

To: North Pender Island Trust Committee
From: Agriculture Advisory Planning Commission
Date: January 4, 2021
Subject: Preliminary Report for the Land Use Bylaw Review Process

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Land Use Bylaw Review – Agriculture

1 Summary of Recommendations

1.1 Preamble

The North Pender Island Trust Bylaws (LUB) create barriers to agriculture and food security on the island. Many of the bylaws are inconsistent with the North Pender Official Community Plan (OCP), and undermine efforts directed to food security, small scale farm viability, ecological agricultural practices, and the rural character of much of the Island outside Magic Lake.

The Agricultural Advisory Planning Commission (Committee or AAPC) received the following instructions:

The focus of the AAPC's review is strictly to make recommendations on agriculture amendments to the North Pender Land Use Bylaw. Substantive policy amendments or amendments to the North Pender Official Community Plan is [sic] out of scope for this project.

The AAPC has reviewed the existing bylaws from an agricultural perspective, and in the context of the Agricultural Land Commission Act (ALC Act) and the Agricultural Land Use Regulation (ALUR), for the purpose of making preliminary comments and recommendations concerning options suggested by Island Trust Staff (Staff) in regards to potential bylaw amendments.

Frankly, the restrictions placed on the Committee are inappropriate for the matter at hand – sustaining agriculture on an Island subject to considerable urban / residential pressure. This is a matter that requires thoughtful ongoing attention by farmers and agriculturalists to develop a model that will work economically and environmentally. Examining bylaws with an eye to finetuning existing regulations, making them more prescriptive and restrictive in the process, is incomplete without review of the OCP, which has been placed “out of scope”.

The OCP, and the Bylaws, should be living, adaptive guides to land use. They should be continuously reviewed not with an eye to further restricting land use but rather to finding ways to enhance agriculture on the Island. The Islands Trust was set up as a governance response and regulatory strategy to ensure that a development such as Magic Lake not be repeated. It is more than a little ironic that the whole of Pender Island be made subordinate to urban planning practices designed to meet the land use planning needs of the Magic Lake area. This undermines the *raison d'être* of the Islands Trust.

The Committee has reviewed the OCP, the LUB, the ALC Act, and the ALUR with specific attention paid to the “Regulatory Options” put forward by Staff in the Agricultural Land Use Review – Discussion Paper, July 2020. The land-use planning and regulatory process must recognize that agriculture can, and does, occur in areas outside the current Agricultural Zone. While the ALUR and ALC Act provide regulatory precedence on Agricultural Land Reserve (ALR) land, they are not a complete template for regulation of agriculture outside the ALR.

Despite the Committee's misgivings, we make the following preliminary recommendations at this, the outset of the LUB review process. We reserve the right to provide additional recommendations and to adapt and amend these as Staff and Local Trust Committee intentions become clearer.

1.2 Preliminary Recommendations

1. Divide the Rural (R) and Rural Residential (RR) zones into two zones each:
 - Rural – divide into Rural / Magic Lake and Rural / General
 - Rural Residential – divide into RR / Magic Lake and RR/ General.
2. Agriculture be permitted, encouraged and promoted in all zones, including ALR classified land, and all farmers have the rights provided under The Farm Practices Protection Act.
3. Agriculture involves land clearing and water, wildlife, and vegetation management. Any bylaw revisions limiting or restricting activities in these areas must not inadvertently or intentionally restrict agriculture, and they should not inhibit or restrict environmentally responsible farming practices.
4. "Farm Status" should be defined pursuant to the Assessment Act (BC) as administered by the BC Assessment Authority.
5. The building of 2nd residences on ALR land be in accordance with the ALUR subject to our recommendations below on farm worker housing and agri-tourism accommodation. Existing regulations allowing for "cottages" on non- ALR land in the RR, R and Ag zones should be sustained.
6. The use of Manufactured Homes or mobile homes should not be prohibited, and rather should be encouraged as a means increase the stock of affordable housing on Pender as well as provide options for farm worker accommodation. Manufactured homes should be defined in the LUB more broadly than "mobile home", and should include all forms of housing built offsite and moved to a site.
7. The LUB should permit temporary and permanent farm worker housing on farms having Farm Status that demonstrate a need for farm workers. The ALC and ALUR provide farm worker housing regulations for large scale commercial farms that are not directly suitable for the scale of farm operations found on Pender.
8. The ALUR standards setting a maximum of 500 m² size for residential homes on ALR land is an appropriate standard for the LUB.
9. The existing lot coverage requirements that buildings and structures not exceed 35%, plus an additional 40 percent for commercial greenhouses only, is an appropriate standard for AG zoned properties when lot coverage, other than for a principal residence, is for agricultural purposes.

10. Agri-tourism be defined consistent with the ALUR, and be applicable on all farms having Farm Status. The conditions provided by the ALUR (Sec 33) be adopted for agri-tourist accommodation on Pender, including:
 - The accommodation be on agricultural land that is classified as a farm under the Assessment Act, and that it be secondary to the principal activity on the property – farming.
 - The total developed area used to provide the accommodation be <5% lot coverage,
 - Subject to lot size, the accommodation be limited to 10 sleeping units, where sleeping units are defined as a bedroom located in a residence or cabin, and including a vehicle, trailer, tent or other structure.
 - Being available for seasonal or short-term use only.

11. The ALUR limits “Home Occupation”, referred to as “Home Business” and “Home Industry” in the LUB, to the use of an area of 100 m2 in a dwelling or accessory building on ALR land. For non-farm businesses requiring >100 m2, approval of a non-farm use of ALR land is required. These standards should be adopted for ALR land on Pender. The Committee has not reviewed Trust proposals of intent for home industry more broadly, and will comment when these intentions are made clear.

12. Cannabis production is a farm use under the ALUR and cannot, therefore, be prohibited on ALR land. The Staff recommendation to limit building size for indoor cannabis production on Ag and Rural zoned land is undefined with no apparent consideration for lot size or economic viability. Therefore, the Committee cannot make an informed comment at this stage of the LUB review process but does question the intent of imposing size limitations.

13. The ALUR definition of Farm Retail Sales (below) be adopted.

“farm retail sales” means the retail sale to the public of tangible farm products grown or raised on a farm or association to which the owner of the farm belongs, from that farm or farms and may include the sale of non-farm products as permitted by the Use Regulation

14. Farm Retail Sales be a permitted use for all farms with Farm Status in all zones where agriculture is a permitted use with similar conditions as prescribed by the Agricultural Land Use Regulation for ALR land.

15. Farm retail sale facility size limitations should be tied to lot size with a maximum of 300 m2 being the limit allowed by the ALUR.

16. Farm Retail Sales should specifically include “association” sales where a cooperative marketing agreement has been established by a group of producers, and “association” be defined as *an association incorporated or continued under this Act or a former Act, and includes a housing cooperative and a community service cooperative;* (see Cooperative Association Act SBC 1999 Chapter 28).

1.3 Minor and Technical Amendments

17. Landscape Screening and Landscape Strip provisions
 - Where landscape screens or strips are called for, they should be diverse plantings of native species, be maintained free of invasive species, and promote pollinator and beneficial insect and bird populations.
 - Landscape screens should not be a requirement in the Ag zone. Landscape screens currently only relate to commercial greenhouses (which are undefined) in the Ag zone.
 - Landscape Strips have the potential to materially impact agriculture in the RR zone (lots >2.4ha) and R zone (lots >8ha) where they could take up to 5% of the lot area out of production, and should not be required where productive agricultural land would be taken out of production.
18. Renewable Energy - Renewable energy installation should be encouraged on agricultural properties.
19. Forestry and Agriculture buildings – by laws associated with agricultural buildings on ALR land should be guided by the ALC “Guide for Bylaw Development” suggesting maximum height restriction of 15m, and for silos and grain elevation systems the maximum height should be 46m.
20. Prohibited Uses –
 - Shipping Containers can be excellent storage, transport and potentially growing facilities on farms independent of residency. They should not be prohibited, and in fact should be encouraged.
 - Pit toilets should not be prohibited on farms.
21. Technical Amendments –
 - Bylaw officer entry onto a farm premises without prior notice and reasonable grounds should not be permitted. There are health, biosecurity, liability and safety considerations on farms and rural properties. Additionally, all entries arising from complaints should be disclosed to the property owner, including the nature and source(s) identity of the complaint, prior to arranging entry. Anonymous complaints should not be investigated.

1.4 Soil Removal

22. The ALUR requirements for soil removal / placement for agriculture on ALR land be adopted for all land capable of supporting agricultural plant growth whether in the AG zone.
23. The ALUR regulations for soil removal / placement be supplemented by the following requirements:
 - If soil is removed, it be placed where it will be available for future agricultural use,
 - Authorization for removal or placement be approved administratively by the IT Staff,
 - Applications specifically not require 3rd party, professional consulting reports in cases involving less than [250 m³/ha].

2 Agriculture on Pender

2.1 AAPC – Terms of Reference

The LTC gave direction to staff to advertise for a special Agricultural Advisory Planning Committee (AAPC) in order to advise them on potential amendments to agricultural zoning regulations.

The focus of the AAPC's review is strictly to make recommendations on agriculture amendments to the North Pender Land Use Bylaw. Substantive policy amendments or amendments to the North Pender Official Community Plan is out of scope for this project. The AAPC is to complete its review and provide a report outlining its recommendations by November 27, 2020.¹ The submission date was subsequently extended to January 4th, 2021.

