-conforming alternatives for those rural residents unable to accommodate the letter of the law, or who require 'stepping stones' to conformity), must be understood as a shared community resource to which farmers, homesteaders, and rural residents are ensured access.

This report addresses how the new legislation increases community factionalism, undermines security of home and livelihood, 'outlaws' certain demographics, is undemocratic, and negatively impacts women's incomes the most. The need for restraint on local government and constitutional protections for landholders is clear.

1. FACTIONALISM: Factionalism and misunderstandings in the community are being worsened by the new legislation. The directed changes to the language of land use regulations from the status quo wording 'conforming/non-conforming' to 'lawful/unlawful' is harming social cohesion by bringing a moralizing tone to land use.

When members of the community speak in public forums about the issue of visitor accommodation and housing, *hate speech breaks out*. Anti-STVR advocates feel justified publicly stating that (now ‘*unlawful*’) accommodation-providers should leave the Island.

Most concerning is that by misdefining the term/acronym ‘STVR’ (Short Term Vacation Rental) to refer to anything a person could possibly sleep in anywhere on the Island, the new legislation not only leverages and foments this unhealthy factionalism, it opens up accommodation providers to a host of regulatory abuses of power.

Salt Spring needs the kind of leadership that brings people together to foster mutual understanding. This report recommends a community-wide restorative approach which shelters existing accommodation from enforcement so that full truths may be shared. This approach is best led by people experienced with reconciliation and restorative approaches to justice.

2. SECURITY OF HOME, FOOD, AND LIVELIHOOD: Rural people’s ability to have resilient livelihoods which contribute to food security and an ecological sustainable economy is being undermined. Rural residents are experiencing arbitrary bylaw enforcement with sweeping discretionary powers.

The new enforcement legislation demands that in order for rural residents to apply for highly-discretionary and costly permits we must cease our livelihoods. This impacts the ability of residents to support our families and pay our mortgages.

Under this new legislation, protection will only be granted to those who write a ‘letter of appeal’ sufficiently convincing so as to demonstrate to Trustees there is a “community need”.

If Trustees deny this highly discretionary protection, *there is no right of appeal*. (*Resolution 045 Policy Options for Bylaw Enforcement Compliance on Unlawful Uses*, referred to henceforth as *Resolution 045 Unlawful Uses*). The ability to appeal an unfair decision is one of the hallmarks of a democracy.

A land use government which institutes fair protections from enforcement, hears appeals, and employs transparent and collective decision-making processes focused on being fair to and supportive of all ‘constituents’ and ‘stakeholders’ is a worthy idea and ideal. It is also the best option to secure home and livelihood for Salt Spring Island’s rural landholders

3. COMMUNITY NEED AND DENIAL OF ACCESS TO RESOURCES: Rural residents are being barred, by the new STVR legislation, from accessing the shared community resource of tourism which our Official Community Plan (OCP) seeks to protect, and which we rely on to support our farms, homesteads, and rural lands.

Those of us ‘enforced’ against are the rural residential landholders and homesteaders who have non-conforming residential and/or visitor accommodation. While appearing to

appease the inflated anti-STVR rhetoric, this rhetoric provides a convenient smokescreen for abuses of power motivated primarily by a 'conservative conservationist' form of gentrification which undermines the rural character of the Island in its full diversity.

The research illustrates how the new legislation subjects bed and breakfast businesses, (legal under zoning and Bylaw 355), to unlawful enforcement. (see analysis of *Resolution 153 STVR* below).

Public documents evidence that the STVR legislation was not written to address a community need. It was written by a succession of enforcement officers in order to bolster the enforcement powers of the Local Trust Committee (Salt Spring Island's land use governing body). Community need, and two years later, community alarm, were ignored by the officers who wrote the legislation and the Trustees who passed it. It is thus understandable that the legislation expressly contradicts the stated will of the people (in the *Official Community Plan (OCP)*). That bylaw officers both write and enforce local legislation belies a lack of checks and balances. This may also explain why Planning Staff defer to Officer authority (*private correspondence*).

4. LACK OF PERMITS AND THE PROMISE OF A NEW TASK FORCE: The majority of us who are being 'outlawed' are concomitantly refused viable pathways to legitimacy. The permits intended to be offered to accommodation providers when the 2017 STVR enforcement drive began in earnest were never developed. Thus proactive and discretionary enforcement against businesses has commenced in the absence of viable legal pathways to access the shared community resource of tourist accommodation.

Over time, those of us who rely on our home-based businesses will be unable to continue to afford to keep our land. Under the new legislation, those enforced against are unable to turn to the Adjudication process or Ombudsperson for help. While these institutions can help if laws are applied unfairly to different constituents, neither institution can address unjust or undemocratic laws or systemic bias in the laws themselves. Without clear constitutional protection, we are left, legally-speaking, with nowhere to turn.

The new Affordable Housing Action Plan and Housing Task Force promises to address some of these issues. However, unless there is public oversight and pressure, it will fail to represent Salt Spring's full diversity of accommodation. Those 'outlawed' through regulatory abuses of power are unlikely to have representation on the Task Force that is to be appointed by Trustees on April 27th, 2021.

Purported to make room for 'new possibilities in affordable housing solutions' in the form of pilot projects, the Task Force's administrative staff have already turned away pilot projects from individual landholders. Instead, staff accept applications for high-density development

projects. In other words, even before the Task Force has convened, its administrative staff have already closed the door on many of the small-scale resilient solutions already underway in the community.

Whatever the motives behind it, what is starkly apparent is this: the 'outlaw properties' which currently provide Salt Spring Island's many affordable housing solutions are being left out of the solutions. Rural people with home-based businesses, farms, and homesteads are being denied pathways to legitimacy and left subject to continued regulatory abuses of power which disrupt livelihoods, local food security, and security of home.

The central finding of this report: Rural home-based businesses are being systematically denied regulatory pathways to legitimacy.

Why this is taking place is harder to ascertain than how. The STVR legislation does not appear in the bylaws. It was first brought in via a Trustee Resolution which legislated an enforcement officer's memo into law in 2007. At that time its purpose was to increase the power of enforcement in a legal case. In 2017, in the face of an 'Incorporation' referendum which threatened to dissolve the entirety of the Local Trust Committee's (the LTC, the local government) administration, its own robustness, and that of the Islands Trust (the LTC's regional umbrella) was felt to be in need of reinforcement.

An enforcement crackdown on nonconforming affordable housing on rural properties around the same time led to finger-pointing at STVRs as the 'real villains' that enforcement officers should be going after. From the public record, it appears that a small group of 'conservative conservationists' with the ear of the Trustees are now fanning the anti-STVR flames.

The latest Resolution in 2019 was passed just months before the pandemic. No attempt was made, on the part of local government, to curtail enforcement when Covid-19 left many people, and significantly more women than men, struggling for a livelihood. Many STVRs offered affordable places of respite, places to work remotely from during lockdowns, and places to self-isolate.

5. GOVERNMENT LEGITIMACY AND RESTRAINT IN REACH AND POWER: In the broader context, Salt Spring's increasingly expansive and prohibitionist legislation has been progressively 'outlawing' rural ways of life and undermining rural livelihoods. With resolutions *153 STVR* and *045 Unlawful Uses*, this trajectory takes untenable leaps. It is important to ask: *what interests are served by denying homesteaders and working rural people/settlers their livelihoods and access to common shared resources?*

People who do not rely on their land for their income—people for whom land is simply a 'capital asset', not also a source of livelihood—are not impacted by these new changes in

legislation. Indeed, by legislating away what a small conservative elite finds ‘unslightly, noisy and odour-producing’ in the livelihoods, food production, and forms of accommodation rural workers and farmers employ, (indeed legislating the mere sight of our equipment an ‘unlawful use’ of land), Salt Spring Island is entering the ‘perfect storm’ of rapid gentrification and ghettoization. This process is further fuelled by the interests of some owners of waterfront properties who, with the support of Trustee Patrick, seek to keep the beaches underused so as to maximize their own private enjoyment.

Insufficient restraints on abuses of power have led to an erosion in democratic rights and an undermining of security of home and livelihood. Constitutional protections are needed to rectify this situation. As such, this citizen’s report seeks to contribute to the discourse on the challenges facing rural communities.

The ‘outlawed’ landholders of Salt Spring Island are asking for:

1. Constitutional protections
2. Pathways to legitimacy for rural accommodations and livelihoods (home-based businesses)
3. Facilitation in community healing and democratic process
4. A legitimate local government for the land and peoples

Resolution 253 Reconciliation is recent legislation which affirms Salt Spring Island’s Local Trust Committee’s (LTC—the local government) commitment to meaningful First Nations consultation regarding land stewardship. Land stewardship necessarily includes and involves the human beings, the rural landholders, currently occupying and holding provincial titles to the land. To begin in some small way to redress the chasm between Salt Spring Island’s non-Indigenous landholders and the First Nations whose territory it is, involves inclusive conversations regarding land stewardship and benefits.

There are many skilled facilitators of community process who could be called in to help Salt Spring Island at this juncture. Salt Spring Island is in need of interim local leaders with moral legitimacy capable of facilitating community connection, healing and mutual understanding through democratic dialogue. The people on the Island are also in need of a legitimate and democratic land use government. It is thus important to open up public discussions about what a legitimate local land use government that both returns land use decision-making to First Nations and takes non-Indigenous landholders and residents into account, could look like.

6. UNDEMOCRATIC BREACHES OF PUBLIC TRUST: The public record reveals a stunning indifference on the part of Salt Spring Island's elected officials to residents who provide affordable and/or visitor accommodation. In this respect, elected representatives have failed to 'serve their roles' in the best interests of the resident population in its full diversity.

For example, in 2019, brushing aside the concerns expressed in a letter representing two hundred residents about enforcement abuses of power, Trustees had the very officer responsible for these abuses amend the legislation to strengthen his enforcement powers (*153 STVR*). The concerns of these citizens are completely disregarded in the new legislation. Over a period of twelve years of escalating draconian enforcement, at each instance Trustees simply passed the respective officer's widening recommendations into law.

On the one hand, the needs and democratic wishes of the community are not taken into consideration. On the other, residents are faced with a disturbing increase in the discretionary powers of Trustees and Bylaw Enforcement Officers which all-but-ensures abuses of power. Routine abuses of power on the part of Bylaw Enforcement Officers, now emboldened by the administration's anti-STVR and enforcement legislation, are becoming increasingly intolerable for residents in the face of the economic implications of the pandemic. These abuses include having surveillance collected on us in covert ways, being threatened with economic sanctions, and having our housing, food security, and home-based livelihoods destabilized.

7. GENDER: Women are disproportionately impacted by the Short Term Vacation Rental legislation (*153 STVR*). Many—seemingly the majority—of us who are being directly subjected to the regulatory abuses of power underway are single middle-aged and elderly women and female-headed households. It is precisely these demographics—older single women, younger single mothers, and female-headed households—who are likely to expand the forms of hospitality they already engage in to support their households. Although these are gender-fluid times, seeing to the accommodation and food preparation on homesteads and farms remains primarily the domain of women. In a late-pandemic economic climate in which women's incomes have been disproportionately impacted, local government should be supporting women's small businesses, not outlawing them.

To again reference my own biography, I began adult life as a single mother on welfare. Subsidized housing enabled me to obtain an education. Renting out rooms to English as a Second Language (ESL) students and cleaning other people's houses to subsidize the mortgage fed us and allowed me to buy a small house. When I realized my son needed home-life that did not continually let new people into our home, I sold our little house and purchased a much larger triplex. I rented out two suites to qualify for and pay the mortgage while I continued my graduate work and taught at Ontario universities. Now, facing retirement, it is in sharing this

beautiful forested acreage with others that I will afford remaining here to steward this homestead and welcome my future grandchildren.

Stories are beginning to surface regarding disturbing gendered power dynamics in how male officers approach the women landholders they charge with ‘unlawful uses’ of land, and land use ‘violations’. Female landholders are easy targets for enforcement officers—it seems we are the ‘low hanging fruit’ who, until now, have offered little resistance. A fellow female landholders expressed how uncomfortable an experience it was to have a male officer arrive, unannounced, at her rural and remote property.

RECOMMENDATIONS AND COMMUNITY NEED

A combination of sweeping and discretionary powers held between Trustees and their planning and enforcement staff, a fanning of the flames of anti-STVR factionalism, and a targeting of homesteaders and rural property holders has reached a level in which the principles of fairness, justice and democracy are no longer being upheld by local government. A pervasive fear of Islands Trust bureaucracy and enforcement continues to keep much of the disgruntled population quiet, and for good reason—Freedom Of Information requests (*FOIs*) confirm enforcement officers keep a ‘watch-list’ and ‘street file’. When innocent requests for information are made to the Salt Spring Islands Trust Planning Department about land use, a property that has been accused of a ‘violation’ (for example, for having stored tools in a barn) is added to a ‘street file’, thereby abusing confidentiality, instituting undemocratic bureaucratic surveillance, and dissuading landholders from seeking the advice and assistance of the Planning Staff whose role it should be to provide that advice and assistance.

There is a demonstrated community need for restraint on local government. Rural property holders on Salt Spring Island are in need of protections. For the sake of maintaining the (understandably fragile) social legitimacy of governance, local government must be curtailed in its ability to reach into and disrupt the intimate domestic lives of residents. Where on the lands we hold we choose to sleep, as well as how we arrange our kinship structures and ways of living together, so long as no one is being harmed, are private matters. It is a matter of freedom and justice that diversity and rural livelihoods be respected and protected. A representative local government does not legitimately retain such sweeping discretionary and repressive power over ecologically-friendly and socially responsible rural livelihoods.

Due to the anti-democratic misuse of bylaw enforcement power through snowballing economic sanctions and erosions to our protections from these abuses of power, many

residents are too afraid to openly share their stories. Some of the stories relied on here have been shared with me, and with our citizen's group, in confidence. Some are in need of appropriate protections from administrative reprisals in order to speak out. Many are willing to share their stories under the protection of a *bona fide* public inquiry process they can trust. Restorative facilitators well versed in conflict resolution and in bringing polarized sides together to find good pathways forward are what is needed at this juncture.

Most of the legal research in this report is gleaned from the Islands Trust public records and is available to all. Other, more sociological and evidence-gathering research involving personal documents are available upon request as legally appropriate—it is important to respect people's privacy. The report offers a subjective analysis of the situation a group of legitimately concerned citizens finds ourselves in. The analysis below is shaped by my first hand 'participant-observer' experience of my own exhaustive attempts at following the rules, as well as witnessing the struggles of my fellow community members and the many meetings motivated by our collective attempts to navigate a bureaucratic quagmire.

In speaking publicly and openly, sharing our information, ideas, and analyses, the hope is to bring progressive change to our own community, and to empower other Canadian communities to shape their own good futures. We also hope to help foster meaningful Reconciliation.

RECONCILIATION AND DECOLONIZING LOCAL GOVERNMENT

At this juncture Salt Spring Island needs leadership capable of healing rifts and bringing people productively together. An intelligent, well-meaning and involved community deserves transformational leaders committed to facilitating community values, needs, wishes, and well-being in its full diversity. When I first read the LTC's new *Resolution 253 Reconciliation*, I thought, yes, of course, it makes sense to ask the "First Nations in the Local Trust Area" (wording of the resolution) on guidance going forward. As well as having the moral authority to govern, who better to understand the nuances and subtleties of 'settler government' land use regulatory abuses than First Nations leaders and scholars?

The gentrification underway operates according to the same logic as settler colonialism in that, albeit in an infinitely gentler and decidedly non-genocidal way, 'unsavoury people' are slowly regulated off the landbase. The complaint-based system ensures that people with home-

based businesses, or those who use their farm equipment on neighbouring properties, are targeted one at a time, on an individual basis, thereby obfuscating the systematic nature of the forces at play. But what does this have to do with First Nations? Why would, or should, First Nations care that a settler government is operating in a classist fashion towards its own settler constituents? First Nations care about the land and the governance and stewardship of the land. These abuses of power are taking place against the human beings currently tasked, though Canada's private property system, with stewarding parcels of First Nations land. It is time that reconciliation bring landholders and First Nations together to find just pathways forward.

The *Douglas Treaty* outlines that First Nations are the historically legitimate governments of Salt Spring Island. As such, these First Nations have the moral authority to govern. In the face of worsening systemic and undemocratic abuses of regulatory power within the Patrick-Grove LTC (Local Trust Committee) administration, moral authority in governance is precisely what is needed. How can the capacity for a new collective land use governance begin to be built? This citizen's report provides a history of a particularly revealing piece on the impact of legislation—*153 STVR*—on rural landholders, particularly homesteaders and farmers. More analysis is needed, especially analysis which seeks to begin 'decolonizing' local government. Removing the systemic 'settler biases' with regard to race, class, and gender within the Islands Trust's legislation and bylaws can be accomplished through a process of reformulating them in earnest. First Nations Treaty claims to Salt Spring Island must be honoured. It is time to begin evolving new collective forms of governance adequate to both: honouring these claims and protecting Salt Spring Island's rural landholders.

THE CANADIAN CHARTER OF RIGHTS AND FREEDOMS

The systematic abuses of power at issue are made possible by gaps in the *Canadian Charter of Rights and Freedoms* which only the Prime Minister of Canada, Justin Trudeau, can address. While a foundational document, the Constitution is also a living one and has required additions to address oversights. Section 15 lists the categories the 1985 Charter was attempting to protect from systematic discrimination: "...race, national or ethnic origin, colour, religion, sex, age or mental or physical disability." (Section 15, *The Canadian Charter of Rights and Freedoms*)

The categories "...race, national or ethnic origin, colour, religion, sex, age or mental or physical disability" are insufficient to reference the new, shifting, and provisional socio-economic demographics facing systemic marginalization under rapidly changing local legislation and its

enforcement. These categories do not adequately provide rural land holders the 'tools' needed to face sweeping, discretionary and 'gentrifying' regulations.

The Canadian Charter of Rights and Freedoms does not, as it does for our southern neighbours in the United States, via their constitution, protect private property. Individual freedom is rendered meaningless when local government can regulate the smallest details of where on one's rural land one sleeps on any given night. As the late Prime Minister of Canada, Pierre Elliot Trudeau, so famously said, "the State has no place in the bedrooms of the nation". Surely local government doesn't either. While the late Pierre Trudeau was specifically speaking to the issue of 'gay rights', he was doing so by pointing to the underlying principle of the right to privacy. In Canada we have a right to determine our own private lives in our private homes on our private lands.

On Salt Spring Island the local government's regulatory abuses of power necessitate that a private property provision be added to the Constitution. Having left private property provisions out of the 1982 and 1985 versions of the *Charter of Rights and Freedoms*, there is now the exciting opportunity to include a property provision commensurate with environmental stewardship and climate change, and which honours the responsibilities of Reconciliation and Canada's own founding Treaties. What better legacy for Justin Trudeau's government than to both secure freedoms and property rights for rural residents and honour its founding Treaties?

Where Are Charter Rights and Freedoms for Rural Landholders?

Local legislation is increasingly barring rural working and farming people from using a range of traditional forms of capital (equipment, lands and unique projects, and ‘social capital’ access to labour) for livelihoods. Forms of accommodation are especially under attack. Local legislation dictates the details of where rural landholders sleep, bathe, and heat up lunch. Showers are strangely disallowed for farmworkers, and the accommodation these properties offer farmworkers and visiting tourists have been reclassified as ‘unlawful’ land uses. As one of those impacted, I can’t help but ask: Where are our Charter rights and freedoms? Is our constitution adequate to the task of defending us? This report makes evident the need for further constitutional interpretations or amendments to protect home-based livelihoods on private rural property and to address regulatory abuses of power by local governments. The path to securing land use rights for individual landholders lies in both the Constitution and in meaningful reconciliation with the First Nations who have the historic and treaty rights to Salt Spring Island.

Housing and Accommodation: Symbiosis, Balance, and Shared Community Resources

Salt Spring Island’s community mandate, the Official Community Plan (OCP) outlines a very egalitarian approach to tourism—Salt Spring’s second largest industry. The OCP calls for a balance between residential housing and tourism. In the OCP, the community rejects hotels and motels and, instead, seeks to distribute access to tourist accommodation revenue among ordinary residents. Tourism is a community resource to be shared among residents. As of late, Salt Spring Island’s largest industry has become real estate and construction. Over the long term, especially if the Island is going to remain rural, the construction industry will need to shrink and specialize. It will increasingly rely on the artisanal renovations which serve visitor accommodation.

Unlike rampant construction, many kinds of tourism are ecologically sustainable over the long term. It is up to residents who offer accommodation to attract eco-friendly visitors. Tourism provides a community resource which can be drawn on to help fund affordable housing subsidies and finance farming and local food security. Salt Spring’s long tradition of agri-edu-ecotourism is one of the things that makes it the unique place it is. The artists and artisans—dancers, musicians, sculptors, dream coaches, specialty chocolate makers, yoga teachers,

retreat hosts, healers and permaculture gardening experts—rely on this particular kind of specialness to attract tourists from the surrounding areas and internationally to a host of niche workshops that make this world a better place.

These activities are endorsed and protected in Salt Spring's OCP (Official Community Plan). The OCP is the Island's (non-Indigenous) official aspirational document. In it 'Salt Springers' outline the kind of community residents want to be. It lays out our principles and goals and express wishes which the local government is morally bound to consult and be guided by in law-making, regulation, and enforcement. Salt Spring's OCP is very explicit about tourist accommodation and facilities.

Local government is expected:

*To **recognize and welcome** the economic value to our community of tourism that is compatible with preserving and protecting the island's natural environment, authentic resident-based sense of community, and the aesthetic values that attract visitors.*

...and...

*To **allow** visitor accommodation to develop in a way that will best retain and distribute the resulting economic benefits...to avoid concentrating benefits and impact only in a few locations.*

*To **retain and maximize** the economic benefits of tourism to the community.*

...and further...

*To **encourage** tourism that blends well with the community and complements the rural, peaceful nature of the island.*

This report exposes the logic and circumstances whereby the verbs "recognize and welcome", "allow", "retain and maximize", and "encourage" come to be re-interpreted by elected officials to mean *a scourge and evil which must be stamped out*. The report contends that the most magical and unique aspects of Salt Spring should be fostered with pride, not 'scapegoated' in the name of protecting housing affordability and in order to keep tourists off the beaches. That this is taking place is perhaps not surprising given that the government official

elected on an affordable housing platform, Trustee Laura Patrick, repeatedly expresses anti-tourist sentiments.

As these sentiments become law, the livelihoods of homesteaders, farmers, and other rural property holders are jeopardized. Interpretations of the bylaws and new legislation deny homesteaders, farmers, and rural property holders access to the “shared common resource of tourist accommodation” protected for residents under the local government’s mandate in the OCP (Official Community Plan) quoted above.

The legislation’s most recent 2019 edition, *Resolution 153 STVR*, contradicts the Island’s zoning and local bylaws (*Bylaw 355*) which, in keeping with the egalitarian ‘will of the people’ in the OCP, widely allow for bed and breakfast businesses. The 2019 letter from two hundred visitor accommodation providers to local government a month prior to the new resolution calls to the attention of Trustees a number of difficulties and abuses of regulatory power resulting from the earlier 2017 STVR resolution, *Resolution 120 STVR*.

The letter reads (my underlining):

There are...significant issues with Standing Resolution SS-2017-120 dated 10 August 2017. These along with the General Provisions paragraph 2.2 of the Bylaw, which is seriously flawed from a legal perspective, are providing the Trust with the opportunity to act indiscriminately and punitively. (pg. 193 of the LTC agenda package 2019-06-25)

Rather than serving the OCP (Official Community Plan) and community by safeguarding access to the shared resource of tourism in a balanced way, the legislation at issue renders it ‘unlawful’. Further, by instructing bylaw enforcement staff to ‘ceaselessly enforce’ in highly discretionary ways, (as per the recent 2020 resolution, *Resolution 045 Unlawful Uses*), and in the absence of protections for residents’ property rights and ‘right-livelihoods’, Salt Spring Island’s unique character is in peril.

The Salt Spring Accommodation Group’s (SSAG) letter clearly states that accommodation providers are not the cause of the affordable housing problem. Moreover, *resident visitor accommodation providers want to be part of the solution.*

...it is our contention that, in the long term, vacation rental housing is part of the solution for needed low-income housing, through the proposed 2% MRDT tax of which all the tax collected from online platforms will go to affordable housing in the community. (pg. 193 of the LTC agenda package 2019-06-25)

It is not just the direct tax, the benefits of tourism to affordable housing are complex and far-reaching. With the high price of real estate and the low incomes farmers make from farming,

tourism is how many farmers pay the bills. Tourism is also how a great many artists and artisans, hospitality industry workers, and food vendors afford their housing. Providing visitor accommodation is literally what enables many artists to 'do their art'. Curtailing visitor accommodation serves a gentrification which undermines the Island's artists and artisanal and farming economies.

SSAG (Salt Spring Accommodations Group) sums up their request thus:

...we hope the Trust can see that we seek a balanced political solution to the present issues and that home-based businesses operating as STVR's, given reasonable parameters, are an important part of the local tourist economy on which our island depends. They should not be made scapegoats for the lack of low-income housing, for which short term vacation rental accommodation will never be a substitute. (pg. 193 of the LTC agenda package 2019-06-25)

The minutes show that Trustees dismissed the Salt Spring Accommodations Group with a polite message and requested a report from the bylaw officer. Upon receiving the report, Trustees promptly proceeded to bolster the problematic legislation at the enforcement officer's behest.

This report finds that the express values in the OCP (Official Community Plan) are contradicted by the LTC's (Local Trust Committee—the local land use government) Patrick-Grove administration in ways that are particularly classist. The section entitled '*How Farming and the Trades are Undermined by 'Endemic Classism'*' further below in the report discusses a recent precedent-setting legal interpretation of the bylaws (Local Trust Committee meeting, November 2020) which restricted a farmer's use of his equipment to three hours a week after a neighbour complained about the noise. This restrictive interpretation overlooked the OCP's (Official Community Plan) intent to foster and protect sustainable logging and local wood products. Further, it made no reference to the *Right to Farm Act*. The recent legislation restricting tourism must be understood within the context of the systemic class-based biases in the bylaws, zoning, and in the Patrick-Grove administration's discretionary interpretations. This legislation must also be understood in light of abuses of power in enforcement (*Chandler Delegation, January 2021*) and a new repressive law which gives discretionary powers to elected officials, the Trustees (*Resolution 045, Unlawful Uses*).

Defining STVRs

I first met with Trustee Patrick in January 2020, a few months after her election. Troubled by Patrick's prohibitionist stance on marijuana cultivation, I was there to explain that while it made sense to keep out huge factory farms, small niche micro-cultivation is part of Salt Spring Island's heritage and should be protected, not prohibited.

During our conversation the topic of STVRs came up. I asked Trustee Patrick how she defined an STVR. Trustee Patrick explained that, in her definition, an STVR was:

A full dwelling unit, suitable for long-term residential use, which, in the absence of the property owner or long-term resident, is rented on a short-term basis to tourists, thereby resulting in its removal from the available residential rental stock.

That seemed a reasonable and accurate definition to me, a definition consistent with that of other jurisdictions. Personally, I felt reassured that Trustee Patrick's definition would in no way risk my plans to offer the bed and breakfast accommodation for which we are zoned at Living Waters Homestead. This was a false sense of reassurance.

Several months later, Trustees Patrick and Grove legislated a definition of STVR which bears no resemblance to the one Trustee Patrick had given at our first meeting. The definition of STVR in *Resolution 153 STVR* is so broad and sweeping that there no longer remains a distinction between Salt Spring's traditional bed and breakfast businesses, agri-tourism campgrounds, and STVRs. In other words, whether or not one's business is deemed 'lawful' is left up to the discretion of bylaw officers.