2.2 North Pender – Two Distinct Communities

2.2.1 Magic Lake – A Distinct Village

There are significant differences between the Magic Lake and non-Magic Lake areas of Pender Island. The Magic Lake Rural Residential zone is densely subdivided with small lots, generally < 0.5 ha, on a relatively small portion of the Island. It is served by community water and sewerage systems and has an interconnected network of roads and laneways.

Magic Lake is really a village that has placed its support services outside the village boundaries. Commercial and Industrial activity has been largely prohibited in Magic Lake although the majority of consumption of these activities is in Village. The effect of this is to transfer the impact of these activities away from the village and on to property owners outside Magic Lake.

Agriculture occurs on Rural (R), Rural Residential (RR) and Agriculture (AG) zoned properties outside Magic Lake. The RR zone, which covers most of Magic Lake also extends to other areas of Pender. To the extent agriculture is restricted in the RR zone it will have a greater impact on the generally larger RR properties outside Magic Lake. There are also discrepancies in the RR zone. For instance, lots along the west side of Bedwell Harbour Rd across from Short Road are zoned Rural (R) despite these being smaller lots with higher density than those zoned RR along Port Washington Rd.

2.2.2 Rural Character

The term “rural” or “rural character” is used frequently in the OCP and Bylaws. There is a definition of rural character at the end of the OCP, and there is no definition of rural or rural character in the LUB. Below are several references to rural character from the OCP.

¹ Project Background – AAPC Memo, dated August 27, 2020 from Kim Stockdill, Island Planner to the North Pender Special Agriculture Advisory Planning Commission.

- *Rural Character – a pattern of land uses in which open space, the natural landscape and agriculture predominate over the built environment.*²
- *North Pender Island is predominantly rural in character and the goals, objectives and policies of this plan support the retention of that character. Preserving a healthy community involves balancing environmental, social and economic sustainability.*³
- *Active agriculture and working forests remain a crucial component of the rural landscape and economy, and the LTC is committed to collaborating with landowners, farmers and provincial bodies to preserve and support these activities.*⁴
- *To encourage a housing pattern that is appropriate to the rural character of the Island.*⁵
- *To preserve the opportunity for a rural lifestyle.*⁶
- *Rural lands contribute to the island’s working landscape, providing resources such as agriculture and forestry, and also play a major role in providing the community’s rural setting. Rural lands also may contain environmentally sensitive areas and habitat for at-risk species. By virtue of their size and composition, rural lands play a key role in water catchment, aquifer recharge and providing essential water to the island.*⁷
- *To retain a rural appearance through the preservation of agricultural lands, ecological reserves, parks and natural areas.*⁸

Rural Character is defined generally in the OCP, and the goals, objectives and policies, taken together, provide a broader definition of rural. This definition is, however, open to interpretation which will be, in part, based on decision makers’ balancing the interests of economic, environmental and social forces in the pursuit of sustainability.

2.2.3 Recommendation

1. The Committee recommends the Trust divide the Rural (R) and Rural Residential (RR) zones into two zones each:
 - Rural – divide into Rural / Magic Lake and Rural / General
 - Rural Residential – divide into RR / Magic Lake and RR/ General.

2.2.4 Rationale

² North Pender Island Official Community Plan Bylaw No. 171, 2007 – Interpretation, Part 7.7 (4), P109.

³ OCP - P8

⁴ OCP - P9

⁵ OCP – Residential Land Uses – Residential Objectives, Part 2.1 (1)

⁶ OCP – Rural Residential Land Use Objectives – P17 - Part 2.1.1 (1)

⁷ OCP – Rural Land Use – Background – Part 2.1.2 (1) – P20.

⁸ OCP - Conservation Areas, ... Background – Part 2.6 (1) – P45.

Magic Lake is distinct from the rest of the Island by virtue of population density, infrastructure and environmental impact caused by the large number of small lots in a concentrated area. While there are several small lot areas elsewhere on Pender (eg Trincomali, Hope Bay, Port Washington) these are quite different than Magic Lake. In the case of Hope Bay and Port Washington they reflect small communities which once had their own services (i.e. store, dock) and have developed over a much longer time than Magic Lake. Notably, they do not have community water or sewerage systems.

2.3 Agriculture on Pender

2.3.1 Islands Trust Policy⁹

The Islands Trust Policy Statement includes the following policies in regards to Agriculture.

POLICIES FOR STEWARDSHIP OF RESOURCES

4.1 Agricultural Land - Commitments of Trust Council

- *4.1.1 Trust Council recognizes that agriculture is a traditional and valuable activity in the Trust Area.*
- *4.1.2 Trust Council shall consult with the Ministry of Agriculture, Fisheries and Food and the British Columbia Land Reserve Commission to request that agriculture policies applied to the Trust Area are appropriate to the nature of agriculture within the Trust Area, including, but not limited to, the smaller island scale of agricultural activities.*
- *4.1.3 It is Trust Council's policy to encourage agricultural management practices that are compatible with sustaining wildlife habitat.*
- *4.1.4 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the identification and preservation of agricultural land for current and future use.*
- *4.1.5 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the preservation, protection and encouragement of farming, the sustainability of farming, and the relationship of farming to other land uses.*
- *4.1.6 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the use of adjacent properties to minimize any adverse affects on agricultural land.*
- *4.1.7 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the design of road systems and servicing corridors to avoid agricultural lands unless the need for roads outweighs agricultural considerations, in which case appropriate mitigation measures shall be required to derive a net benefit to agriculture.*
- *4.1.8 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address land uses and activities that support the economic viability of farms without compromising the agriculture capability of agricultural land.*
- *4.1.9 Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the use of Crown lands for agricultural leases.*

⁹ <http://www.islandstrust.bc.ca/media/342659/01orgpolstatement.pdf>

- 4.1.10 Trust Council encourages the Ministry of Transportation to ensure that, where a road must sever agricultural land to provide access to lands beyond, the road is built to the minimum standard necessary to service that land.
- 4.1.11 Trust Council encourages the British Columbia Land Reserve Commission to approve applications from property owners for inclusion of their land with potential for agriculture in the Provincial Agricultural Land Reserve.
- 4.1.12 Trust Council encourages the Provincial government and the British Columbia Assessment Authority to:
 - retain a separate farm class to provide significant property tax incentives;
 - ensure that the threshold for farm income necessary for farm class status is appropriate to agriculture within the Trust Area; and
 - acknowledge that the total land area subject to the farm class may include land left uncultivated.

2.3.2 Excerpt from OCP

The Agricultural designation encompasses lands within the Agricultural Land Reserve (ALR) and includes lands where soil conditions and topography have created areas suitable for agriculture. Agricultural land may be used for growing, rearing, producing and harvesting agricultural products, including trees, and the processing of primary agricultural products harvested, reared or produced locally, and the repair of farm machinery and implements used in local farming. As of 2005, there were 358 hectares (886 acres) of land on North Pender in the Agricultural designation. According to the 2001 census there were 29 farms on North Pender, with an average area of 26 hectares (65 acres); much of the land used for farming is not in the ALR or Agricultural land use designation.

Farming has traditionally been an important activity on North Pender Island. Today, many of the original large farms have been subdivided into smaller parcels which are still viable for agriculture. The preservation, protection and encouragement of farming, the sustainability of farming, and the relationship of farming to other land uses shall be a priority in land use decisions.¹⁰

Many references to agriculture in the Islands Trust Policy Statement and OCP are aspirational in intent yet act to materially constrain agriculture in application. The “*preservation, protection and encouragement (and) the sustainability of farming*” runs headlong into “*The object of the trust is to preserve and protect the trust area and its unique amenities and environment for the benefit of the residents of the trust area and of British Columbia generally*”.¹¹ Preserve and protect, in some interpretations, would discourage rather than encourage agriculture. It is important that the Local Trust Committee understand this contradiction.

Agriculture on Pender is, by virtue of a limited land base, soil capability, and challenging economics, pursued as a small scale, cottage industry where income from farming and food production supplements other sources of income or financial support for the farmer. Compared to larger, more developed agricultural regions, production costs are higher due to:

¹⁰ <http://www.islandstrust.bc.ca/media/346950/ocp-bylaw-171--consolidated-dec-10-2018.pdf>

¹¹ https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/96239_01#ScheduleB

- logistics to get supplies and services to the Island,
- small diverse operations with limited scale,
- lack of availability of reliable farm labour,
- lack of support and post-farm gate infrastructure, and
- logistics of accessing the market.

The local market is small. Many potential consumers on Pender must, by necessity, shop for the lowest possible cost in their food supplies. Local food will not be less expensive than supplies bought from the mainstream grocers, although they are likely to be fresher, more nutritious, and free of additives when compared with food from mainstream, commercial farms. While most current farmers can sell all they produce locally, it is pretty easy for one farmer to flood the local market during the growing season if they focus on producing one crop really well and in marketable quantities.

The infrastructure on Pender is limited. The agricultural land is, for the most part, not farmed intensively with a view to local food security, nor is it generally owned by farmers. Where the land is farmed the operations tend to be limited in scope and scale. The ability of the existing farm operations to supply even a fraction of our community's food needs is small.

Yet potential exists. New forms of organizing food production are being envisioned and tested and ways are being found for small landholders to work together cooperatively. Technology is available for advancing small scale local production. For instance, intensive plant production in environmentally controlled structures (eg converted Seacans (shipping containers)), small scale mobile abattoirs, pilot plant scale processing facilities and composting systems for organic matter produced in the community are all readily available today. These are important infrastructure components of a sustainable and growing local food system.

However, it seems clear that installation of these facilities could encounter resistance in the community or might not pass the hurdles already enshrined in the OCP and Bylaws – the waste management issue is a case in point. The requirements imposed by the existing bylaws, including the necessity to apply to the Trust for a variance for approval to proceed, and the requirement to obtain 3rd party consulting reports for most applications, will push most projects from being marginally economic to being discouragingly difficult and financially impossible for local food producers.

More insidiously, community and public discussions concerning land use issues and the Trust often devolve into a Magic Lake vs the rest of Pender scenario. We are witnessing the tyranny of the minority on Pender. A relatively small number of vocal dissidents and / or activists, often not land owners themselves, drive the agenda while the majority shies away from any public involvement due to the confrontational approaches and regulatory straightjacketing that have become endemic in the Trust process.

In this report the AAPC has focused on the proposed bylaw amendments developed by Staff for the Agricultural zone as set down in the North Pender Island Agricultural Discussion Paper, July 2020. The issues we have outlined above go well beyond simple bylaw fine-tuning. Many go to the core of how agriculture and food production needs to evolve on a small island if farming is to be vibrant and sustaining. Simply making a few technical amendments to the bylaws is entirely insufficient for what is

really needed – a review of the OCP and Bylaws to ensure agriculture is not merely tolerated under the “preserve and protect” mandate, but is actually promoted.

2.3.3 Agriculture in All Zones

2. The Committee recommends Agriculture be permitted, encouraged and promoted in all zones, including ALR classified land, and all farmers have the rights provided under The Farm Practices Protection Act which states that a *“farm operations must*
 - a) *be conducted in accordance with normal farm practices,*
 - b) *be conducted on, in or over land*
 - a) *that is in the agricultural land reserved,*
 - b) *on which, under the Local Government Act, farm use is allowed, ...”* (Part 2 (2) – Farm Practices Protection Act).¹²

2.4 Considerations Related to Agriculture

Land clearing, water management, wildlife management and native vegetation reservoirs are important for agriculture, and they must be considerations in land use planning and the IT bylaws insofar as they relate to agriculture.

2.4.1 Land Clearing

Farming generally occurs on land that has been cleared and drained - the land was once a forest, floodplain, grassland or wetland. Some land capable of being farmed may currently be treed and poorly drained, the result of abandonment after previous farming or logging. The 2nd growth forest could be categorized as early stage succession (mostly deciduous) where drainage has become impeded over time. Left alone it may revert to a mixed Douglas fir / red cedar forest, or it can be cleared and drained to provide crop land. To sustain and increase the inventory of crop land on Pender, land clearing and drainage are essential agricultural practices.

2.4.2 Water Management

The management of water through rainwater catchment, water usage, and wastewater treatment is important to the community, and to farmers. Farmers collect seasonal rains to provide irrigation water during the summer, and drain land to provide improved soil structure and fertility. From a planning perspective, it is also reasonable to plan for on-land aquaculture which would require adequate water capture and usage planning to ensure success. There are a number of public policy and regulatory initiatives associated with water, and it is important that agriculture be thoughtfully considered in the development of any new bylaws related to water management on Pender.

2.4.3 Wildlife Management

¹² https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96131_01

The excessive deer population on Pender is an impediment to agriculture on the Island. Farmers must provide substantial fencing to prevent the intrusion of deer (and potentially elk) onto cropped areas. More broadly, the forest is not regenerating in part due to seedling predation by deer. This is an area that the Trust needs to urgently address if there is to be any hope of success for agriculture or the larger coastal Douglas fir zone.

2.4.4 Native Vegetation

Native plant species in a diverse planting provide important habitat for pollinators and diverse insect and bird populations necessary for sustainable agriculture. Establishing a band or strip of natural vegetation along all stream sides, with fencing to restrict access by livestock where necessary, is a practice found in other jurisdictions related to agricultural impact on the water systems.

Often abandoned or lightly used land capable of being farmed gets over-run with invasive weed species. Highway right-of-ways are recognized as major pathways for invasive plant spread and are often the starting points for infestations found in adjacent pastures, forests, and environmentally sensitive areas. In just the last few years, we have had the introduction and spread of new invasives – daphne/spurge-laurel, and tansy ragwort. Some weeds also come in with contaminated seeds, imported farm and landscaping inputs, and ornamental plants. The BC Weed Control Act¹³ (RSBC 1996, Chapter 487) designates a list of invasive plants as ‘noxious weeds’ at the regional and provincial level. Private property owners and government agencies are mandated by law to control these species that occur on their property or jurisdiction.

2.4.5 Recommendation

3. Agriculture involves land clearing and water, wildlife, and vegetation management. Any bylaw revisions limiting or restricting activities in these areas must not inadvertently or intentionally restrict agriculture, and they should not inhibit or restrict environmentally responsible farming practices.

¹³ https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96487_01

3 Definitions

IT Staff Comment - *Amend definition to harmonize with ALC definitions for “farm use” and allowable uses; Non-adhering uses – [provided] For information only / No action*

Most definitions are addressed in the relevant sections of this report.

3.1 Agriculture definitions

Farm Status – defined in the Assessment Act (BC), and further outlined by BC Assessment Authority.

What land is eligible for farm class?¹⁴

The Classification of Land as a Farm Regulation, B.C. Reg. 411/95, made under the Assessment Act, provides that, upon application, the following land may qualify for farm class:

- a) land used for a qualifying agricultural use;*
- b) land used for purposes that contribute to a qualifying agricultural use (e.g., irrigation, access to farm outbuildings, shelter belts);*
- c) land used for a farmer’s dwelling;*
- d) land in an agricultural land reserve (ALR) that is used for a retired farmer’s dwelling;*
- e) land used for the training and boarding of horses when operated in conjunction with horse rearing; and*
- f) in some cases, vacant land associated with a farm.*

Minimum income requirements are calculated as follows:

- a) \$10,000 on land less than .8 hectares (1.98 acres);*
- b) \$2,500 on land between .8 hectares (1.98 acres) and 4 hectares (10 acres);*
- c) on land larger than 4 hectares (10 acres), you must earn \$2,500 plus five per cent of the actual value of any farm land in excess of 4 hectares;*
- d) \$10,000, in order to qualify unused land where the area in production by the owner makes up at least 25 per cent of the portion of the parcel outside the ALR. Some sales of qualifying agricultural products must occur every year.*

AAPC Comment –

4. “Farm Status” should be defined pursuant to the Assessment Act (BC) as administered by the BC Assessment Authority.

¹⁴ [About farm land assessment \(bcassessment.ca\)](http://bcassessment.ca)

4 Second dwellings in ALR

IT Staff Comment - *Potential amendments to the AG zone for consistency with current or proposed ALC amendments*

4.1 OCP

4.1.1 OCP Goals – Section 2.1 – Residential Land Uses

- *To encourage a housing pattern that is appropriate to the rural character of the Island.*
- *To provide for a range of housing options that serve the needs of all residents and property owners of North Pender Island.*

4.2 ALR – Residences in the ALR – Land Use Reg s.31¹⁵

ALR Second dwelling regulations are [evolving] – see Policy Intentions Paper¹⁶ on “residential flexibility” in the ALR. Below are sections of ALC – Information Bulletin concerning residences in the ALR.

- *Generally, land in the ALR may have no more than one residence per parcel: ALCA, s. 20.1(1)(a), subject to certain grandfathering exceptions. In addition, the Commission may approve an application for an additional residence if necessary for farm use: ALCA, s. 25(1.1).*
- *The total floor area of a principal residence must be 500 m² or less in order to comply with the ALCA, though a local government may impose a lower size cap under their bylaws: ALCA, ss. 20.1(1)(b), 46.*
- *The use of land in the ALR for a secondary suite is permitted if there is one suite only, located in the principal residence: ALR Use Regulation, s. 31.*¹⁷

4.3 LUB

4.3.1 Definitions

- "cottage" *means a dwelling with a floor area of 56 m² or less.*

¹⁵ [Agricultural Land Reserve Use Regulation \(bclaws.ca\)](http://bclaws.ca)

¹⁶ Policy Intentions Paper - https://www2.gov.bc.ca/assets/gov/farming-natural-resources-and-industry/agriculture-and-seafood/agricultural-land-and-environment/agriculture-land-reserve/residential_flexibility_intentions_paper.pdf

¹⁷ [information_bulletin_5_residences_in_the_alr.pdf \(gov.bc.ca\)](http://information_bulletin_5_residences_in_the_alr.pdf)

- “mobile home” means a dwelling suitable for year-round occupancy, designed, constructed or manufactured to be moved from one place to another by being towed or carried and meets a minimum CSA-Z240 standard.”
- “secondary suites” means an accessory, self-contained dwelling unit, located within the principal dwelling on a lot and having a lessor floor area than the principal dwelling unit.

4.3.2 General Regulation – Cottages & Secondary Suites

Uses Permitted in any Zone

- uses, buildings and structures, which are accessory to a principal permitted use, building or structure on the same lot, including accessory horticulture; Section 3.1.1 (1)
- [Section] 3.18 Secondary Suites
 - 3.18.1 - There is a maximum of one secondary suite permitted per lot.
 - 3.18.2 - A secondary suite shall be entirely located within the building that contains the principal dwelling.
 - 3.18.3 - The maximum floor area for a secondary suite is 90m² (968 ft²) and it must not exceed 40 per cent of the floor area of the principal dwelling.
 - 3.18.4 - The entrance to a secondary suite from the exterior of the building must be separate from the entrance to the principal dwelling unit.
 - 3.18.5 - A secondary suite must not be subdivided from the principal dwelling unit under the Land Title Act or the Strata Property Act.
 - 3.18.6 - A secondary suite may not be used as a short term vacation rental or a bed and breakfast home business.