Resolution 153 STVR defines STVRs as follows (my underlining):

Short-Term Vacation Rentals (STVRs) that have one or more of the following characteristics will be subject to proactive enforcement:

1. They are advertised on the Internet, newspapers or other media;
2. More than one dwelling on the lot is simultaneously made available for STVRs;
3. While the property is rented persons are staying in tents, trailers, or Recreational Vehicles;
4. There are issues related to health and safety;

5. There is a written complaint by owners or residents on nearby lots about *bona fide* nuisance issues such as noise or parking congestion related to the STVR;
6. The owner of the property uses more than one property on Salt Spring Island as an STVR; that a Short-Term Vacation Rental (STVR) is defined as rental of a dwelling, suite, or cottage in a residential zone for less than 30-day periods;

that a Short-Term Vacation Rental (STVR) is defined as the rental of a dwelling, suite, cottage, camping unit, accessory building or structure for a commercial guest accommodation use in a non commercial or commercial guest accommodation zone for less than a 30-day period;

This Resolution mis-defines acronym 'STVR' so sweepingly so as to include anything a human being could possibly sleep in anywhere on the Island. It is also blatantly 'classist' in that it impacts homesteaders, farmers, and working class landholders the most. The rural Gulf Islands tradition of moving one's family out of the house and into a tent or a boat in the summers to garner a couple of months of tourist income has been rendered illegal.

The beautiful book *The Curve of Time*, by Muriel Wylie Blanchet, accounts the fifteen summers she spent sailing the West Coast with her five children. That these summers began in 1926 attest to the long-standing tradition of repeatedly renting one's house to tourists in the summers. Such adventures, only possible by joining the 'sharing economy' and renting out one's island abode to visiting tourists, are, today, rendered illegal by Salt Spring's STVR legislation. Rather than 'preserving and protecting' Salt Spring Island's unique culture, as it is mandated to do, the LTC (Local Trust Committee) is outlawing Island ways.

That *Section 3 of Resolution 153 STVR* directs officers to proactively enforce against properties where "persons are staying in tents, trailers, or Recreational Vehicles" only makes sense as a hidden way to proactively enforce against the 'non-conforming' kinship and work trade systems on many farms and rural properties. Indeed, the paper trail from two collective farms illustrate that enforcement officers use the excuse of STVR enforcement to enter a given property and then proceed to enforce against affordable housing on that property. (*private correspondence*)

The economic freedoms homesteaders have until recently enjoyed, and the economic stepping stones homesteaders have relied on, are being systemically removed, one after the other, by local government. Just as systematic is the failure of the Islands Trust administration to create new pathways to replace what has been taken away. Thus we are left with a situation in which 'everything is illegal' and abuses of power are all but ensured.

The situation is so out of hand that bylaw enforcement officers feel justified in enforcing *on the mere grounds that someone has advertised* their bed and breakfast home-based business. The mere act of advertising one's visitor accommodation now redefines it as 'commercial', thus an 'unlawful' and 'evil' STVR in the eyes of officers.

As SSAG's 2019 letter explains (the underlining is mine):

Legal dwellings, suites and seasonal cottages when used as home-based business B&B clearly are allowed to be advertised on the internet, in the newspapers and other media. The Trust is improperly interpreting the Standing Resolution to classify these as STVRs and using item # 1 of the Standing Resolution to harass and intimidate accommodation providers by using the threat of fines (even to the point of suggesting that the Trust will fine guests) in order to pressure accommodation providers into signing an agreement that they will comply with an often incorrect interpretation of the Bylaw.

When they re-inscribe the STVR legislation for the third time, Trustees choose to retain this bizarre 'criminalization' of advertising. The mere fact of advertising a lawful business continues to potentially render that business unlawful.

Prior to writing the Trustees of their concerns, SSAG (Salt Spring Accommodations Group) consulted a lawyer. According to this lawyer, the 'slippage' between "STVRs" and "Bed and Breakfasts" is itself unlawful. This new (and likely unlawful) definition of STVR by Trustees reclassifies home-based visitor accommodation businesses as 'commercial' and thus as an 'unlawful use'. The 'outlawing' so many are facing—and some have been facing this now for several years—is itself, if not unlawful, a definite form of 'soft' oppression against which protections are in order. It is troubling that Trustees choose to employ a likely unlawful mis-definition of 'STVR' to reclassify lawful home-based businesses as unlawful commercial ones, thereby putting rural residents with home-based accommodation businesses under antagonistic enforcement pressures and economic distress.

The letter from the two hundred SSAG residents explains how the definition STVR is unlawful:

The definition of an STVR used in the Standing Resolution is not one found in the Bylaw, as there is no definition of an STVR in the Bylaw and a Standing Resolution cannot be used as an instrument to change the Bylaw.

Shortly after passing *Resolution 153 STVR*, the Patrick-Grove administration brought in extra enforcement powers to bolster it. *Resolution 045 Unlawful Uses* removes protections from enforcement for individuals applying for permits. Having applied for permits, I do not understand the logic of this. Trying to meet the onslaught of complex demands and expenses that accompany Salt Spring Island Trusts administrations' permit processes is a tall feat unto itself. Where is the harm in halting enforcement during that process? Instead, *Resolution 045 Unlawful Uses* requires those individuals who are unable to proactively convince Trustees that there is a "demonstrated community need" for their livelihoods to shut their businesses while applying for permits.

Salt Spring Island is the unique place it is due to the many homesteads, farms, artisans, and thriving authentic grass roots 'cottage industries'. By legislating away the small cottage industries, and simultaneously denying homesteaders and other working landholders access to the shared community resource of tourist accommodation revenue, the Islands Trust's administrative machinery is undermining what is most precious and special about Salt Spring Island's culture and economy. This unique culture cannot continue to evolve and thrive under circumstances in which its economic base is systemically rendered 'unlawful'. This 'everything is illegal' approach promises to gentrify the land base and send many working property holders into economic hardship. What is to become of those who rely on this now 'unlawful' income for their retirement years?

Salt Springers deserve a fair, open, and informed public consultation process in drafting replacement resolutions, if such resolutions are, indeed, even necessary. The *Municipal Ticketing Information Systems Bylaw No. 410*, passed in 2006, a year before the first 2007 STVR legislation, brought into effect a formidable list of bed and breakfast business offences and fines. This administrative ticketing bylaw suggests that, previous to the STVR legislation, non-conforming bed and breakfast businesses were enforced through a robust list of fines. The sweeping and discretionary powers handed to enforcement officers now hinge not on enforcing conformity, but rather on completely re-classifying home-based bed and breakfast businesses as 'commercial' STVRs worthy of full-throttle proactive enforcement.

When Trustees Have the Enforcement Officers Write and Amend the Law...

THE FIRST ITERATION:

There have now been three versions of the STVR legislation. All three have been written by bylaw enforcement officers and passed into law by the LTC (Salt Spring's local government).

The public documents illustrate that this legislation was never intended to be for the good of the people. Rather, this enforcement legislation was first, in 2007, to provide extra enforcement power, and in 2017 to bolster this power and the administration's legitimacy in the face of possible administrative dissolution. The 2019 reiteration of the legislation seems to serve a high-density development agenda and anti-tourist sentiments. This section of the report 'unpacks' how and why the STVR legislation came to be.

On September 28th, 2007, just prior to striking *Resolution 120 STVR*, Salt Spring's bylaw officer Miles Drew wrote a memo to the Local Trust Committee (Salt Spring's local government) asserting that, in Bylaw 355, STVRs are "illegal land uses" (*pg. 1, Memorandum, September 28, 2007*--my italics and underlining). Firstly, how something not even mentioned in Bylaw 355 can be deemed 'illegal' is dubious. Secondly, why the term 'illegal'? 'Illegal' is far worse than 'unlawful'. An unlawful act is only unauthorized by law. An illegal act is expressly forbidden by law. This language of 'illegal land use', meaning accommodation, is, as I write this, top, front and centre on Salt Spring's Islands Trust Bylaw Enforcement public webpage. How a form of sharing that had not yet been named or widely popularized at the time Bylaw 355 was written could be considered 'illegal' under it, and could now become the 'number one menace to the public good' is an interesting question—one also brought up in SSAG's letter.

In his memo the officer states: "The STVR issue has been very active in Salt Spring Island" (this sounds rather like pest-control talk of 'rodent activity') "and there are at least 50 active STVRs advertised on the internet." (According to SSAG many, if not most, of the advertisements were for legal bed and breakfast businesses).

Officer Miles Drew gets to the real point of his memo (my underlining):

Recently, the Salt Spring Island LTC has initiated court action against one of them to demonstrate that its land use bylaw is enforceable. The results of this case are expected to strengthen the effectiveness of further enforcement efforts. However, given the limited enforcement resources available there is some risk that without setting priority for enforcement this advantage will be squandered.

Interesting. Officer Drew is asking the Local Trust Committee (LTC—Salt Spring's local government) to provide extra enforcement measures, through a resolution, in order to bolster a legal case against a 'token' individual landholder being saddled with a legal suit. This is done in order to prove the legal robustness of *Bylaw 355*. In other words, in Officer Drew's eyes, the law itself is at risk. Extra enforcement is needed to protect law and order in general from lawlessness. (The lawlessness of...visitor accommodation.)

His memo continues,

The Salt Spring Island LTC can provide, through adoption of an enforcement policy, specific enforcement direction to the bylaw enforcement officer on when to take action against STVRs. These instructions can range from being proactive against all STVRs to taking actions only in certain circumstances.

Staff believes that as a first priority, enforcement should be directed against STVRs that are operated in an overtly commercial manner, cause nuisance problems or have safety and health issues.

Let's quickly unpack these three 'reasons' for proactive enforcement: (1) being 'commercial', (2) having a neighbour complaint ('nuisance problems'), and (3) health and safety.

First, enforcement officers deem any home based business which advertises *at all* to be "operating in an *overtly commercial manner*." In the discretionary eyes of officers, a home-based bed and breakfast business ceases to be a home-based business and becomes "commercial" as soon as it advertises.

Second, 'nuisance': A complaint by a neighbour regarding noise—interpreted as 40 decibels, which is the level of a whisper in a library, or a bird chirping—is also sufficient to warrant going after a visitor accommodation business.

Third, health and safety: In my own case, chronicled in the footnotes to my *January 2021 Delegation to the LTC* (Salt Spring's local government), fallacious 'health and safety' violations were alleged, quite insultingly, against my homestead. This took place last summer and fall. The services at Living Waters Homestead are installed with permits and to code, directly by me under the supervision of the appropriate mentor or supervisor. Everyone involved or who has worked with me will attest to the quality of the installation and safety of the services. Nonetheless officers persisted in their search for health and safety violations.

There is a fourth 'guise' under which Bylaw Enforcement Officers may proactively enforce against landholders—if there are environmental concerns. A rainforest island is all shoreline and riparian areas—seasonal streams come with heavy rains. The LTC has, in recent years, put in place environmental protections of riparian areas and shorelines. Both are weaponized by enforcement officers searching for reasons to enforce. (*Chandler Delegation, January 2021*)

Officer Drew concludes his memo by suggesting (my underlining):

That the Salt Spring Island Local Trust Committee adopt the following STVR enforcement policy:

1. THAT given finite resources available for enforcement activities and in order to ensure the most effective results for enforcement activities, STVR's that have one or more of the following characteristics will be subject to enforcement:

1. They are advertised on the internet, newspapers or other media;
2. They are not managed by the property owner;
3. More than one dwelling on the lot is simultaneously made available for STVR;
4. While the property is rented persons are also staying in tents, trailers, or RV's;
5. There are issues related to health and safety;
6. There is a written complaint by owners or residents about bona fide nuisance issues such as noise or parking congestion related to the STVR;
7. The owner of the property uses more than one property on Salt Spring Island as a STVR.

2. THAT nothing in this enforcement policy should be interpreted as giving permission to violate the Land Use Bylaw and the Salt Spring Island Local Trust Committee may change this policy at any time and may give direction to expand enforcement activities at any time. (*September 28, 2007 Memorandum from Miles Drew Bylaw Enforcement Officer*)

The public record shows that Trustees legislated Officer Drew's memo into law, verbatim. So far as I've been able to tell, this was Salt Springs first STVR legislation (*Resolution 164 STVR, 2007*)

THE SECOND ITERATION:

The second iteration of this legislation (*Resolution 120 STVR*) was passed in 2017, just prior to the incorporation vote. The Salt Spring LTC (Local Trust Committee) received letters from three members of the public speaking out against STVRs. Echoing Officer Miles Drew, the first two individuals emphasize that STVRs are *illegal*, evidencing the assumption that mere illegality renders something wrong. (In some countries it is illegal for women to drive and obtain an education. In Canada we perceive *those laws as bad* and *unethical* because they do not respect the rights of women. We do not say that it is the women who are bad or unethical for wanting to illegally drive or study).

The third letter is more interesting, and takes Officer Drew's original 2007 motivation behind the STVR resolution a step further. This correspondent writes that it is no wonder the "Incorporationists" (the group of citizens arguing that Salt Spring should become its own municipality, rather than falling under the broader scope of the Islands Trust) "want control because we have not effectively followed through on by-laws". (*pg. 100-102 of the LTC Agenda Package 2017-08-10*) Enforcing against STVRs, in this rhetoric, becomes the mode by which Islands Trust will save its own legitimacy and existence from the 'Incorporationists'. When I looked into who sent in these letters, it seems that none of them are affordable housing advocates. They are all, rather, conservationists with conservative stances on other issues.

Officer Miles Drew's second STVR report—his August 2017 report—ten years after his original STVR memo became law is co-signed by the Regional Planning Manager, Stefan Cermak. In it Officer Drew writes:

In May of 2017 the LTC received a report saying that there are approximately 140 unlawful STVRs operating on Salt Spring Island and that there are only 11 open enforcement files. (*LTC Agenda Package 2017-08-10, pg. 108*)

When I went in search of the report Officer Drew mentions above, the only thing I could find in the agenda package from May of 2017 which mentions 140 accommodation providers is the Delegation from SSAG (Salt Spring Accommodations Group).

Officer Drew's 2017 report recommends wording to update the STVR legislation, (making it slightly more sweeping and dealing with a 'glitch' which was leading owners to occupy 'seasonal' cottages on more than a 'seasonal' basis), and submitted a plan for implementing a 'proactive enforcement strategy'. The strategy would put more of the Trust's resources towards proactive enforcement, and would enable officers to take action if any one of the seven conditions (advertising, the existence of a tent or trailer on the property, etc.) were present. (*LTC Agenda Package 2017-08-10*) Trustees signed Officer Drew's amendments to the STVR legislation into law, and *Resolution 120 STVR* came into effect.

SSAG's (Salt Spring Accommodations Group) 2017 Delegation is worth quoting in length. The delegation clearly addresses the issues residents are facing, and proposes solutions which Officer Drew not only leaves out of his report, but appears oblivious to (my underlining).

The members of the association feel that the current bylaw, as relating to B&Bs (#355 3.13.3.14) does not address the current needs of the visitors, the accommodation providers, or long-term renters. We would like to urge the Committee to examine the relevant sections

of the bylaw (#355) and bring it in line with the reality of visitors' demands and 21st century booking channels, as well as the needs of the Salt Spring community. It should be noted that tourism is the single biggest economic driver of the island community and affects virtually every activity on Salt Spring. It should also be understood that most residents of Salt Spring started off as visitors or tourists. It is important that we manage this aspect of our economy carefully and sustainably while at the same time providing more short & long-term rental options.

Several aspects of the current bylaw relating to Bed & Breakfasts and Guest Cottages do not make sense to our members and, we believe, should be re-examined. First, the current bylaw only addresses B&Bs, and does not take into account the many other types of accommodations available to visitors. These other types "technically" do not exist on Salt Spring unless commercially zoned, e.g Short Term vacation rentals (STVRs). In fact, the leaflet distributed by the Trust, "An Operator's Guide", relating to bylaw #355, only addresses Bed & Breakfasts and does not even mention STVRs.

Other aspects of the bylaw that need to be re-examined include: 1. 3.13.8 (2) All bedrooms used to accommodate guests must be located within the principal dwelling or within a seasonal cottage if one is permitted on the lot.

•Visitors are now looking for a wider variety of accommodations such as Yurts, "glamping" luxury tents*, tree houses and of course cabins; these accommodation types should be considered.

(LTC Agenda Package 2017-06-29)

The SSAG Delegation addresses the community need for flexibility in how visitor accommodation is provided. Rather than addressing this need, the Trustees and Enforcement Officer instead worsen the problem by reinscribing problematic legislation and issuing in 'proactive' and draconian enforcement measures.

How was this justified? By appearing to offer permits to STVR applicants, the proactive enforcement measures are made to seem less draconian than they in fact are. The report (signed and endorsed by the Regional Planning Manager) outlines how Temporary Use Permits (TUPs) will be made available to applicants impacted by the STVR legislation. Enforcement officers are to (my underlining):

Prepare and send letter to individuals who may be operating an STVR:

- o Explain regulations and TUP options
- o Invite to apply for TUP
- o Note that there would no enforcement
once a complete application is received

- o Review letter for clarity

(LTC Agenda Package 2017-08-10)

The letter to be sent “to individuals who may be operating an STVR...explaining TUP options” suggests that TUP options do, indeed, exist, and that home-based visitor accommodation providers are intended to apply. Moreover, the report clearly indicates that once an application is made, enforcement would halt. Today, four years later, the permits have yet to be developed, and the only way to stem the tide of enforcement is by convincing Trustees, via a letter of appeal, that there is a ‘demonstrated community need’ for the STVR.

Planners failed to develop the permits, and Trustees, while aware of this absence of permits, have in the intervening four years nonetheless continued to ramp up enforcement against home-based businesses. Anyone who has experienced enforcement recently knows how ceaseless and escalating it is. Officers simply continue searching for and fabricate new Bylaw infractions, often in the absence of evidence, and to the disbelief, exasperation, and sense of persecution experienced by property holders. Trustee’s recent *Resolution 045 Unlawful Uses* reverses even the protection from enforcement that applicants were to have while applying for permits. Now applicants of any home-based business must close throughout the lengthy and arduous application process.

This report from Officer Drew (again, it is important to note that this report was overseen and signed by the Regional Planning Manager) outlines proactive steps planning staff is to take to research and regulate “STVR operations”. (Note the wording of ‘operation’ which harkens yesteryear’s criminalization of marijuana ‘grow operations’.) The report directs planning staff to collect information from ‘STVR operators’ (accommodation providers) via a questionnaire and report on the conclusions:

- Prepare questionnaire about STVR operations such as size, type of facility, occupancy rates, economic and social impacts, etc.
- Report on conclusions from questionnaire

(LTC Agenda Package 2017-08-10)

I have been unable to locate such a questionnaire or report in the Salt Spring Islands Trust’s public documents. Staff at the Islands Trust Planning Office have, thus far, similarly been unable to find this questionnaire or report.

According to Officer Drew's report, overseen by the Regional Planning Manager, Planning Staff are also to (my underlining):

- Prepare checklist and material for applicants
- Prepare checklist for staff report
- Prepare map: applications in process, approved, etc.
- Prepare tracking document to add contact comments
- Prepare response wording for applicants detailing information requirements
- Update webpage
- Establish procedure for Bylaw Enforcement and Planning to communicate and coordinate contact with operators/applicants
- Establish referral procedure to CRD and water districts
- Prepare material re contact information and standards of behavior for owners to provide to tenants and post to webpage (*LTC Agenda Package 2017-08-10*)

All of these Planning Staff tasks presume that there is a TUP (Temporary Use Permit) available for visitor accommodation home-based businesses to apply for.

A year later, in 2018, I went to the Islands Trust with a plan to begin my homestead farm and build the allowable house and outbuildings. A TUP was needed for myself and the farm workers to live on the property while we developed the farm, and for visitor accommodation. After the main house was built, both farmworkers and bed and breakfast guests would be accommodated, as per the letter of the law, in a main house. Permits were needed to provide stepping stones for the 'interim' years until the infrastructure and house are in place.

The fact that no permit existed for these allowable land uses was perplexing. I had read about TUPs in the local newspaper. When reporting on enforcement officers evicting people from their non-conforming dwellings, the local newspaper, the *Driftwood*, stated that the residents were told to apply for a TUP. The *Driftwood* failed to note that the TUP needed did not exist.

Enforcement officers continue to dispense eviction letters which direct residents facing eviction or fines to apply for TUPs that are not available. When I, myself, was evicted in the fall of 2020, at the height of a pandemic, for occupying my travel trailer for more than 90 days in a calendar year, (although I was clearly in the process of working towards 'full conformity' with *Bylaw 355*), the eviction letter directed me to contact Planning Staff and apply for a TUP. Staff have not yet formulated the TUPs I, and many others, require. Neither have Trustees directed Planning Staff, in the meantime, to simply come up with an interim 'general TUP' for those of us left without protection from ongoing enforcement abuses.

In 2018, still very naive about the 'bureaucratic landscape', I explained my need for a TUP to both Planning Staff and the two elected Trustees. While I was able to obtain permits for the driveway and some tree clearing for the provincially-recommended firebreak around buildings, no-one in the administration would allow me to follow the rules by obtaining a TUP for accommodation. I slowly came to understand that while the TUP I needed was unavailable, it was, however in process. Despite my 2018 and 2019 attempts at applying for the requisite TUP, and despite having spoken of the need for this TUP to planners and elected Trustees, due to it's unavailability, I was evicted from my own home by bylaw enforcement officers in the fall of 2020.

It is now 2021, four years after Officer Drew's 2017 STVR report which balances proactive enforcement with accessible TUPs. The proactive enforcement goes full steam ahead, bolstered by the most recent 2019 legislation, *Resolution 153 STVR*. Officer Karol Kudyba's 2019 report (which was not signed by the Regional Planning Manager, but rather by Miles Drew, who had been promoted to Bylaw Enforcement and Compliance Manager) completely 'forgets' that residents still require permits, protections, and pathways to legitimacy. The absence of these permits leaves rural residents open to the continued reclassification of home-based businesses as 'unlawful land uses'.

Trustees, the Regional Planning Manager, and the Bylaw Enforcement and Compliance Manager have put into place proactive enforcement measures without first creating viable legal protections and pathways to legitimacy for resident and visitor accommodation. The task of developing the much-needed permits for accommodation has now been forwarded to the newly-appointed Affordable Housing Task Force. It is thus especially important that the Tourist Accommodation sector and 'outlawed properties' are represented on this Task Force.

THE THIRD ITERATION:

In the summer of 2019, two years after presenting their 2017 Delegation, SSAG's now two hundred resident members consult a lawyer and send an alarming appeal with their cogently expressed letter to the LTC (Local Trust Committee—Salt Spring's local government comprised of two elected Trustees, and a third Trustee appointed from another island in the Trust area). The Trustees politely reply saying that they will be sure to include SSAG in any future bylaw changes.

The Trustees then request a report from the new Bylaw Enforcement Officer Karol Kudyba. Officer Drew, now the Bylaw Compliance and Enforcement Manager, signed Officer Kudyba's report. Upon receipt of Officer Kudyba's report, Trustees not only re-adopted the same resolution, but based on Officer Kudyba's suggested revisions, they made it even more sweeping. Thus the highly problematic STVR legislation currently being proactively enforced, *Resolution 153 STVR*, was born. Left without permits to apply for or pathways to legitimacy, home-based businesses on farms and rural lands are thus now falling 'under attack' by highly discretionary and sweeping enforcement. In the absence of permits, the only protection rural residents are left with is *The Canadian Charter of Rights and Freedoms*, which is missing a private property provision.

As one would expect, Officer Kudyba's revisions reflect his...*partial* ability to understand and analyze the STVR issue. His revisions also reflect his enforcement and compliance interests, and that of his supervisor, Miles Drew. There is no evidence that Officer Kudyba (or Officer Drew, the co-signatory) even read the long and detailed legal letter from SSAG's two hundred members. None of their concerns appear in his report (this one reads more like the original 2007 memo) nor does he seem cognizant of the legally and morally problematic nature of the resolution wording. Nor do Officers Drew and Kudyba address the missing TUPs or the issue of how to shield would-be applicants from enforcement.

When we look at the way these three instantiations of the STVR legislation came into effect, a pattern emerges: A large group of reputable residents with home-based businesses—tourist accommodation—address the Trustees (Salt Spring's local government) asking for updated, fair and reasonable regulations and interpretations. A comparatively very small group of conservationist citizens hear of this address, and write Trustees with emotionally-laden and alarmist anti-STVR letters citing affordable housing. Trustees then turn to the Enforcement Officers asking for a report. An Enforcement Officer issues a memo or report which fails to address the concerns of the first set of citizens—the two hundred residents represented by SSAG.

In other words: when a large group of informed citizens send a cogently-expressed and researched appeal to Trustees, it is hijacked by a couple of alarmist 'squeaky wheels' with other concerns. Enforcement against the many concerned citizens is then increased and made more sweeping and discretionary. That this pattern continues to repeat itself is disturbing.

When a military dictates laws through a national government's 'puppet' politicians, we call it a 'military state'. When a country's police force dictates the laws, we call it a 'police state'. What is the terminology appropriate for a municipal-level government administration where Bylaw Enforcement and Compliance Officers draft Standing Resolutions for the elected politicians? Do we call it a 'bylaw-enforcement-and-compliance-administration'?

Speaking as a citizen and tax payer, I did not vote for the Enforcement Officers. I voted for representative Trustees who I entrusted with formulating laws that are representative of the will of the people. If in doubt as to what this is, the OCP (Official Community Plan) is clear: tourist accommodation income is a common shared resource. Salt Spring Island residents reject commercial hotels. Instead, providing accommodation to visitors as a source of income is supposed to be supported by the local governing body in a way that is balanced with residential housing. Bylaw 355 outlines a fifty-fifty balance of visitor and resident bedrooms on individual properties (my zoning, for example, allows for four bed and breakfast rooms in an eight-bedroom house). Nowhere do enforcement officers refer to this in their reports.

The contested terrain in the enforcement against visitor accommodation has now come to rest on this word "commercial". Home-based businesses are, under *Bylaw 355*, allowed. They are distinguished from commercial businesses, which are prohibited on our rural residential farms and homesteads. The purpose of establishing home-based businesses in *Bylaw 355* was to protect them, not to prohibit them by reclassifying them as 'commercial' or 'industrial'. In *Bylaw 355* bed and breakfast businesses are considered home-based businesses. The STVR legislation creates a new category of visitor accommodation, one that officers reclassify as 'commercial' and thus 'unlawful'. This reclassification of home-based visitor accommodation businesses as commercial, and thus as prohibited, directly, and underhandedly, contradicts the community will as it is expressed in the OCP (Official Community Plan).

Consider the sweeping breadth and language of *Resolution 153 STVR*, and the discretionary and invasive power it gives Bylaw Enforcement and Compliance Officers. At the national level, such a level of incursion would be considered corrupt and undemocratic. Undemocratic governments are known for suppressing freedoms, targeting civilians via corrupt ways of outlawing them, using this outlawing to subject those civilians to secret surveillance, and justifying to themselves tactics of intimidation to suppress voices of protest. In undemocratic

governments political transparency is lacking and politicians purposely muddy the waters. Undemocratic governments tend to operate by criminalizing the factions they wish to suppress. The STVR legislation seems very much oriented towards confusing the issue of access to tourist accommodation. This is accomplished by obscuring the boundaries between lawful and unlawful accommodation. It is further accomplished by quasi-criminalizing the least ‘conforming’ properties while scapegoating ‘STVRs’ (anything anyone can sleep in anywhere on the Island) as the enemies of affordable housing.

Legitimate Governments Confer Legitimacy and Protect Basic Freedoms

The extensive reach of local government into the private lives and livelihoods of citizens on private rural properties, such as rendering ‘unlawful’ the ways rural people accommodate multigenerational families and other alternative kinship structures, and the level of ‘hyper-conformity’ demanded, appears to be driven by alarmism and an ‘invisible need’ for the Islands Trust’s administration to bolster an antagonist legal prowess. Rather than increasing the legitimacy of local government, this ‘enforcement approach’ accomplishes the opposite—it undermines democracy itself.

In a democracy we agree to live by common rules because under those rules we are free to live lives of our own choosing; we are free in our kinship and friendship lives on private property. While the majority of us agree that regulations which protect the environment and waterways override individual freedoms, protecting the environment does not require local government to legislate against the will of the people regarding access to the shared resource of tourist accommodation. Nor does it require or justify reaching into the private lives of rural citizens to such a degree as to impractically and punitively dictate the intimate details sleeping, bathing and cooking, or, further, to effectively deny rural residents the right to share those activities of daily life with workers, friends, and family members.