4.3.3 Zone Regulations – Cottages & Secondary Suites

- Rural Residential, Rural, and Agriculture Zones, Permitted Uses - on lots 1.2 hectares in area and larger, one cottage; Section 8.1.2.(b)

4.4 AAPC Comments

The ALC / ALUR prohibits a 2nd residential building on ALR land except where approval has been granted by the ALC. Secondary suites are permitted provided they are in the principal residence.

LUB Regulations allow for a 2nd residential building (cottage) on Rural Residential, Rural and AG zoned land. This is restricted, but not prohibited, on ALR land in the AG zone.

4.4.1 Recommendation

5. The building of 2nd residences on ALR land be in accordance with the ALUR subject to our recommendations below on farm worker housing and agri-tourism accommodation. Existing

regulations allowing for “cottages” on non- ALR land in the RR, R and Ag zones should be sustained.

4.4.2 Rationale

The ALC and ALUR regulations operate over the LUB. The ALUR includes important restrictions on what Local Government can, or cannot, prohibit on ALR land. The use of agricultural land for an additional residence is permitted if the additional residence meets all of the conditions set out in the ALUR.

It is important to protect limited land areas on Pender with soils capable of growing plants. Siting buildings on productive soil somewhat defeats the purpose of trying to maintain agricultural / food production capability for current and future generations.

5 Manufactured homes

IT Staff Comment - *Amend AG Zone zoning to prohibit manufactured homes after December 31, 2020 to harmonize with policy*¹⁸

5.1 OCP

5.1.1 Residential Land Use Objectives

- 1) *To encourage a housing pattern that is appropriate to the rural character of the Island.*
- 2) *To provide for a range of housing options that serve the needs of all residents and property owners of North Pender Island. (OCP - Section 2.1)*

5.1.2 Residential Land Use Policies

- *Accessory housing options such as secondary suites may be permitted as a way to increase the stock of rental housing without negatively impacting the rural sense of place or the carrying capacity of the island. (Section 2.1.H)*

5.2 ALR – Regulations

5.2.1 ALC – Policy L-25¹⁹

ALR Regulations allow for a manufactured home occupied by the owner or owner's family provided it is permitted before July 31, 2021.

The Use Regulation permits a manufactured home, in addition to a principal residence on a parcel in the Agricultural Land Reserve (ALR), as long as a building permit was issued before July 31, 2021. The manufactured home may only be occupied by the property owner or the property owner's immediate family.

The permitted maximum width of a manufactured home is 9 metres, sometimes referred to as a 'double-wide' manufactured home. If the manufactured home is no longer occupied by the property owner or the property owner's immediate family, it is not a permitted use in the ALR.

When the manufactured home is no longer lived in as permitted in the Use Regulation, it must either be:

- *demolished on-site and the debris removed;*
- *removed from the property; or,*
- *converted for non-residential use, such as an office, storage, etc.*

¹⁸ Table 5, p10. http://www.islandstrust.bc.ca/media/349818/agricultural-discussion-paper_2020-07-02.pdf

¹⁹ Manufactured Homes in the ALR – Policy L-25 https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/policies/alc_-_policy_l-25_-_manufactured_homes_in_the_alr.pdf

5.2.2 Ministry of Agriculture – Policy Intentions²⁰

In January 2020 the Ministry of Agriculture initiated a policy review and provided this guidance:

In order to support farmers and non-farmers living in the ALR, the Ministry is considering a change to regulations that will enable landowners in the ALR to have both a principal residence and a small secondary residence on their property, provided they have approval from their LG. In other words, there would be no required application to the ALC. Further, the province would not impose restrictions to require this secondary residence be a manufactured home, or be for an immediate family member, or be part of a farming plan.

5.3 LUB

Manufactured homes are not defined directly in LUB.

The LUB currently provides a “mobile home” definition. *“mobile home” means a dwelling suitable for year-round occupancy, designed, constructed or manufactured to be moved from one place to another by being towed or carried and meets a minimum CSA-Z240 standard.”*²¹

5.4 AAPC Comments

The use of manufactured homes (and 2nd dwellings) on ALR land is evolving. The ALC has issued policy intentions standing down on a prohibition of a secondary residence on ALR land, and they are considering removing all reference to “manufactured homes” or that the residence be occupied by immediate family.

5.4.1 Recommendation

6. The use of Manufactured Homes or mobile homes should not be prohibited, and rather should be encouraged as a means increase the stock of affordable housing on Pender as well as provide options for farm worker accommodation. Manufactured homes should be defined in the LUB more broadly than “mobile home”, and should include all forms of housing built offsite and moved to a site.

5.4.2 Rationale

Manufactured homes, in the broader definition than the one applied by the ALUR, as well as mobile homes (small homes, ...) are an option for property owners in building either a principal residence or a cottage. It is not reasonable to prohibit the use of manufactured homes.

²⁰ [residential flexibility intentions paper.pdf \(gov.bc.ca\)](#)

²¹ LUB – p4. <http://www.islandstrust.bc.ca/media/347801/np-lub-no-103-consolidation-june-3-2019.pdf>

Manufactured homes (modular or mobile), are also a preferred form of housing for those looking for an affordable option that meets the provincial building code as long as they are certified to a CSA Z240 standard.

6 Farm Worker Accommodation

IT Staff Comments - Consider amendment to AG zone to include use [of farm worker housing] with note "only by ALC Approval"

6.1 OCP

Agricultural Land Uses (Section 2.2 – OCP) include a policy statement regarding farm worker accommodation:

The Local Trust Committee may consider zoning regulations permitting additional accommodation for farm help, provided the accommodation is necessary for farm purposes, provides cooking and washing facilities, and is temporary in nature, limited in size, and consistent with the recommendations of the Regional Agrologist. Section 2.2.5 (Agricultural Policies)

6.2 ALC

The ALC Policy – Non-Adhering Residential Uses (NARU)²² – provides for housing for temporary and permanent farm workers.

6.2.1 Housing for Temporary Farm Workers

Employers who are approved for farm workers under the Canadian Seasonal Agricultural Worker Program ("SAWP") have already been assessed for farm business legitimacy and employment need as part of the SAWP application process. As such, the Agricultural Land Commission's ("ALC or "Commission") determination of a Non-Adhering Residential Use ("NARU") application for temporary farm worker housing ("TFWH") registered in the SAWP will be based on already determined legitimacy and need.

Appendix A - CEO Delegated Decision-Making Criterion 15:

Non-adhering residential use applications for temporary farm worker housing (TFWH) for workers registered in a federal temporary worker program that comply with the following criteria:

- i. The parcel where the TFWH is to be located is classified as 'farm' under the BC Assessment Act;*
- ii. The minimum size of the farm operation* on which the TFWH can be located is 4 ha;*
- iii. The maximum number of workers per farm operation* is limited to no more than:*
 - a. 130 workers for greenhouse, mushroom and berry/vegetable production*
 - b. 40 workers for all other commodities*
- iv. The workers are housed in an existing building or a manufactured home designed to be moved from one place to another;*
- v. Siting and placement of the TFWH minimizes the residential impacts on agricultural land taking into consideration topography, agricultural capability, access, and encourages the clustering of residential structures;*

²² [Agricultural Land Commission Act \(gov.bc.ca\)](http://gov.bc.ca)

- vi. *The registration of a restrictive covenant stating that the TFWH will only be used by temporary farm workers and that the owner will remove the TFWH and restore the land to agricultural use if the TFWH is vacant for two consecutive years; and*
- vii. *The receipt of an ILOC sufficient to remove the TFWH provided to the ALC upon approval of the NARU.*

6.2.2 Housing to Reflect Agricultural activity

In considering whether an additional residence is necessary for a farm use, the Commission will assess the scale and intensity of the farm operation. Where an applicant can demonstrate that the scale and intensity of the farm operation has exceeded the labour capacity of the owner/residents, the Commission may determine that an additional residence would be necessary to support the farm operation. ... See Appendix B.

Appendix B:

NARU applications should include an appropriate level of information to aid the Commission in its determination of whether the proposed use is appropriate. The following are examples of the information that may be submitted with an application:

- i. *Size (ha) of the current farming operation (including leased lands)*
- ii. *Type(s) and amount of commodity(ies) produced on the property*
- iii. *Description and number of current farm labourers with details of roles and responsibilities*
- iv. *Rationale for additional farm labour requirements based on the applicant's agricultural operation or commodity*
- v. *Proposed number of farm workers to reside in the additional residence or principal residence >500 m²*
- vi. *Proposed length of occupancy of farm workers (e.g. seasonal, temporary, year-round) a. Include date ranges, if applicable b. Include expected work hours (part-time or full-time)*
 - a. *Details of the proposed residence*
 - b. *Size of residence and total residential footprint*
 - c. *Foundation type*
 - d. *Site map*
- vii. *Associated infrastructure requirements*
- viii. *Farm plan or farm business plan (support future expansion, if applicable)*
- ix. *Professional reports (e.g. report by a professional agrologist, geotechnical report)*
- x. *Farm succession plan, if applicable*
- xi. *Expense receipts demonstrating equipment, start-up, or infrastructure costs*
- xii. *Lease agreements for other properties associated with the farm operation*
- xiii. *Farm quota records*

6.3 LUB

The LUB is silent on farm worker accommodation in all zones.

6.4 AAPC Comments

Land within the ALR, and by extension the AG zone, may be used to provide temporary and permanent farm worker housing under conditions set out in the ALUR under non-adhering residential use (NARU) policies. It is clear from the conditions stipulated that the ALC focused primarily on seasonal workers enrolled in the Seasonal Agricultural Worker Program (SAWP) which is highly unlikely to be used by farmers on Pender due to farm scale, nature of operations, and economics.