Local government should not have the power to undermine local culture by quasi-criminalizing rural land-based livelihoods. That the LTC’s (Salt Spring’s local government) recent legislation does just this is wrong. The explanation lies in the fact that it has been written by successive enforcement officers with no input from those whom the legislation impacts. Salt Spring’s STVR legislation is *de facto* undemocratic.

The democratic way for a local government to increase its legitimacy as a government is by conferring legitimacy on its citizens. Protecting the land uses and small businesses currently operating, and thereby protecting residents’ varied unique lifestyles and livelihoods, would

secure a new respect for the LTC (Local Trust Committee) from many Islanders. Providing viable legal pathways to legitimacy for our lives and livelihoods, and writing legislation for the common good (rather than to bolster the discretionary powers of enforcement officers) would constitute fair and effective, and thus legitimate, government.

Affordable Housing, Farming, and Factional Leadership

In the summer of 2018, while I was applying for my own permits, anger erupted on Salt Spring when enforcement officers attempted to evict a young family living, very much in keeping with Gulf Islands and Salt Spring traditions, in a yurt on a homestead. This was a family who contributed to the food and artisan economy and culture of Salt Spring's famous Saturday Market. These were members of the Salt Spring Island community. It is thus understandable that public anger at what was perceived as unjust classism was turned against the easiest culprits, those providing tourist accommodation rentals. This coincided with a rapidly-rising real estate market attracting investors turning previous residences into vacation rentals. The sense of threat was not without cause.

Anti-STVR activists encouraged and advised affordable housing advocates (such as myself) to point the finger at STVRs as the culprit. It was easy to re-direct the anger of those whose rental housing rates were rising rapidly while simultaneously finding themselves in danger of eviction by enforcement officers to property owners seeming to be comfortably profiting from tourist accommodation income.

Salt Spring's lack of affordable and subsidized rental housing, is not, however, the fault or responsibility of farmers, homesteaders, and rural property owners. Indeed, it is the farmers, homesteaders, and rural property owners who provide most of the affordable rental accommodation that currently exists. This accommodation is classified as an 'unlawful land use' and enforcement is set to commence again once the Covid restrictions are lifted. (*Resolution 147 Enforcement Policy during COVID-19 Public Health Emergency*) It makes sense for anyone providing accommodation unsafely, or in ways that neighbours find unsightly or too loud, to be supported by being brought into conformity with setbacks and buffers so that all parties can reach mutual toleration. It is unproductive to 'outlaw' these properties and their inhabitants.

Outlawing properties by reclassifying traditional and allowable uses as 'unlawful' undermines the potential for those most impacted to speak up in self-defense or join together to bring attention to what is taking place. The extensive footnotes to the short Delegation

submitted to the LTC in January 2021 offer an analysis of how the climate of low-level individualized fear and distrust of local authorities which this creates, erodes democracy.

The crisis in affordable housing is not the fault of rural home-based businesses. It is the responsibility of the provincial government to ensure sufficient affordable housing in this province. The responsibility of British Columbia's residents, including those who run rural home-based businesses, is to pay taxes which our provincial government then uses to fund affordable and subsidized housing.

I have the educational background to write this report precisely because thirty years ago, as a very young and rather 'penniless' single mother, I was able to access good quality subsidized housing. Writing this report, and taking important time and energy away from my own livelihood to do so, is one of the ways I am now 'giving back' to society. My years living in geared-to-income co-operative housing gave me the 'hand up' I needed to obtain an education and save for a down payment on my own home. Shortly after I left British Columbia in 1997 to pursue graduate studies in Ontario, the Canadian Mortgage and Housing Corporation (CMHC) cancelled funding to these highly successful affordable housing projects.

The problem we are facing on Salt Spring today is that while purported to address the issue of absentee landlords and speculation-buying, the STVR legislation is being used to undermine the affordability of housing and farming, and the home-based livelihoods of rural residents and farmers. This is having a 'gentrifying' impact. It makes it *less economically viable* for those whose livelihoods are 'home-based' to afford to live rurally. Land ownership becomes *more economically viable* for owners who do not depend on using the land they buy for their livelihoods.

The public record indicates that, while affordable housing is touted as the reason for this proactive enforcement, it was not affordable housing activists who were the driving force behind the anti-STVR sentiments, rather, it was a small group of conservative conservationists. At first I was perplexed by the hate mail and vitriol I received a couple of months ago when I wrote a public appeal to Trustees asking them to consider allowing glamping alternatives to bed and breakfast accommodation for homesteads in the upcoming summer season. (*Support Economic Resilience and Recovery: Approve B&B Eco-Friendly Glamping*) After examining the public record, I now have a better understanding of where this factionalism comes from. When I saw more hateful comments after the publication of Dori Van Stolk's piece pointing to these issues (*Letter of the Law or Spirit of the Law?*), I was again struck by the social acceptance of public expressions of hate. Comments on our respectful publications told Dori and me to leave the Island if we didn't like the rules. Four years ago I purchased property here precisely because I

did like the rules. The property *was* and *is* zoned for the uses that are being reclassified as 'unlawful' under the new legislation.

I am a newcomer. I have also been coming to Salt Spring for over thirty years and have friendships here that go back even further. I am growing roots, friendships, and connections that are meaningful. Prior to moving to Salt Spring, I lived for several years on another more remote Gulf Island learning important land-based skills. I didn't purchase this homestead on Salt Spring as an 'investment'. I purchased a multi-generational family homestead. In order to steward, farm, live, and grow old with dignity here I require access to the ecologically-friendly and respectful livelihood from the land for which it is zoned—four tourist accommodation bedrooms, and would require some flexibility in terms of exactly what those bedrooms look like while I undertake the long road to full conformity.

The few 'hate mail' comments (most comments were authentic and thoughtful engagements) on the publications in the Exchange and circulating on Facebook, the same ones that told Dori and me to leave the Island if we didn't like the rules, also claimed that we should both be housing homeless people instead of accommodating visitors.

It is not the individual responsibility of homesteaders to run social housing programs. As previously argued in this report, it is our Provincial Government's responsibly to invest in and ensure affordable housing. Our income taxes are meant to distribute wealth, if not equitably, at least reasonably to meet basic human needs. A minimum guaranteed income would also help alleviate poverty and homelessness. To lay the burden on individuals, or through misplaced blame and hostility, to close down our home-based businesses, complicates and deflects where responsibility truly lies.

Nor is it the responsibility of property holders to solve the housing crisis. Since the removal of 'landlord rights' in British Columbia, many landholders are hesitant to engage in long term rental agreements. My homestead already provides affordable housing to two members of the community—my elderly mother and myself. Our ability to afford our land and housing is put in jeopardy by the new legislation and proactive enforcement plan. Ideally, if the Living Waters Farm's Pilot Project Proposal is endorsed by the Housing Task Force, our homestead will further be able to provide long-term affordable housing to another local individual. A friend and fellow Salt Springer is looking for a place to put her tiny house, and wants to help with the home-based bed and breakfast business.

Over the past fourteen years, Salt Spring's elected Trustees would have shown leadership by fostering open and transparent generative and problem-solving community discussion. Tourist accommodation is obviously an important and increasingly touchy subject for many. Open public dialogue with the aim of mutual understanding and collaboration is what has been, and continues to be needed. Instead, the Patrick-Grove administration continues to leverage this factionalism by increasing the discretionary enforcement undermining local rural livelihoods and home-based businesses.

This polarization of short-and-long-term rentals is starkly evident in the Patrick-Grove administration's recent change to *Bylaw 355, 512*. *Bylaw 512* rezoned a 'pilot project area' in such a way as to polarize residential and visitor use. It should be noted that these now-single-use 'seasonal cottages' had, previous to that, been used flexibly, however the homeowner wished to use them—sometimes having friends and family stay, sometimes long-term renters, and other times tourists. Rural Gulf Islanders have historically depended on this flexibility to be resilient and adaptive. (*The Curve of Time*)

Bylaw 512, by rendering one's cottage either long-term accommodation or visitor accommodation, but not, flexibly, both/and, *according to the needs of the family*, reduces the economic resilience of families. Why force a young family to forever 'give up' their access to tourist accommodation revenue when, for example, a grandmother comes to live for a few years? How is this good policy? It does not respect the OCP (Official Community Plan), nor does it respect rural lives and livelihoods. (*Bylaw 512*, and *The Personal is Political: A Critique of Bylaw 512*)

No Protections For Home-Based Businesses, No Access to Shared Public Resources, and the Drive to Limit Access to Salt Spring's Beaches

My second meeting with Trustee Patrick occurred in the late afternoon of February 9th, 2021. It was this meeting which included our little group of three single middle-aged women. At the time, none of us knew of SSAG's (Salt Spring Accommodations Group) 2017 Delegation or 2019 letter, yet we were there to bring to Patrick's attention the very same concerns and recommendations. Trustee Patrick made no mention of these documents or of the existence of *Resolution 153 STVR*—which we did not even yet know was the source of our concerns.

The latest STVR law, *Resolution 153 STVR*, had been made by Trustees Patrick and Grove only two years previously in 2019 (after my initial meeting with Trustee Patrick in which

she'd defined 'STVRs' in an accurate and reasonable way). We were meeting with Trustee Patrick to bring regulatory abuses of power with respect to STVR enforcement to her attention. Why didn't she mention the existence of her own new STVR law?

Our meeting took place over Zoom. My compatriot and fellow landholder asked Trustee Patrick what the difference was between a legal bed and breakfast and an illegal STVR. Trustee Patrick replied that she did not know what the difference was. Given her clear definition at our first meeting, this struck me as uncomfortably odd.

I spoke up that my friend's nonconforming bed and breakfast business was clearly not an STVR as it was not taking away accommodation otherwise suitable for housing. Trustee Patrick said nothing in response to this. She seemed unable to recall her own previous and very clear definition. Instead, Trustee Patrick said something that at first seemed out of context; she explained that she needed to respect the position of constituents who think that Salt Spring Island's beaches are becoming too overcrowded with tourists.

Reflecting upon this later I realized the implications of what she was saying. Trustee Patrick's motivation behind reclassifying home-based tourist accommodation businesses as 'commercial', and thus closing them down, reduces tourism, and keeps tourists off the beaches. This strikes me as an extraordinarily elitist position for an elected official to take. As a British Columbian, I consider it my prerogative to jump in my van with my dog and head out exploring the coast and mountains. Canada as a nation has further decided that by law our beaches are for everyone to access and share. They are not privately owned. If Trustee Patrick were truly concerned about giving residents access to tourist-free beaches, the best way to accomplish this would be an initiative to replace the many beach access marker signs across the Island that have, over the years, been removed.

Preventing rural residents from accessing the shared community resource of tourist accommodation indeed does make Salt Spring's beaches off-bounds for many. Working and middle class landholders provide visitor accommodation for working and middle class visitors. When this visitor accommodation is curtailed, so is accessibility to Salt Spring for visitors from these demographics. This further inflates accommodation prices. The incomes of those whose businesses manage to survive the 'purge' are increased, and Salt Spring Island increasingly becomes a destination for only the wealthiest visitors. The Islands Trust was formed in large part to preserve the Gulf Islands for all British Columbians. The closing down of accommodation for visitors means preserving Salt Spring for only the most elite of British Columbians.

During the February 9th 2021 meeting with Trustee Patrick and the two friends also subject to enforcement, I repeatedly asked what protections were available to us.

What permits were available for us to apply for to secure us, our extended family structures, and our home-based businesses, from discretionary and abusive enforcement? Trustee Patrick would offer us nothing.

In our first meeting in 2019, the one on marijuana prohibition, Trustee Patrick had acknowledged that the TUP (Temporary Use Permit) needed in cases like mine and those of my 'compatriots' was still in development and not yet available. Why had she not addressed this 'lag' in permits two years later, especially in light of the difficulties we were facing and explaining to her? Moreover, why did Trustee Patrick not tell us that it was her and Trustee Grove's very recent resolution, *Resolution 045 Unlawful Uses*, which removed protections we would otherwise have had as per Miles Drew's and Stephan Cermak's 2017 enforcement measures report?

Finally, Trustee Patrick turned to me, and invited me, specifically, without my two compatriots, to submit a pilot project proposal to the new Housing Task Force she had initiated. Patrick explained that the Housing Task Force was soliciting ideas for the "Art of the Possible". The Task Force was to be empowered with approving 'nontraditional' projects like mine. (My homestead is in fact quite 'traditional'.) Why was I invited to submit a pilot project, and my 'compatriots' not? Surely we should *all* submit 'pilot projects' if that is the only viable pathway to protection available under the current administration?

After learning that the planning staff in charge were already turning away pilot project inquiries from property holders and residents in need of permits, telling the would-be applicants that the Housing Task Force was only interested in subdivision projects and high-density condominiums, I now suspect that this invitation to have been politically motivated.

Inviting me to submit a pilot project, especially after the publicness with which I was evicted from my homestead trailer last fall, is good press for the Housing Task Force. A 'token' homesteader, in my case, one who, by a congruence of circumstances, (my education and ability to jump through endless hoops, paired with my propensity to follow rules, cross 'i's' and dot 't's'), is likely helpful in legitimizing the new Task Force in the eyes of the public.

Salt Spring Solutions and the Affordable Housing Task Force

Shortly after that second meeting with Trustee Patrick, perhaps as a result of it, and based on the short-lived acclaim my January 2021 Delegation had among some affordable housing

advocates (I had published the short version in the community's online local news forum, the Salt Spring Exchange), I was invited to participate in a screening of *Making a Stand in the Salish Sea*, Salt Spring Solutions (SSS) new public relations film. This meeting was meant to simultaneously champion, garner support for, and solicit appointees to the new Housing Task Force. It was also to solicit feedback on the new SSS (Salt Spring Solutions) film and to request that both the Task Force and film be referenced in mindful and kind ways in social media.

This third meeting, the film screening and discussion, took place over Zoom on the evening of February 18th, 2021. We were welcomed as a gathering of “affordable housing advocates”. We introduced ourselves and viewed the film together. The film dealt with a number of issues ranging from food security to bicycle paths, although seemed centrally concerned with the lack of affordable housing on Salt Spring Island. After the screening, our feedback was solicited. I had two concerns--an unnecessary and unproductive vilifying of STVRs and a pitting of tourism against affordable housing, and, second, a ‘leaving out’ of the solutions currently being lived by homesteaders and rural working folks on Salt Spring Island. I shared these two concerns at the meeting, and left feeling somewhat uneasy. Why didn't the film address what was really going on—how the solutions currently being lived on the ground are being misclassified by bylaw enforcement as ‘unlawful’?

Trustee Patrick remained silent as an anti-STVR activist and Task Force appointee spoke at length assuring me and the other participants that, under the new Housing Task Force, wonderful creative possibilities for accessing the shared community resource of tourist accommodation revenue through things like small-scale glamping would become available.

Trustee Patrick, a key participant at the meeting because of what her position has to offer the conversation, failed to mention that her own resolution, *153 STVR*, precluded that very possibility. Indeed, after two years of working closely together on affordable housing, and leveraging anti-STVR rhetoric in the affordable housing cause, the Salt Spring Solutions organizer and Housing Task Force appointee had no knowledge that this anti-STVR resolution existed, let alone how it was/is being enforced.

Still unaware of *153 STVR*, and encouraged by the Salt Spring Solutions pro-glamping discussion with Trustee Patrick, I was inspired to publish, on March 10th, 2021, a short open letter to Trustees suggesting that residents who are zoned for B&B home businesses be allowed, instead, equivalent glamping spots to enable post-pandemic economic resilience (*Support Economic Resilience and Recovery: Approve B&B Eco-Friendly Glamping*).

It was not until after publishing this that I learned of *153 STVR* via a friend's bylaw enforcement letter.

As the pieces started to come together, and things began to make sense, I was overcome by waves of betrayal. I felt that Trustee Patrick had not been transparent about her own and her administration's intentions and laws. I expressed my concerns that Trustee Patrick's agenda was likely one of gentrification and ghettoization in emails to my two Salt Spring Solutions interlocutors.

I regret that my email communication was, at that point, emotionally charged in a way that one feels free to be with friends and allies during the height of experiencing rather devastating revelations. The distress I was experiencing was exacerbated by the fear of the impending April 15th opening of enforcement against our homestead. (After my eviction had been resolved, and I was allowed home again, the Bylaw Enforcement Manager, Warren Dingman, had put the file on hold until April 15th to allow me time to apply for a permit...which does not exist.)

Although the film *Making a Stand in the Salish Sea* repeatedly points to STVRs as the culprits of the housing shortage, the two members of SSS (Salt Spring Solutions) with whom I was communicating claimed to have no knowledge of the STVR legislation at all. They made and distributed film featuring the harms of STVRs on Salt Spring Island without knowledge of the STVR law, its scope, how and why it is being enforced, or how, by mis-defining 'STVR', it is the law that is harmful.

When I expressed my concern that Salt Spring Solutions, as the affordable housing advisors to Trustee Patrick, did not include representatives from Tourism or the Outlawed Properties, and that Trustee Patrick appeared to be the sole appointer of the Housing Task Force positions, my interlocutor insinuated that I was questioning the integrity of the Housing Task Force appointees. Nothing could be further from the truth.

Personal integrity does not replace adequate diversity of representation. I do not question the integrity of the anti-STVR Salt Spring Solutions affordable housing advocate. I trust this advocate will represent the positions he stands for with full integrity. I know he is a good and wise person. He is also human. As am I. Humans everywhere can only give voice to their own limited and subjective viewpoints. That is why full representation from a variety of positions is so critically important. In order for solutions to address the full diversity of situations, there needs to be full diversity in representation among the decision-makers.

How Farming and Trades are Undermined by 'Endemic Classism'

A cultural shift in administration is needed, including a critical examination of the most obvious classist and gentrifying biases in *Bylaw 355*. For example, a strong underlying bias

running throughout *Bylaw 355* is that tradespeople's tools and equipment are so ugly, shameful, and offensive that neighbours and residents driving by should be protected from the offence of having to see them. As *Section 3 of 153 STVR* itself illustrates, the trailers many of us use for sleeping and cooking are considered reasons to enforce against 'STVRs'...even when these trailers are only providing temporary shelter during the process of homestead-building.

The existence of tradespeople's tools is so offensive to the Trust's administration, that, and my friend, another single, middle-aged woman, is a case in point. Bylaw Enforcement and Compliance Officers issue fines for commercial activity *even when the offending tools are stored out of sight inside a shed or barn*. This is accomplished by reclassifying the mere existence of tools as a 'commercial' enterprise rather than respecting the rural home-based business that *Bylaw 355* was intended to protect.

It is almost as though it is not so much the sight of tradespeople's tools, but the fact that tradespeople have tools in the first place, tools which we use to perform work, that is being enforced against. If you look at the effects of recent officer and planning staff interpretations, it seems it is trades-based work and human existence that is considered offensive in the underlying value system. This is in express contradiction to the OCP (Official Community Plan).

Trustee Patrick's own added restrictions to the permits of farmers and tradespeople also 'violate' the OCP and contradict her 'homesteader-positive' and working-class-oriented election platform. At the November 10th, 2020 LTC Meeting, Trustee Patrick was presented with an incredibly restrictive farmer permit—the first permit ever needed for a portable sawmill on Salt Spring Island. Staff were proposing a permit to limit a farmer's use of his farm equipment, this portable sawmill, to three hours a week.

This permit constituted *a very important legal precedent*—a new interpretation of *Bylaw 355* itself. The category 'portable sawmill', which can mean a modified chainsaw, now, through this precedent-setting permit, and in the complete absence of the phrase 'portable sawmill' in *Bylaw 355*, and in one flick of the pen, is so overly-restricted under it, that the permit undermines the sustainable local forestry provisions of the OCP (Official Community Plan). I watched in disbelief as this precedent was set with seemingly no consultation of the *Right to Farm Act*, or *the OCP's express intent to foster and protect sustainable logging and local wood products*.

Let me be transparent: I am the proud owner of a portable sawmill. As someone very much looking forward to using trees here on the land, cleared from the build sites or blown over in storms, to build 'as sustainably as it gets', I watched in further disbelief as Trustee Patrick added a further restriction on this farmer from being able to use his farm equipment. In true

puritanical style, Trustee Patrick added that the farm equipment is not to be used on Sundays or Statutory Holidays. Later, during that same November 10th, 2020, Local Trust Committee meeting, available to watch and download from the Salt Spring Island's Trust website, Trustee Patrick *reduced the restraints and accountability of a big off-island contractor building high-density strata rental accommodation.*

I would be remiss as the citizen author of this report were I anything less than transparent about my personal biases. This report is written from the viewpoint of a homesteader facing a tsunami of regulations seemingly aimed at removing me from the land I 'own', steward, and am wedded to. The analysis, although shared with others who have come to the same conclusions independently, must nonetheless be interpreted by any reader in that light. The claims I make here should be independently regarded.

The Anonymous Complaint-based System

The anonymous complaint-based system serves to obscure the systemic nature and gentrifying impact of the LTC (Local Trust Committee—Salt Spring's local government) administration's new laws and interpretations. Complaints, and the secrecy and moralizing around them, individualize enforcement. The inclusion of the occasional more elite property holder via the complaint process serves to further obscure the overall 'gentrifying' nature of enforcement. (*Chandler Delegation*).

During 'rashes' of enforcement, in which an onslaught of 'violation' tickets for 'unlawful land uses' (such as putting up a tent in the summer, storing tools in shed, or putting gravel on a walkway) keep coming, there is no-one to turn to. Appeals by members of the community to David Marlor, Director of Local Planning Services at Islands Trust, Islands Trust's Chief Administrative Officer, Russ Hotsenpiller, and to Salt Spring's elected Trustees have had no protective effect. (*private correspondence*)

While landholders facing enforcement are, on the face of it, given the option of adjudication to address the mounting fines, adjudication itself begins from an enforcement perspective and is thus unable to address abuses of regulatory power. Adjudication is unable to address unjust and undemocratic laws, rather, adjudicators must uphold even starkly unjust or undemocratic laws. The BC Ombudsperson's office is not able to address unfair laws either. It does, however, have an excellent report on best practices for bylaw enforcement. (*Bylaw*

Enforcement: Best Practices Guide for Local Governments) These practices are not followed by enforcement officers on Salt Spring Island where there is no one to enforce the enforcers.

Rural homesteads and farms require a constellation of streams of seasonally land-based income including tourist accommodation, renting equipment, and providing skilled labour. Destabilizing the accommodation solutions of rural residents and rendering land-based livelihoods 'commercial' and thus 'unlawful' means that, as soon as a neighbour complaint from someone who does not rely on their land for their livelihood is made, enforcement against the home-based business is armed with laws. Without access to the permits outlined in the 2017 report, and under the new enforcement resolution *045 Unlawful Uses*, home-based businesses are left without protections.

Weaponizing Environmental Regulations Against Farmers and Tradespeople

Grave damage is done to the social acceptance of environmental protections when those protections are pre-emptively weaponized by bylaw officers to assert power. The weaponization of riparian areas and other environmental protections is just one symptom of the disrespect towards rural residents woven into Islands Trust culture. In treating landholders as scheming uninformed enemies of the land, rather than as the intelligent and caring stewards that the vast majority are and want to be, the Trust's environmental regulations lose support and legitimacy. (It is my sincere hope that a First Nations land use local administrative stewardship would encourage and foster ways of connecting with land and place.)

Checks and balances are missing in the current complaint-driven system. When a bylaw officer, responding to a neighbour complaint about the existence of a tent (pitching a tent on a rural acreage on Salt Spring is another unjust, and unCanadian, bylaw prohibition), proceeds to threaten to go in search of riparian violations simply because the property includes riparian areas, it is clear that abuses of power are at play. Indeed, among the many people I have spoken to who have faced enforcement, in all cases of those whose property includes riparian areas (a great deal of Salt Spring), enforcement officers have gone in search of riparian violations. If the system were at all fair or trustable, violation investigations would be circumscribed to resolving the complaint at hand, not expanded by punitively weaponizing environmental regulations.

This misuse of regulatory power justified by environmental protection is simultaneously taking place at other levels. For example, Trustees recently increased the discretionary power of

Planning Staff to request environmental reports from applicants whose land contains riparian areas. The misuse of this discretionary power was felt immediately. During the November 10th 2020 LTC (Local Trust Committee) meeting, the owner of a local septic design and installation company, who was attempting to renew a TUP (some commercial Temporary Use Permits do exist, for short periods) in order to continue providing an essential service, was there to appeal the Planning Staff demands that he pay for yet another riparian report. The last report he had paid for—these reports are thousands of dollars each—had been only three years previous to this, when he'd first been forced, via enforcement, to apply for a TUP to store his equipment in a shed on his land. In the three years since first obtaining a professional riparian report, nothing had changed. The seasonal winter stream had not moved. The demand by Planning Staff that the owner of this small business obtain another costly report was entirely gratuitous. It also has a disturbingly punitive undertone.

The problem with classifying a business, such as a septic installer, 'industrial', is that Salt Spring Island has no industrial zoning. Nor does the Islands Trust bureaucracy seem intent on rectifying this oversight in the 'late-settler' zoning process which took place approximately thirty years ago. Rather than treating the businesses that provide this island with essential services as though the tools and equipment they employ constitute moral breaches to the fabric of the land, why not simply expand home-based-business protections to these businesses? I cannot help wonder how a First Nations led local government might approach zoning. Certainly it would be from very different stewardship perspectives. What is important, and missing in the current governance design and ethos, is that solutions be mutually supportive, participatory and inclusive.

Gender, 'Witch-hunt-thinking', and Post-pandemic Economic Recovery

Women's incomes have been disproportionately impacted by the pandemic as compared to men's. This is in part because the hospitality and tourist industries are still dominated by female workers. Construction and the trades, far less affected by the Covid-19 pandemic, are still male-dominated. By impacting disproportionately the kinds of small businesses women tend to run, the new Short Term Vacation Rental legislation (*Resolution 153 STVR*) damages women's businesses and livelihoods. Anecdotal evidence suggests that the regulatory abuses of power underway are predominantly aimed at single middle-aged and elderly women and female-headed households. As noted in the introduction, it is precisely these demographics—older single women, younger single mothers, and female-headed households—

who are likely to expand the forms of hospitality they already engage in to support their households. Although these are gender-fluid times, seeing to the accommodation and food preparation on homesteads and farms remains primarily the domain of women. In a late-pandemic economic climate in which women's incomes have been disproportionately curtailed, local government should be supporting women's small businesses, not outlawing them.

The anti-STVR sentiments erupting since 2017 (that is as far back as I have tracked them) follow a 'witch-hunt' logic. In the recorded history of witch-hunts, good upstanding members of a community and innocent children accuse single and especially older women of witchcraft. When I look at what 'witches' were accused of doing it is this: saying things out loud, cooking, gathering herbs, helping people heal, and charging fees for these services—it strikes me that these are all quite normal things that women do in their homes and lives, and that they were doing these things to support themselves. These 'normal things' (speaking, cooking, gathering herbs, helping people heal, etc.) are, in witch-hunt-thinking, demonized and blamed for unexplainable 'ills' that befall the community (strange sicknesses among humans or domestic animals, crop failures, etc).

In the anti-STVR logic, good upstanding members of the community and innocent teenagers in a public relations film accuse STVR businesses, run, for the most part, by older women, of bringing about the community 'ill' of scarce and expensive housing. In other words, older women are vilified for sharing their land and homes to support themselves and others in very normal and allowable ways. This witch-hunt logic must be exposed for what it is, especially in the face of the need for post-pandemic economic resilience and recovery.