6.4.1 Recommendation

7. The LUB should permit temporary and permanent farm worker housing on farms having Farm Status that demonstrate a need for farm workers. The ALC and ALUR provide farm worker housing regulations for large scale commercial farms that are not directly suitable for the scale of farm operations found on Pender.

6.4.2 Rationale

Farms on Pender are smaller scale enterprises, often with operating models outside the commercial stream targeted by the ALUR. It is unlikely seasonal farm workers on Pender will be part of SAWP. Regulation must be thoughtful so as not to place “standards” on farm worker accommodation that effectively shuts out most, if not all, farms on Pender.

The criteria for constructing temporary worker housing as well as additional permanent residences on ALR farmland, if applied to Pender farms, will effectively prohibit the provision of farm worker housing.

There must be flexibility for farm worker housing including the use of dwellings, manufactured / mobile homes, vehicles, tents, or yurts that are appropriate for the economic scale of the farm.

7 Residential Home Maximum Floor Area

IT Staff Comments - Consider amendment to AG zone to introduce a max. size dwelling in ALR

The LUB Review is broader than agriculture and food, and the issue of maximum floor size is, for the most part, being addressed elsewhere.

7.1 ALC

The ALC and ALUR restrict residences to 500 m².

Generally, land in the ALR may have no more than one residence per parcel (ALCA, s. 20.1(1)(a)), subject to certain grandfathering exceptions. In addition, the Commission may approve an application for an additional residence if necessary for farm use: ALCA, s. 25(1.1).

The total floor area of a principal residence must be 500 m² or less in order to comply with the ALCA, though a local government may impose a lower size cap under their bylaws: ALCA, ss. 20.1(1)(b), 46.²³

Notwithstanding the maximum size limitation of 500 m², the ALC will take applications for a Non-adhering Residential Use (NARU) ... *for a principal residence larger than 500 m². However, the necessity for farm use of the proposed principal residence is still a relevant factor in determining whether a size over 500 m² should be allowed. For these applications, the Commission will generally consider whether the requested increase in total floor area would be supportive of the current farming operation and necessary for farm use. The Commission may also consider unique or extenuating circumstances that do not negatively impact the agricultural use of the property.²⁴*

7.2 LUB – Lot Coverage

The LUB does not define a maximum floor area for principal residences other than through lot coverage.

7.2.1 Definition

"lot coverage" means the total area of those portions of a lot that are covered by buildings and structures, divided by the area of the lot, and for this purpose the area of a lot that is covered by a building or structure is measured to the drip line of the roof."²⁵

7.2.2 Lot Coverage Limits

²³ https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/information-bulletins/information_bulletin_5_residences_in_the_alr.pdf

²⁴ https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/policies/alc_policy_1-26_-_non-adhering_residential_use_applications.pdf

²⁵ See Land Use Bylaw – Definitions, P3.

- Ag Zone - *Lot coverage for building or structures may not exceed 35 percent, plus an additional 40 percent for commercial greenhouses only.* (LUB 8.3.3 – P38)
- Rural Residential & Rural Zones - *Lot coverage may not exceed 25 percent.* (LUB 8.1.4, 8.2.4)

7.3 AAPC Comments

Gulf islands farm properties, as is the case elsewhere in the province, can become trophy properties with luxury homes that farmers will never be able to afford. Essentially farm land ownership shifts to a landed gentry, and puts legitimate farmers on that land in the position of being tenant farmers with no long term land tenure. Ultimately this can lead to the degradation or conversion of farm land to other purposes.

There is at least one current example of this on Pender. The Clam Bay farm property was issued a development permit to build a 700 m² residence and 300 m² cottage on a portion of the land zoned Rural (b). The value of these buildings, which appear to be on the same lot as the farm, which is split zoned and include Ag zoning, effectively places the whole property outside normal agricultural economics. Perhaps a subdivision of the Rural from the Ag zone should have been required as part of the development permit. Unfortunately, this agricultural property appears to have been removed from the agricultural economy of Pender.

7.3.1 Recommendation

8. The ALUR standards setting a maximum of 500 m² size for residential homes on ALR land is an appropriate standard for the LUB.
9. The existing lot coverage requirements that buildings and structures not exceed 35%, plus an additional 40 percent for commercial greenhouses only, is an appropriate standard for AG zoned properties when lot coverage, other than a principal residence is for agricultural purposes.

7.3.2 Rationale

Maximum floor area of principal residences is of less concern to the AAPC than siting buildings so as to protect agriculturally productive soils. Of greater concern is the trend of farm properties being purchased solely for residential purposes effectively taking the farm land out of active farming in the present and likely longer term. This is a longer term social and economic concern that likely cannot, and should not, be addressed by the Islands Trust.

8 Agri-tourism and Agri-tourist Accommodation

IT Staff Comments –

- *Amend definition and regulations in AG zone to harmonize with ALC Regulation by defining and restricting use to that associated with Agri-Tourism Activity*
- *Consider allowing accessory camping as an accessory use to Subsection 8.3.7 “Agri-tourist Accommodation” (OCP policy 2.2.21)*

8.1 OCP

Agriculture Policies - Section 2.2.20

Agri-tourist accommodation may be permitted as the equivalent of bed and breakfast accommodation²⁶. The Local Trust Committee may consider applications for rezoning or temporary use permit that would permit agri-tourist accommodation providing for more than 3 units, provided that:

- a) the use is accessory to working farm operations;*
- b) the use is on agriculturally designated land that is in the ALR; the application is consistent with ALC policies;*
- c) the working farm will continue in operation and will not be adversely affected;*
- d) potable water of sufficient quantity for both farming and non-farming use is available;*
- e) sewage disposal facilities are suitable;*
- f) on-site parking is adequate;*
- g) the impact of increased traffic on adjacent roadways is considered;*
- h) the environmental and climate change impact of the proposal is considered;*
- i) the impact on adjacent properties is addressed.*

Agriculture Policies – Section 2.2.21

The Local Trust Committee may consider temporary commercial use permit or rezoning applications to permit accessory campgrounds as agri-tourist accommodation. In addition to the criteria established in policies 2.2.20 and 2.1.2.7 (Rural Land Use), applications for accessory campgrounds in this designation shall not exceed 10 campsites, campsites and indoor units shall be considered equivalent for purposes of density and applications should comply with relevant Agricultural Land Commission policies.

8.2 ALC & ALUR

8.2.1 Agri-tourism Accommodation

The ALC Information Bulletin 06 – Accommodation for Tourists in the ALR²⁷ -

²⁶ Note – review B&B regulations which may prohibit providing access to cooking facilities.

²⁷ IB-06 – Accommodation for Tourists in ALR https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/information-bulletins/information_bulletin_6_accommodation_for_tourists_in_the_alr.pdf

The ALUR provides for agri-tourist accommodation at Part 4, Section 33)

- 33** (1) *In this section, "sleeping unit" means the following:*
- (a) *a bedroom or other area used for sleeping located in a residence, cabin or other structure;*
 - (b) *a vehicle, trailer, tent or other structure located on a campsite, field or other area.*
- (2) *The use of agricultural land for providing accommodation in relation to an agri-tourism activity is permitted if all of the following conditions are met:*
- (a) *the accommodation is located on agricultural land that is classified as a farm under the Assessment Act;*
 - (b) *the total developed area for structures, landscaping and access for the accommodation is less than 5% of any parcel;*
 - (c) *the accommodation is limited to 10 sleeping units in total, including bedrooms under section 34 [tourist accommodation];*
 - (d) *accommodation is provided on a seasonal or short-term basis only.*

8.2.2 AG Zone - Agri-Tourism Activity²⁸

The ALUR provides a list of permitted agri-tourism activities in the ALR – see Part 2 (12) (copied below).

Agri-tourism

- 12** (1) *The use of agricultural land for conducting an agri-tourism activity described in subsection (2) of this section is designated as a farm use and may not be prohibited as described in section 4 if all of the following conditions are met:*
- (a) *the activity is conducted on agricultural land that is classified as a farm under the Assessment Act;*
 - (b) *members of the public are ordinarily invited to the activity, whether or not a fee or other charge is payable;*
 - (c) *no permanent facilities are constructed or erected in connection with the activity.*
- (2) *The following are agri-tourism activities for the purposes of subsection (1):*
- (a) *an agricultural heritage exhibit displayed on the agricultural land;*
 - (b) *a tour of the agricultural land, an educational activity or demonstration in respect of all or part of the farm operation conducted on that agricultural land, and activities ancillary to any of these;*
 - (c) *cart, sleigh and tractor rides on the agricultural land;*
 - (d) *subject to section 9 [horse facilities], activities that promote or market livestock raised or kept on the agricultural land, whether or not the activity also involves livestock raised or kept elsewhere, including shows, cattle driving and petting zoos;*
 - (e) *dog trials held on the agricultural land;*

²⁸ Agri-tourism in the ALR – Policy – L-04 [https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/policies/alc - policy l-04 - agri-tourism activities.pdf](https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/policies/alc_-_policy_l-04_-_agri-tourism_activities.pdf)

- (f) harvest festivals and other seasonal events held on the agricultural land for the purpose of promoting or marketing farm products produced on that agricultural land;*
- (g) corn mazes prepared using corn produced on the agricultural land on which the activity is taking place.*

8.3 LUB

8.3.1 AG Zone

Agri-tourist accommodation is a permitted use in the AG zone.

(e) agri-tourist accommodation as an accessory use, subject to subsection 8.3.7, and as permitted by the Agricultural Land Commission. (LUB Section 8.3.2 (e))

Agri-tourist Accommodation is further defined at Section 8.3.7 as

- 1) agri-tourist accommodation must be accessory to a working farm operation;*
- 2) agri-tourist accommodation must be situated on land that is in the AG (Agricultural) zone and the Agricultural Land Reserve;*
- 3) agri-tourist accommodation must be situated in a permitted dwelling or cottage.*
- 4) agri-tourist accommodation may include associated uses such as meeting rooms and dining facilities for paying registered guests, but may not include a restaurant or any commercial or retail goods and services other than those permitted by the Agricultural (AG) Zone;*
- 5) the maximum number of guests that may be accommodated in any agri-tourist operation at any one time, either alone or in combination with a bed and breakfast, is not to exceed 6 guests and 3 bedrooms.*

8.3.2 Other Zones

The LUB is silent on agri-tourism activity or accommodation in all zones except the Ag zone.

8.3.3 Campgrounds & Camping Spaces

The LUB defines:

*"**campground**" means premises developed for the provision of commercial accommodation to campers in recreational vehicles and tents, for a maximum period of 21 consecutive days at any one camping space and 3 months in any calendar year in any one campground.*

*"**camping space**" means an area of a campground developed or laid out for the accommodation of a recreational vehicle or a maximum of two tents.*

8.4 AAPC Comments

IT Staff Comments –

- *Amend definition and regulations in AG zone to harmonize with ALC Regulation by defining and restricting use to that associated with Agri-Tourism Activity*
- *Consider allowing accessory camping as an accessory use to Subsection 8.3.7 “Agri-tourist Accommodation” (OCP policy 2.2.21)*

8.4.1 Recommendation

10. Agri-tourism be defined consistent with the ALUR, and be applicable on all farms having Farm Status. The conditions provided by the ALUR (Sec 33) be adopted for agri-tourist accommodation on Pender, including:
 - a. The accommodation be on agricultural land that is classified as a farm under the Assessment Act, and that it be secondary to the principal activity on the property – farming.
 - b. The total developed area used to provide the accommodation be <5% lot coverage,
 - c. Subject to lot size, the accommodation be limited to 10 sleeping units, where sleeping units are defined as a bedroom located in a residence or cabin, and including a vehicle, trailer, tent or other structure.
 - d. Being available for seasonal or short-term use only.

8.4.2 Rationale

The OCP considers agri-tourist accommodation as “the equivalent of bed and breakfast accommodation” and limits to 3 units providing for 6 guests. In the Agricultural policies section of the OCP, consideration is given to permitting up to 10 campsites on agricultural land. There appears to be some inconsistency between the B&B and camping policies.

Agri-tourism is well defined in the ALUR which clearly requires the activity to be part of a working farm plan. However, due to the short seasonal nature of most agri-tourism activity (i.e. between Easter and Thanksgiving) limiting accommodation to B&B with 6 guests is too limiting. Expanding the limit to 10 sleeping units, whether in residences, cabins, or other structures including vehicles, trailers, yurts, or tents, provides reasonable flexibility for farmers to develop unique agri-tourist experiences attracting visitors and thereby supporting the sustainability of their farms.

9 Home Industry and Home Occupation Regulations

IT Staff Comments - Amend General Regulations (size and types) to be consistent with ALC for Home Business and Home Industry in ALR

9.1 OCP

Part 2.1.3 – Home Based Business and Home Industry

The OCP encourages home based business and home industry and direct that these be permitted uses subject to regulation.

9.1.1 OCP - Home Based Business Policies (Part 2.1.3)

- *2.1.3.1 Home Based Business shall be permitted as secondary to a principal residential use only.*
- *2.1.3.2 Home Based Business shall not cause significant adverse impacts to adjacent properties or to the environmental quality of the island and shall be managed in cooperation with other agencies having jurisdiction through the regulation of screening, noise control, odour emission, traffic generation, water consumption and waste removal.*
- *2.1.3.3 Parking of vehicles for the benefit of a home based business shall not interfere with the use and enjoyment of public roads or neighbouring properties.*
- *2.1.3.4 Sales of craft items and other products made on the premises and the provision of services shall be permitted from the home. Products secondary to a service may also be sold from the home.*
- *2.1.3.5 Direct sale of products manufactured elsewhere and/or not secondary to a service shall not be permitted at the vendor's home.*

9.1.2 OCP - Home Industry Policies (Part 2.1.3)

- *2.1.3.6 Home Industry should be permitted as a use accessory to a principal residential use on lots 2 hectares (5 acres) or larger in the Rural and Agricultural designations.*
- *2.1.3.7 Regulations should ensure that the owner or operator of the Home Industry use is resident on the property.*
- *2.1.3.8 Home Industry uses should be limited to small scale manufacturing and/or processing.*
- *2.1.3.9 The regulation of Home Industry as an accessory use should address the following factors:*
 - o *a) parking b) number of employees on a lot c) number of Home Industries on a lot d) area used for a Home Industry e) direct sales f) noise g) setbacks and screening h) use of groundwater water i) septic disposal j) potential soil and water contamination k) lighting and signage l) waste disposal m) hours of operation.*

9.1.3 OCP - Agricultural Objectives

#8) *To support the economic viability of farms without compromising the agricultural land capability*

Otherwise silent on Home Industry and Home Occupation in Part 2.2 - Agricultural Land Uses

9.2 **ALC – see Policy Bulletin L-07**²⁹

- Policy L-07 states that for home (business) occupation use in the ALR,
 - o The max area allocated is 100 m2,
 - o There is no requirement that the parcel has farm classification.
 - o Home occupation must be accessory to the residential or farm use of the property.
 - o Does not include certain occupations that have 8 or more clients at one time i.e. daycare, preschool, group home, health or care facilities, restaurant, food, or beverage service facility.

9.2.1 Definition

“home occupation” means a use that is accessory to a residential use of a property where a resident carries on a profession or occupation that is clearly incidental to the primary use of the land and, for Commission purposes, is entirely contained within a dwelling or a building accessory to a dwelling except for such businesses that require a small area of outside space from time to time.

9.2.2 Excerpts from Policy Bulletin L-07 – Home Occupation

The Use Regulation allows as a non-farm use a home occupation use on a legal parcel in the Agricultural Land Reserve (“ALR”), up to a maximum area of 100 m2

The home occupation use must be accessory to the residential or farm use of the property. The local government bylaw may determine whether the use is confined to a dwelling, accessory building or both, or whether limited outside areas may be used. ...

For Agricultural Land Commission (“the Commission”) purposes a home occupation use does not include the following facilities, where more than 8 persons or clients are served or accommodated at one time: Day care facilities, Preschool or other educational facilities, Group homes, and Health and community care facilities. Home occupation use does not include a restaurant or other food or beverage service facility of any size.

9.3 **LUB**

9.3.1 Permitted Uses – Zones

- Rural Residential Zone – Home Business is permitted, Home Industry is not.
- Rural Zone – Home Business is permitted, and Home Industry is permitted on lots >2 ha.

²⁹ Home Occupation – Policy L-07 https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/policies/alc_-_policy_l-07_-_home_occupation_use.pdf

- Agriculture Zone – Home Business and Home Industry are permitted.

9.3.2 Definitions

"home business" means an accessory commercial use conducted on a residential lot and includes: short term vacation rentals, bed and breakfast and any profession, trade, business, artistic endeavour, where such activities are clearly accessory to a principal residential use."

"home industry" means an accessory industrial use conducted on residential premises.

9.3.3 Home Business Regulations (Part 3.5)

1. *Home businesses must be conducted entirely within a dwelling, cottage or permitted accessory building except that this restriction does not apply to the use of land for a pottery kiln or for outdoor activities associated with a kindergarten, nursery school, daycare or horticulture.*
2. *With the exception of short term vacation rentals, the combined floor areas of all home businesses on a lot must not exceed 65 m².*
3. *Except for the retail sale of goods produced, processed or repaired as part of a home business, and retail sale of articles directly related to a personal service provided as a home business, the following activities are not permitted: (1) retail or wholesale selling of any product or material; and (2) the serving of food or drink products on the premises as part of a home business except for bed and breakfast home business in which case a morning meal may be served to paying guests.*
4. *Not more than four persons per lot may be employed in any home business in addition to any residents of the premises in which such business is carried on, and at least one of the employees of a home business must live on the premises. In the case of a short term vacation rental, the operator or another person responsible for the vacation rental must live in a permitted dwelling or cottage on the property.*
5. *Except for one unilluminated nameplate not exceeding 0.6 m² in area in respect of each home business, no sign or other advertising matter may be exhibited or displayed on the premises where a home business is conducted, and no exterior artificial lighting may be installed or operated on the premises for a purpose associated with a home business.*
6. *No storage of materials, commodities or finished products is permitted in connection with the operation of a home business, other than within a permitted building in which case the total floor area used for such storage must not exceed 65 m².*
7. *In addition to the off-street parking spaces required for the dwelling, the parking spaces required by Part 6, and in no event fewer than two such additional spaces must be provided for patrons of a home business, but no such additional spaces are required if the nature of the home business is such that patrons do not call at the premises.*