Enforcement and Community Need

By taking away the protections residents previously had from enforcement during unreasonably lengthy, expensive, and arduous permitting processes, a second resolution brought in by the Patrick-Gove administration, *Resolution 045 Unlawful Uses*, now requires residents to cease livelihood activity while applying for permits. This is the difficulty *Francis Bread Bakery* encountered, leading to a public outcry when they faced the possibility of closing in order to undertake a permitting process. (*social media documents*)

Resolution 045 Unlawful Uses gives applicants the option to write a letter of appeal to Trustees demonstrating community need for the service provided. In this resolution, Trustees have awarded themselves discretionary power, making themselves the supreme arbiters of what does and does not constitute a 'demonstrated community need'. As someone with a

background in the Social Sciences, I am perplexed at the underlying assumption that a family's livelihood or a homestead's economic resilience is not in and of itself a 'demonstrated community need'. Surely the continued viability of small businesses in and of itself constitutes an indisputable community good? Surely a rural family's ability to support itself constitutes a 'community need'.

Resolution 045, Unlawful Uses, strangely, is also aimed at "unlawful planning applications." This is echoed on the Salt Spring Islands Trust Bylaw Enforcement webpage which warns that proactive enforcement without a complaint will be taken upon discovery of a "permitting issue". (<http://www.islandstrust.bc.ca/islands/bylaw-compliance-and-enforcement/>). What is meant, exactly, by the vague phrase 'permitting issue'? And how is it that the mere act of submitting a permit application, as per *Resolution 045 Unlawful Uses*, is now to be deemed unlawful? What great danger do residents submitting 'unlawful planning applications' pose? Even if submitting an application could somehow be deemed 'unlawful', some key permits for rural residents to apply for do not even exist.

Resolution 045 Unlawful Uses goes on to add that any anonymous neighbour complaints will negatively impact the applicant's appeal for protection from enforcement. When Bylaw Enforcement Officers are proactively looking for any reason to target properties, and when the bylaws themselves are classist, and Trustees make decisions based on strong personal biases, the small proviso that these complaints be *bona fide* is of little comfort to applicants. (*private correspondence with Islands Trust Planning Manager, David Marlor*)

When the clearly-demonstrable gentrifying impacts of *Resolution 153 STVR*, and *Resolution 045 Unlawful Uses* are understood in conjunction with the secret 'watch-list' and 'street-files' kept on profiled properties, things appear...concerning. (*Freedom of Information, private*) I think it is safe to say that serious breaches of democracy are taking place within our current administration.

This report addresses how Resolutions *045 Unlawful Uses* and *153 STVR* serve the interests of, and speed up, gentrification. By exacerbating gentrification and increasing the potential for unbridled abuses of power to this end, the Patrick-Grove administration has breached public trust to such an extent that it has, in my present opinion, lost the moral authority to govern. Citizens of a democracy are under no obligation to obey unjust and undemocratic laws. Rather, there is a moral obligation for citizens to protest—via civil disobedience—socially and economically repressive laws that rob us of our freedoms and livelihoods as necessary.

There are certainly situations, such as a (just) war, or a pandemic, when a government can claim it is justified in repressing freedoms and instituting temporary limits to social and

economic activity. It is unquestionably the case that, in the face of climate change, ecologically harmful economic activity must be curtailed to save our planet. It is also the case that, in the face of climate change, and having declared a 'climate emergency', it behooves local governments not to prejudicially, and based on personal bias, close down the ecologically responsible and legal modes of livelihood that residents rely on, take pride in, and derive meaning from.

This is especially the case as we look forward to post-pandemic recovery and resilience. The eco-edu-agri-tourism that makes SSI so special needs to be protected, not stamped out and classified "unlawful", or blamed for the affordable housing crisis in an attempt to empty the land base of working and middle class land holders and homesteaders. When so many British Columbians have been cooped up in condos and basement apartments in nearby Victoria and Vancouver, it is especially elitist for Trustee Patrick to maintain her intent to keep tourists off Salt Spring Island's beaches. (*February 9th 2021 Zoom meeting*) As it becomes safe, and as we come out of the pandemic, access to forests and beaches can help revive the spirits of British Columbians.

The Patrick-Grove administration's crackdown on visitor accommodation is not justified by the exigencies of climate change. The new Housing Task Force is touted as the body to creatively address Salt Spring Islands housing needs by clearing pathways through the miasma of regulations for new initiatives and pilot projects. Already, even before even being struck, the planning staff in charge welcomes condo and subdivision developments while turning away the majority of rural solutions and livelihoods which so many are currently living.

How STVR Law is Speeding Up Gentrification

By speeding up gentrification—the shift of the land base from less affluent to more affluent owners—the STVR legislation 'violates' (to use the Trust's own language of enforcement) the needs of a diverse community. Gentrification entails a slow and gentle 'cleansing' of a geographic area of its less affluent, dirtier, often 'racialized' and 'criminalized', and more bohemian (or, colloquially, 'hippy') residents. The process of gentrification involves increased 'policing' aimed at bringing those out of line with the interests of rising property values, into line...or motivating them to move on and out. On Salt Spring Island this is exacerbated via a problematic complaint-based Bylaw Enforcement system, and *Resolutions 153 STVR* and *045 Unlawful Uses*.

The *Chandler Delegation*, submitted to the LTC (Local Trust Committee) in January 2021, outlines how the interpretation and enforcement of *Bylaw 355* denies us access to the traditional homesteader forms of capital—the social capital we rely on for labour to plant and build. That Salt Spring Solutions have left the accommodation solutions which homesteaders, farmers, and tradespeople employ largely off the list does not suggest fault in their extensive excellent work. Rather, it underscores the importance of full representation on a Task Force vested with the power to give the green light to any particular project.

By making certain land-based livelihoods ‘unlawful’, and further scapegoating those livelihoods—blaming them for the affordable housing crisis—a government conveniently absolves itself of its own failure to adequately address the needs of social housing. In a capitalist economy which commodifies land, resolutions such as *153 STVR* and *043 Unlawful Uses* which threaten to economically erode land-based livelihoods must be struck down because they are against the interests of the public good.

The gentrifying tide can be stemmed, or at least slowed, but closing down home-based businesses clearly exacerbates the problem. The solution requires returning to the spirit and intents of *Bylaw 355* and the OCP (Official Community Plan) to protect and ensure sufficient space for viable home-based businesses. Ensuring real and adequate representation on the Housing Task Force from the Salt Spring Accommodations Group and other representatives of visitor accommodation, as well as a representative capable of speaking on behalf of the ‘Outlawed Homesteads’ would reassure Salt Springers that the Housing Task Force will, indeed, address pressing needs for protections from abuses of power and Bylaw Enforcement.

Homesteads face the very real danger of an unprecedented tide of enforcement as soon as Covid restrictions are lifted. Adequate representation on the Housing Task Force, and transparency, will assure Salt Springers that this Housing Task Force can be more than just a smokescreen for ghettoizing workers. It will ensure that the interests of homesteaders, farmers, and rural artisans and tradespeople are included so that protections for our livelihoods are not conveniently left by the wayside while new housing developments go forward.

Some in real estate and construction will profit from these new housing developments. There is not much profit in creating legal pathways for the many ecologically low-impact and already-successful solutions to affordable housing already on-the-ground. Although Trustee Patrick ran on a platform to end the persecution of farmworker accommodation, the Patrick-Grove administration continues to deem these forms of accommodation ‘unlawful land uses’. This, even though Trustees are well aware that their own STVR legislation is used underhandedly by Enforcement Officers to crack down on the affordable long-term

accommodation provided by 'outlawed' farms, homesteads, and rural landholdings. (*private correspondence*)

Beneficiaries and the 'Watch-List'

There are some who will benefit from this STVR 'purge'. Those whose businesses survive will be in high demand. Tourists who can afford it will still visit Salt Spring Island. Trustee Patrick's goal of reducing the influx of tourists to Salt Spring Island's beaches, and of densifying the core, is served.

In response to claims of gentrification, the complaint-based system can be pointed to by Bylaw Enforcement. It is true that, on occasion, enforcement measures are taken against economically elite landholders. So far my research indicates that when, on occasion, members of the 'economically elite' do come under enforcement, it is because they have done something widely unpopular with both planning staff and elected officials in Salt Spring's Islands Trust administration.

A friend's FOI (Freedom of Information request) illustrates that when residents go into the Planning Office to request information, Planning Staff contact Bylaw Enforcement Officers to have those properties added to a 'watch-list' and 'street-file'. This constitutes a disturbingly real and insidious threat to freedom and security in a democratic society.

Bylaw Enforcement Officers may not have the power to deny liberty in the sense that they can't lock rural residents up in prisons. Their coercive power rests in threats of economic sanctions (fines) and threats to livelihood. Reclassifying home-based bed and breakfast businesses as 'unlawful' STVRs, and then ceaselessly enforcing against accommodation providers who must remain closed while applying for permits that don't exist is unjust. It makes matters worse that, in the instances that permits do exist, Planning Staff, guided by a myopic notion that they are champions of environmental protection who must save the land from the landholders, radically restrict or recommend against those permits on principle. This kind of behaviour at the hands of a local government is never acceptable. Especially now, coming out of the pandemic, when we need to be thinking about fostering genuine landholder stewardship congruent with grass-roots economic recovery and resilience, it is dangerously irresponsible. Trustees must take a serious look at problems endemic to their administration. Rural rights to 'right livelihood' should be upheld by local government, not quasi-criminalized.

The Crisis in Legitimacy—When Local Government Breaks the Social Contract

A government's legitimacy is conferred by the people it governs. Without the consent of the governed, governing just doesn't work. We consent because we all agree that democracy—a system in which the governed elect representatives to represent us—is a fair system. We consent because 'the will of the people' justifies giving away our natural freedoms and agreeing to follow a government's rules, even when we may not, as individuals, agree with all of the details. When we elect our Trustees we do so on the tacit understanding that, when they see fit to make resolutions which have significant impacts on our lives and livelihoods, they consult us, (the constituents, the people whose livelihoods will be impacted), and they consult our OCP (Official Community Plan). We do not expect Trustees to ignore the people they are elected to represent and instead 'rubber stamp' laws written by Bylaw Enforcement Officers.

The Patrick-Grove administration is seemingly betraying public trust and failing to hold up its end of the Social Contract. I, and many others, have done, and are doing our utmost to honour and obey a host of increasingly repressive rules and enforcement measures. I have held up, and continue to hold up, my end of the Social Contract bargain. According to the philosophical foundations of governance itself, when a government breaks the Social Contract, citizens have a duty (i) to point this out, and (ii) to replace the illegitimate government with a legitimate one—one able to uphold the duties of representation.

A legitimate local Salt Spring Island land use government would genuinely honour the OCP (Official Community Plan) by protecting and permitting accommodation—both the common community resource of visitor accommodation, and the affordable accommodation solutions that already exist. Providing pathways to acceptance for 'non-conforming' alternative affordable accommodation is a democratic approach. Outlawing farmworker communities on Salt Spring Island's homesteads and farms is not.

In the absence of data, an arm's length inquiry into the demographics targeted (and not targeted) by enforcement is necessary to fully understand who is, and isn't, being outlawed. From what I have been able to gather it appears that many of those targeted are middle aged single women, (perhaps based on a mistaken assumption that older single women are more willing to be 'compliant'), and people whose kinship structures and ways of living together fall outside a narrow nuclear-family-structure norm.

Thus, a communal family of seven—five adults and two children in a large house—may be barred from building their cottage because a forbidden second stove—a wood stove that can also be used to cook on in winter—is found in the main house. The enforcement officer tells

them there are too many adults living together. (*private correspondence*) A family with an especially high ratio of adults to children, or who have a multi-generational extended family homestead, or a group of people who choose to live communally and farm, are enforced against by a local government so constrained by an outmoded and suburban definition of 'density' (among other neocolonial concepts) that it is unwilling to accommodate the ways people are living together. (*private correspondence*)

In many cultures, including settler Canadian rural homesteading culture, people live in multigenerational and communal groupings. Housing flexibility necessary for multigenerational, chosen, and communal families, including the use, ('unlawful' on Salt Spring Island), of 'outbuildings' such as yurts is integral to community well being and the social fabric. This flexibility for diversity is protected and endorsed in the OCP (Official Community Plan). Why are Trustees drawing on their powers of resolution to remove these protections? Why the punitive and prohibitive approach? Would it not better address community needs for Trustees to reflect upon and use their powers of resolution to affirm OCP commitments to social, familial, racial, economic, and gender diversity? The LTC's (Local Trust Committee) affirmation of reconciliation, *Resolution 253 Reconciliation*, seems very much like a good approach.

Constitutional Freedoms and Governance

For many homesteaders, farmers, and working people on Salt Spring Island, the bylaws unreasonably stymie the...

...right to life, liberty, and security of the person and the right not to be deprived thereof.
Section 8 Canadian Charter of Rights and Freedoms

In dictating to us where individuals must sleep, denying farm workers bathing and food preparation facilities, and refusing homesteads the help and company of friends and family, access to social capital and to individual liberty are effectively denied.

There are times that it makes sense to curtail liberty for the well-being of a community or country. Our liberty has been curtailed during this pandemic to keep us safe and healthy...and to keep our elders alive. During times of war, liberty is similarly curtailed. The curtailing of liberty is only condoned and tolerated during times of crisis, and *our freedoms must be returned to us after the war or pandemic is over.*

It also makes sense to curtail liberty if someone uses their liberty to infringe on someone else's well-being or freedom. I am not, for example, free to hit you. Doing so would infringe on your freedom and well-being. I am also not free to pollute the water that runs through this homestead, because doing so harms a shared planet. None of us should be free to cause environmental harm.

What exigency justifies Salt Spring Island's LTC (Local Trust Committee) denying rural people the right to live in socially and environmentally responsible ways on their landholdings? When local government denies rural landholders the pleasure of having friends and family visit, when landholders and their farmworkers are denied a place to shower, a place to cook, and a place to sleep on a homestead or farm, liberty and privacy are impinged beyond good reason. Similarly, systematically reclassifying home-based businesses as 'commercial', thereby rendering them 'unlawful', impinges livelihood rights.

The abuses of power in the behaviour and communication of Enforcement Officers, while likely protected, run contrary to the spirit of Section 7 of the Canadian Charter of Rights and Freedoms:

Everyone has the right to be secure against unreasonable search or seizure.