8. *The following additional regulations apply to bed and breakfast home businesses: (1) not more than 6 guests may be accommodated at any one time; (2) not more than 3 bedrooms may be used to accommodate guests; (3) in addition to the 2 parking spaces required for the dwelling, one additional parking space for each bedroom used for bed and breakfast accommodation must be provided, despite Subsection 3.5.7; (4) no rental of equipment or material is permitted except to registered guests; and (5) a bed and breakfast home business must be conducted solely within a principal dwelling or cottage.*
9. *The operator of every home business must comply with all licensing, health and other applicable regulations of British Columbia and the Capital Regional District, including building, public health, noise, air quality, and water quality regulations.*
10. *No vehicle or equipment used by, or in the conduct of, a home business shall be stored in a required front yard setback or in a required side yard setback without being screened from view.*
11. *No more than one dwelling or one cottage may be used for a short term vacation rental on a lot.*

9.3.4 Home Industry (Part 3.6)

1. *The following uses and no others are permitted as home industries: (1) boat building and repair; (2) automobile repair; (3) hand-split shake manufacturing; (4) contractor yards providing service within the North Pender, South Pender, Saturna, Mayne, Galiano and Salt Spring Island local trust areas, provided that no more than 5 vehicles used in the home industry may be stored and no more than 930 m2 of lot area may be used for outdoor storage; (5) sawmilling of timber and other wood products; (6) cabinet manufacturing; (7) processing of raw materials of any kind harvested or extracted from within the North Pender, South Pender, Saturna, Mayne, Galiano or Salt Spring Island local trust area; (8) design, fabrication and assembly of automated packaging machinery and equipment; (9) welding, machining and fabrication.*
2. *Not more than one home industry may be conducted on a lot, the combined floor areas of all buildings and structures used in the home industry must not exceed 185 m2 , and areas used for outdoor storage in connection with the home industry must not exceed 930 m2 .*
3. *A home industry use: (1) is not permitted on any lot less than 2 hectares in area; (2) must be sited not less than 50 metres from any lot line and not less than 30 metres from any lake, wetland, stream or the sea; and (3) must be screened from view by a landscape screen from abutting lots and from public lands and public road rights-of-way. (4) may only be operated between the hours of 8 am to 8 pm, Monday through Friday. (5) must not generate any noise in the course of its operations that may be heard at any lot line.*
4. *Land within 50 metres of the natural boundary of any lake, wetland, stream, the sea or the Ecological (ECO) Zone shall not be used for any automobile repair, boat repair or boat building home industry.*

5. *Subsections 3.5.4, 3.5.5, 3.5.7, 3.5.9 and 3.5.10 apply to the conduct of a home industry and the words "home business" in those subsections must be read as "home industry".*

9.4 **AAPC Comments**

IT Staff Comments - Amend General Regulations (size and types) to be consistent with ALC for Home Business and Home Industry in ALR

9.4.1 Differences between ALR and LUB

Home occupation	ALUR	LUB
Permitted Use	Use is accessory, entirely within a dwelling or accessory building	Use is accessory, conducted entirely in a dwelling or accessory building
Max Area	< 100 m2 (1076 ft2)	< 65 m2 (700 ft2)
Activity Limits	No more than 8 clients at one time	No more than 4 persons employed, one must be a resident of the property
Uses prohibited	Day care, preschool, schools, group homes, health and community care facilities, restaurants or other food and beverage service	Retail or wholesale selling, serving food or drink products (except B&B) May not store materials or products except within a building <65 m2
Bed & Breakfast		Max 3 bedrooms, 6 guests, and must be entirely within a principal residence or cottage
Home Industry		
Usage	Not defined or categorized	Includes "processing of raw materials of any kind harvested or extracted from within North Pender"
Max Area	Not defined	< 185 m2 (1990 ft2) within a building <930 m2 (10,000 ft2) for outdoor storage
Limitations	Not defined	Lot must be >2 ha Siting >50 m from lot line, and >30 m from water bank Screening required Operations restricted to 0800 – 2000 Monday to Friday

		Noise must be contained
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9.4.2 Recommendation

- 11. The ALUR limits “Home Occupation”, referred to as “Home Business” and “Home Industry” in the LUB, to the use of an area of 100 m2 in a dwelling or accessory building on ALR land. For non-farm businesses requiring >100 m2, approval of a non-farm use of ALR land is required. These standards should be adopted for ALR land on Pender. The Committee has not reviewed Trust proposals of intent for home industry more broadly, and will comment when these intentions are made clear.

9.4.3 Rationale

The ALC makes no distinction between “home business” and “home industry” and provides limits for non-farm activity on ALR land. These limits do not apply to farm buildings used in the farming operation.

Many small-scale farms are not sustainable without the ability to supplement income with non-farm income which may be in the form of off-farm income (i.e. a job somewhere else) or the operation of a small business from the farm.

The operation of a small business from a farm site should be encouraged to assist the sustainability of small farm properties. If small business is prohibited or hobbled by local land use regulation, small properties capable of producing food will continue to be converted to residential use only further limiting local food production.

10 Regulate Cannabis Production

IT Staff Comments – Consider amending AG and Rural zones to limit building size for indoor cannabis production

10.1 OCP

Cannabis is not referenced in the OCP.

10.2 ALC / ALUR

10.2.1 ALUR – Cannabis - Section 8

8 (1) The use of agricultural land for producing cannabis lawfully may not be prohibited as described in section 4 if the cannabis is produced

(a) outdoors in a field, or

(b) inside a structure that, subject to subsection (2), has a base consisting entirely of soil.

8 (2) The use of agricultural land for producing cannabis lawfully may not be prohibited as described in section 4 if the cannabis is produced inside a structure that meets both of the following conditions:

(a) the structure was, before July 13, 2018,

(i) constructed for the purpose of growing crops inside it, including but not limited to producing cannabis lawfully, or

(ii) under construction for the purpose referred to in subparagraph (i), if that construction

(A) was being conducted in accordance with all applicable authorizations and enactments, and

(B) continues without interruption from the date it began until the date the structure is completed, other than work stoppages considered reasonable in the building industry;

(b) the structure has not been altered since July 13, 2018 to increase the size of its base or to change the material used as its base.

10.2.2 ALC – Information Bulletin 04 – Cannabis Production in the ALR³⁰

All forms of cannabis production are a farm use subject to limitations – see above.

10.3 LUB

Cannabis is not referenced in the LUB.

³⁰ Cannabis Information Bulletin 04 - https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/information-bulletins/information_bulletin_04_cannabis_production_in_the_alr.pdf

10.4 AAPC Comments

IT Staff Comments – *Consider amending AG and Rural zones to limit building size for indoor cannabis production*

10.4.1 Recommendation

12. Cannabis production is a farm use under the ALUR and cannot, therefore, be prohibited on ALR land. The Staff recommendation to limit building size for indoor cannabis production on Ag and Rural zoned land is undefined with no apparent consideration for lot size or economic viability. Therefore, the Committee cannot make an informed comment at this stage of the LUB review process but does question the intent of imposing size limitations.

10.4.2 Rationale

While cannabis production is recognized as a farm use, it is regulated by both Provincial and Federal Governments. The Committee does not believe the Local Trust should be placing size limits on facilities without a thorough review with consideration being given to farm size, sustainability and economics.

11 Farm Retail Sales Provisions

11.1 OCP Policies

OCP policies regarding farm retail sales outline that agriculture is encouraged on rural land, and the production and sale of farm products is permitted on agricultural land.

- Rural Land Use Policy # *2.1.2.7 - The sustainable agricultural use of rural land should be encouraged and regulations should not restrict or inhibit sustainable farming.*
- Agricultural Land Use Policy # *2.2.4 - Roadside stands, small scale marketing and processing, and agricultural education and research shall be permitted uses.*

11.2 Agricultural Land Use Regulation (ALUR)

Regulations under the ALUR refer only to land designated in the Agricultural Land Reserve. These Regulations do not apply outside the ALR which includes farm lands zoned Rural Residential and Rural on Pender.

Sales of farm products are permitted on ALR land, and cooperative agreements are contemplated as an avenue by which producers may go to market. This covers AG zone land, but not R or RR.

11.2.1 Farm Products – Part 2.11 ALUR

1. *In this section, "association" has the same meaning as in the Cooperative Association Act.*
2. *The use of agricultural land for storing, packing, preparing and processing farm products is designated as a farm use and may not be prohibited as described in section 4 if at least 50% of the farm product is*
 - (a) *produced either on that agricultural land or by an association to which the owner of the agricultural land belongs, or*
 - (b) *feed required for farm use on that agricultural land.*
3. *The use of agricultural land for conducting farm retail sales is designated as a farm use and may not be prohibited as described in section 4 if*
 - (a) *all of the farm products offered for sale are produced on that agricultural land, or*
 - (b) *the area used for all retail sales meets both of the following conditions:*
 - i. *the total area, both indoors and outdoors, does not exceed 300 m²;*
 - ii. *at least 50% of that area is limited to the sale of farm products produced either on that agricultural land or by an association to which the owner of the agricultural land belongs.*

11.2.2 Farm Retail Sales in the ALR³¹

- ***“farm retail sales”** means the retail sale to the public of tangible farm products grown or raised on a farm or association to which the owner of the farm belongs, from that farm or farms and may include the sale of non-farm products as permitted by the Use Regulation.*
- ***“association”** means an association as defined in the Cooperative Association Act which was incorporated for farm purposes.*

11.2.3 Definitions – Cooperative Association Act (SBC 1999 Chapter 28)

- ***“association”** means an association incorporated or continued under this Act or a former Act, and includes a housing cooperative and a community service cooperative; (see Cooperative Association Act SBC 1999 Chapter 28)*
- ***“cooperative marketing contract”** means a contract entered into by a person with an association to deliver to or sell through the association any thing caught, grown, made or produced by the person, or on the person's behalf, or in which the person has an interest, that person being one of a number of persons with whom the association has entered into contracts of a similar nature;*
- ***“producer”** means a person who has entered into a cooperative marketing contract with an association.*

11.3 Land Use Bylaw

11.3.1 General Regulations – Part 3.1 – Uses Permitted in any Zone

Road side sales are permitted in all zones provided the farm products sold are grown on site.