Either acting 'proactively' from a classified 'watch-list', as directed by Trustees via *Resolution 153 STVR*, or responding to an anonymous complaint by a neighbour, bylaw officers are empowered to enter and search a property without notifying the owner or residents. (*Bylaw Infractions Investigations Bylaw No. 264*)

If faced with the prospect that there are no bylaw violations, officers are empowered to then return and search the property again with a 'fine toothed comb' in an attempt to procure one. If an officer finds the original concern or complaint to be unfounded or resolved, why is he then empowered by the Islands Trust to go on a hunting expedition for any other possible violation? Certainly such process violates the spirit of the Canadian *Charter's* Section 7, security against unreasonable search.

Adding the original property rights provision to the Charter (this provision was left out in 1982) may protect Salt Spring Island residents from the regulatory abuses of power and overreach of local government that are being experienced today. Today, however, is a different historical period. Today, reconciliation and climate change are the two biggest issues facing Canadians. A private property Constitutional protection which adequately addresses both is in order. Given the Islands Trust's lack of legitimacy on Salt Spring Island—a lack of both internal

and external historic legitimacy—and given the close proximity of the University of Victoria's Indigenous Law Program, Salt Spring Island is the ideal location in which to reconcile Indigenous and non-Indigenous relationships to land in a new form of municipal government.

In 2017 Salt Spring Island held a referendum to vote on whether or not to replace the Islands Trust with an Incorporated Municipality having a mayor and council. That a referendum had to be called in the first place, and that forty percent of the population voted to radically revamp local governance by replacing Islands Trust with the unknown entity--a new municipal system--indicates just how unpopular the Trust's governance system is. Attention to the *Douglas Treaties*, as well as to the democratic rights and freedoms for the landholders currently living on Salt Spring Island call for a new imagining. It is time to imagine, and talk about, new possibilities for 'evolving' a truly participatory decision-making process which honours First Nations economic and stewardship rights to Salt Spring Island, protects the private homes and land-based livelihoods of Salt Spring's residents, and takes care of the environment.

The Insufficiency of Adjudication and the Ombudsperson

There is no viable appeal when faced with injustice and regulatory abuses of power in the workings of the present Islands Trust administration. Appealing to individual Trustees has no effect. Trustees steer clear of the working of Enforcement Officers. (*private correspondence*) In 2016 the British Columbia Ombudsperson's office published Special Report 36, *Bylaw Enforcement: Best Practices Guide for Local Governments*. These best practices, developed in the interests of fairness, do not inform bylaw revision or enforcement under Salt Spring Island's LTC (Local Trust Committee) administration.

'Outlawed' landholders who are presented with an ever-mounting array of confusing and expensive fines are simultaneously offered an adjudication process as a means to resolve these fines. An outside adjudicator can address whether or not the mounting infractions officers are 'ticketing' for, are allowable under the legislation as it is written (tickets, hundreds of dollars each, can quickly turn into thousands of dollars). Adjudication cannot address the problematic sweeping and discretionary wording of *Resolution 153 STVR*, or the misclassification of home-based businesses as 'commercial' and thus 'unlawful' ones. Indeed, the more sweeping and discretionary the wording of the law at play, the better it serves the enforcement officer's adjudication case. In other words, bad laws ensure that officers win their cases.

Residents who do not wish to go to adjudication are given the option (or, as SSAG explains it, are 'blackmailed' by the mounting tickets) into signing a 'compliance contract'. This pattern is repeated with even the most accommodating, earnest, and helpful of rural property holders. SSAG (Salt Spring Accommodations Group) addresses the abusive use of the 'compliance contract' in their 2019 letter:

The Trust is improperly interpreting the Standing Resolution...to harass and intimidate accommodation providers by using the threat of fines (even to the point of suggesting that the Trust will fine guests) in order to pressure accommodation providers into signing an agreement that they will comply with an often incorrect interpretation of the Bylaw.

British Columbia's colonial history is a history of how representatives of the British Crown's administration alienated Indigenous people from their land through a series of regulatory processes which included blackmailing leaders of First Nations into signing documents giving up their claims to and uses of land. I can't help but see a faint vestige of this same approach in how the Salt Spring Island's LTC (Local Trust Committee) administration now engages with the non-Indigenous rural landholders who live on Salt Spring Island. The reclassification of allowable land uses as 'unlawful', and forcing people to sign 'compliance contracts' under threat of mounting economic sanctions is not acceptable in a fair and just local land use administration.

Conclusions

WE ARE ALL TREATY PEOPLE

As former Governor General, Adrienne Clarkson pointed out, in Canada, we are all of us, non-indigenous and indigenous, alike, ‘treaty people’. We are treaty people because treaties are the precondition of Canada. The non-Indigenous residents of Salt Spring Island are treaty people also in the sense that, as per the *Douglas Treaties*, non-Indigenous residents can only live on and use the Island’s land and fishing waters with the express permission of the First Nations whose land it is to govern. The *Royal Proclamation* of 1763 (the document which ended the war between France and Britain during the period of their colonial expansion) acknowledged that Aboriginal lands that had not been ceded to or purchased by the British Crown were the possession of the Aboriginals. Treaties, such as the *Douglas Treaties*, are what gave the British Crown the legal and moral authority to ‘assume’ lands—that is, to colonize Canada. Non-Indigenous Salt Spring Island residents are treaty people. It is time to honour those treaties by recognizing Salt Spring Island’s First Nations’ governments.

THE WAY FORWARD

The way forward, as I see it, is for non-indigenous residents to recognize the governance rights of Salt Spring’s Thirteen First Nations, Tsartlip First Nation, Tsawout First Nation, Tseycum First Nation, Pauquachin First Nation, Malahat Nation, Cowichan Tribes, Halalt First Nation, Penelakut Tribe, Lyakson First Nation, Lake Cowichan First Nation, Chemainus First Nation, Tsawwassen First Nation, and Semiahmoo First Nation. It is important for non-Indigenous residents and landholders to recognize the governance rights of First Nations, but how is this to be accomplished? Asking permission and paying compensation for land uses are straightforward avenues to legitimizing governance. Doing so would be a clear way of honouring the *Douglas Treaties* in contemporary times.

Most of Salt Spring Island is privately held property. Because the land is occupied by largely non-Indigenous landholders, the thirteen First Nations are prevented from using and benefiting from their fishing and hunting grounds, and historic fields and village sites. Real Estate is the largest ‘economic engine’ on Salt Spring Island. Since the land base belongs to First Nations, and not the Province of British Columbia, the Province should immediately begin

handing over the land transfer tax it collects on all private property sales on Salt Spring Island to the appropriate First Nation in compensation.

While in principle I suggest that Salt Spring Island's private landholders honour the *Douglas Treaties* by asking permissions and guidance for land uses from the legitimate First Nations' governments, in reality First Nations' government administrators not want piles of unsolicited paper suddenly showing up on their desks. In the larger picture, however, First Nations stewardship rights have and are continuing to be violated. Seeking stewardship guidance from First Nations seems to me important. Seeking permission also rightfully legitimizes First Nations' governance on Salt Spring Island. It is conceivable that as landholders choose to return land use governance to First Nations, pathways for doing so can evolve and be normalized, legitimized, and funded. Just as local governments may confer legitimacy on land uses, people may confer legitimacy on governments by seeking permission for land uses, and paying taxes and administrative fees to those governments.

Unless Salt Spring's Islands Trust administration first undergoes a radical reorganization and change in approach which addresses overreach and regulatory abuses of power, I do not support the idea of replacing Trustees with First Nations leadership. Indeed, without fundamental internal changes first occurring in the administration's Planning and Bylaw Enforcement offices and law-making processes, the consequences would likely be unpredictable, and may lead to increased fear and distrust of an already feared and distrusted institution. What I suggest is slowly moving jurisdiction away from the LTC (Local Trust Committee) administration (in much the same 'incremental' fashion used to expand its jurisdiction over the past years) to new participatory, inclusive, and kind forms of administration.

Now is the time for imagining new possibilities and opening up public dialogue about what a local government guided by reconciliation, environmental responsibility, and the well-being of Salt Spring Island's 11,000 residents looks like. A land use decision-making design rooted in participation and effective representation would be ideal. There are various models to look to and borrow from. The Cortes Island Community Forest, for example, is a partnership between the Klahoose First Nation and the membership-owned Cortes Community Forest Co-operative. Representatives from Klahoose First Nation and the Community Forest Co-op meet to jointly make decisions about forest management and timber harvesting, and share in the profits. Decisions between the Klahoose and the Co-op are made by consensus. No actions are taken in the forest until both Klahoose and Co-op representatives are comfortable going forward.

Much of the current Islands Trust administration, especially the abusive forms of enforcement it employs and the highly discretionary basis of its decision-making and powers,

should be dispensed with. Islands Trust's weaponizing of environmental regulations harms the human-land relationship—it weaponizes the land itself against the landholders. Islands Trust's permit process is not much better. The degree to which the land becomes tied up, antagonistically, in layer upon layer of red tape is heartbreaking to any landholder committed to listening to the land itself. Salt Spring's Islands Trust administration protects the environment by rudely severing landholders from the land with lengthy regulations which require expensive professional reports from landholders who must fund their own professional 'monitoring'. For the rule-following landholder, an activity as small as putting in an allowable driveway can cost thousands of dollars in monitoring alone.

Among the non-Indigenous population of Salt Spring Island, Islands Trust is a mistrusted institution which lacks moral authority in the eyes of a large minority, if not majority, of the resident population. Its administration is cumbersome and harmful to the social fabric of the resident community. Rather than responding to community needs, it attempts to 'police' the community into unreasonably narrow and increasingly repressive regulations. Salt Spring's Islands Trust administration undermines democracy, invades privacy, exacerbates neighbourhood and community acrimony, (*Chandler Delegation January 2021*), and continues to expand its reach and realms of jurisdiction.

Building permits, for example, have in the past decades been the jurisdiction of the Capital Regional District (CRD). In 2018, the Islands Trust instituted a system whereby the Islands Trust Planning Staff now approve building permit applications prior to those permit applications going to the CRD for approval. It is still the CRD who issue the actual permits and conduct the building inspections. If it is this easy to re-direct permitting and decision-making to the Islands Trust, it should be quite possible to incrementally re-direct permitting and decision-making away from the Islands Trust to new forms of land use administration which reconcile First Nations and private landholders rights.

RECOMMENDATIONS TO SALT SPRING ISLAND'S LOCAL TRUST COMMITTEE

This Citizen's Report calls on Salt Spring Islands Local Trust Committee to honour reconciliation, fairness and justice, and the Canadian Constitution by acting in accordance with the pre-Confederate Douglas Treaties. This can be accomplished by returning the land use governance of Salt Spring Island to the thirteen First Nations, Tsartlip First Nation, Tsawout First

Nation, Tseycum First Nation, Pauquachin First Nation, Malahat Nation, Cowichan Tribes, Halalt First Nation, Penelakut Tribe, Lyakson First Nation, Lake Cowichan First Nation, Chemainus First Nation, Tsawwassen First Nation, and Semiahmoo First Nation, whose land it is to govern.

The recommendations below are intended to address the regulatory abuses of power outlined in this report. By following the will of the people in the community plan, protecting the rural livelihoods of homesteaders, farmers, tradespeople, artisans, and small businesses, respecting the full diversity of ways of living together, and implementing restorative approaches to neighbour complaints, the Local Trust Committee would show good governance.

1. Protect home-based businesses and accommodation appropriate to extended families, communal living, and balanced tourism on rural properties from enforcement.
2. Provide affordable TUPs (Temporary Use Permits), as needed, which respect and protect the family and communal living structure of residents, and socially and ecologically responsible home-based businesses.
3. Tax visitor accommodation. A portion of these funds should go the First Nations whose land it is. Another portion of the fund could support community needs in affordable housing, and be distributed by a small community-run committee. The committee might, for example, choose to assist rural properties facing difficulties meeting Islands Trust's compliance demands. Monies could be used to, among many other things, subsidize ecological water and sewerage systems. Good water and sewerage systems benefit the whole Island.
4. Invite proposals from graduate students interested in 'decolonizing' the LTC's *Standing Resolutions* and *Bylaw 355*. (Reaching out to the Indigenous Law program at the University of Victoria would be a good place to start.) Ask these students to facilitate generative community discussions on how to rethink and rewrite the laws from both a 'community need' and from a reconciliation standpoint.
5. Ensure that bylaws and resolutions are based on sound principles of justice and fairness, and are in accordance with the general will as outlined in the OCP (Official Community Plan). Outline the purpose of the law in the resolution or bylaw. Routinely reassess bylaws and resolutions to ensure they are implemented in accordance with their intended purposes,

and that their purposes do not run contrary to the intentions of the OCP or to justice, fairness, and democracy.

6. Replace the new language of 'lawful/unlawful' in Trustee legislation and Islands Trust governance documents with the former and more morally benign language of 'conforming/non-conforming'.
7. Ensure adequate representation from all important 'stakeholders' on the Housing Task Force.
8. Learn from Truth and Reconciliation processes. Bring in facilitators to undertake the work of healing community rifts and rebuilding trust so that Salt Spring Island may find good ways forward. Dispense with the punitive and repressive approach. Instead, create kind, inclusive, and safe processes with a focus on community healing.
9. Increase pay for the Trustee position. The remuneration for the position of Trustee—\$30,000—while it may be workable for a self-employed architect or retiree, is not feasible for someone whose livelihood is trades-based. Neither a self-employed person who works in construction nor a farmer can afford to drop everything to attend lengthy meetings for \$30,000 a year. To address inclusivity, increase Trustee income sufficiently in order to make it feasible for candidates from the full range of Salt Spring Island 'sectors' to fill this role.
10. Set into motion an independent review of the 'watch-list' and abuses of power endemic to the complaint-based system.
11. Replace the complaint-based system with a peace-building restorative system that fosters connection and collaboration among neighbours and community members. Rather than hiring enforcement staff, hire staff with 'peace-building' skillsets. Bring in good processes to help Salt Spring Island residents resolve neighbour complaints, steward land in ecologically responsible ways, and obtain permits for non-conforming land uses.
12. Honour reconciliation, the *Douglas Treaties*, justice and fairness, and the *Canadian Constitution*. The details of what doing this looks like necessarily involve open dialogue and communication with the First Nations who have rights to Salt Spring Island.

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