- *3.1 (3) road-side produce stands not exceeding 10 m² in floor area and used for the selling of farm products that are grown or reared on the land upon which the stand is located; (LUB – Part 3.1)*

Farm retail sales are permitted in any zone where agriculture is permitted – AG and Rural, but not RR – and with farm status, however farm retail sales are not a defined term.

- *3.1 (7) where agriculture is permitted in any zone, farm retail sales are permitted, providing the property has farm status under the BC. Assessment Act. (LUB Part 3.1)*

³¹ Retail Farm Sales – Policy I-02 - https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/policies/alc_-_policy_i-02_-_farm_retail_sales.pdf

11.4 AAPC Comments

IT Staff – *Limit max area to 300 m2.*

11.4.1 Recommendations

13. The definition of Farm Retail Sales in the ALUR be adopted.
14. Farm Retail Sales be a permitted use for all farms with Farm Status in all zones where agriculture is a permitted use with similar conditions as prescribed by the Agricultural Land Use Regulation for ALR land.
15. Farm retail sale facility size limitations should be tied to lot size with a maximum of 300 m2 being the limit allowed by the ALUR.
16. Farm Retail Sales should specifically include “association” sales where a cooperative marketing agreement has been established by a group of producers, and “association” be defined as *an association incorporated or continued under this Act or a former Act, and includes a housing cooperative and a community service cooperative*; (see Cooperative Association Act SBC 1999 Chapter 28).

11.4.2 Rationale

Presently, agriculture is not permitted in the RR zone, although it is permitted to have accessory horticulture, poultry, rabbits and livestock in this zone under certain conditions. It would seem that agriculture was contemplated but limited to certain plant and animal agriculture.

Small scale hydroponic vegetable and/or mushroom production units can be placed on small areas. For instance, technology exists today to produce a weekly supply of vegetable greens from a “Seacan”, otherwise known as shipping containers. Under current regulations on North Pender it seems unlikely such structures would be permitted. However, shipping containers may be an increasingly viable addition to the infrastructure of small scale farms that meets all sorts of other goals for the community.

Retail (roadside) sales in the RR zone are currently limited to 10 m2 and sale of produce from the property. This should be sustained and encouraged.

Farm retail sales are an important go to market strategy for many small-scale farmers, and it should be encouraged in all zones where agriculture is a permitted use. A channel to market is all some producers need to get them over a hump and on their way. But it is difficult on one’s own on a small acreage. Groups of 2 or more producers may find it helpful to their farms to market cooperatively. This should be encouraged in helping the agricultural community build sustainable channels to market. Envision, if you will, 3 or 4 small farm stores spread around Pender Island, each with 3 or 4 producers providing farm produce – raw and processed. While it is difficult to see the IT shutting this down, farmers need the certainty that their marketing avenue will not be shut down by an irritated or aggrieved minority having a bad day.

12 Minor & Technical Amendments

12.1 Landscape screening

IT Staff – *Review of effectiveness, intent, and practicality of existing regulations; consider potential amendments. Existing requirements are often unsuited for rural landscapes; ambiguity in regulations – screening, fencing and planting*

It is unclear what the IT staff report is focusing on beyond considering amendments, which are not defined, to address ambiguity in the regulations concerning screening, fencing and planting. Without knowing what amendments Staff feels are worthy of consideration, it is a bit like Where's Waldo.

17. Landscape Screening and Landscape Strip provisions,

- Where landscape screens or strips are called for, they should be diverse plantings of native species, be maintained free of invasive species, and promote pollinator and beneficial insect and bird populations.
- Landscape screens should not be a requirement in the Ag zone. Landscape screens currently only relate to commercial greenhouses (which are undefined) in the Ag zone.
- Landscape Strips have the potential to materially impact agriculture in the RR zone (lots >2.4ha) and R zone (lots >8ha) where they could take up to 5% of the lot area out of production, and should not be required where productive agricultural land would be taken out of production.

12.1.1 Section 3.13.1 Landscape Screening

Landscape screens are intended to provide complete and permanent visual barriers to the uses or structures behind the screen. They are to be provided by natural vegetation and / or fences, and they must be a minimum of 2.5 m in height.

Landscape screens are required in the Ag zone, to screen commercial greenhouses (an undefined term in the LUB), and in the Commercial, Industrial and Community Service zones to screen permitted activities and structures.

Landscape screening for agriculture should be optional – it could require double fencing to establish a landscape screen and provide an appetizing target for livestock and wildlife. They should only be required where there is a benefit to the farmer. There is an ALC document (1993) that describes a) how to establish and maintain landscape screens for agriculture, b) their benefits are to provide security, prevent trespassing and vandalism, and c) the practicality and usefulness of the screens. Some jurisdictions waive the requirement for screening in agricultural areas ie “these regulations do not apply to farming activities”.

Excerpts from LUB

Definition - *"landscape screen" means a visual barrier consisting of natural vegetation, trees, shrubs, fencing, or a combination of those elements, broken only by necessary access ways for pedestrians and vehicles and serving to screen land uses from abutting land and highways.*

General Regulations

- 1) *If this Bylaw requires landscape screening of outdoor storage areas or other uses or structures, the screening may be broken only by necessary access, and must be provided in the form of:*
 - a. *existing indigenous vegetation that provides a complete and permanent visual screen around the uses or structures; or*
 - b. *a fence or brick, masonry or stone wall at least 2.5 metres in height that provides a complete and permanent visual screen around the uses or structures; or*
 - c. *a row of drought tolerant evergreen plants that will attain a sufficient height and density to provide a complete and permanent visual screen around the uses or structures, planted and maintained continuously.*
- 2) *If this Bylaw requires landscape screening separating uses, the screening must be provided along the required lot lines, broken only by driveways or walkways necessary for access, in the form of:*
 - a. *existing indigenous vegetation that provides a complete and permanent visual screen between the uses being separated, to a width of at least 1.5 metres on lots less than 0.4 ha in area and to a width of at least 3 metres on lots equal to or greater than 0.4 ha in area; or*
 - b. *a fence or brick, masonry or stone wall at least 2.5 metres in height; or*
 - c. *a row of drought tolerant evergreen plants that will attain a sufficient height and density to screen the use or structure, planted and maintained continuously so as to provide a complete and permanent visual screen between the lot being screened and the adjacent lots.*

AG Zone Regulations 8.3.6 Landscape Screening

- 1) *Every commercial greenhouse must be screened from view by a landscape screen complying with article 3.13.1(1).*

Commercial Zone Regulations 8.4.7 Landscape Screening

- 1) *Every external storage area must be screened from view by a landscape screen complying with article 3.13.1(1).*
- 2) *Every commercial use must be screened from adjacent residential uses. The screening must be provided along lot lines abutting parcels zoned Rural Residential and Rural, complying with article 3.13.1(2).*

Industrial Zone Regulations 8.8.7 Landscape Screening

- 1) *Every external storage area and works yard must be screened from view by a landscape screen complying with article 3.13.1(1).*
- 2) *Every industrial use must be screened from adjacent residential, commercial and institutional uses. The screening must comply with article 3.13.1(2) and must be provided along all lot lines abutting the non-industrial uses.*

12.1.2 Section 3.13.2 - Landscape Strips

“Landscape strips” are required in the RR zone on lots >2.4 ha and in the R zone on lots greater than 8.0 ha. An area of land having a minimum width of 3 m must be provided on at least 2 lot boundaries, and

cannot include the back lot line. This means 5% of the lot area, along 2 side boundaries, must be reserved for natural vegetation.

Excerpts from LUB

Definition - "landscape strip" means natural vegetation, trees, shrubs, fencing, or a combination of those elements, broken only by necessary access ways for pedestrians and vehicles and serving to protect the natural environment and prevent hazardous conditions.

General Regulations – Section 3.13.2 Landscape Strips for Environmental Protection

(2) If this Bylaw requires a landscape strip to be provided, existing indigenous vegetation, at least 3 metres in width, adjacent to at least two of the lot lines, other than the rear lot line, must be retained as a landscape strip so as to provide environmental protection, broken only by driveways or walkways necessary for access and any clearing necessary for the construction and maintenance of fencing.

Rural Residential Zone Regulations *8.1.7 Landscape Strips for Environmental Protection*

(1) On lots 2.4 hectares or larger, every lot must have a landscape strip for environmental protection complying with subsection 3.13.2

Rural Zone Regulations *8.2.7 Landscape Strips for Environmental Protection*

(1) On lots 8 hectares or larger, every lot must have a landscape strip for environmental protection complying with subsection 3.13.2.

12.1.3 Section 3.17 - Fencing

General Regulations – Fencing

Fences shall be permitted in any zone and shall not exceed 3 metres in height within the required setback area.

It is unclear whether fences >3 m could be built outside the “required” setback area.

12.2 Home Industry Regulations

IT Staff – *harmonize regulations (lot coverage, setbacks), review list of uses and consider broader use categories, ensure regulations address mitigation of impacts, use should be manufacturing / processing, address parking of vehicles / equipment*

Section 10 reviews the “home industry” regulations purely from an agricultural perspective. The Committee has not reviewed Trust proposals of intent for home industry more broadly, and will comment when these intentions are made clear.

12.3 Subdivision Regulations

IT Staff – *amendments should be technical changes, update proof of potable water standards, consider harmonization with South Pender Regulations,*

AAPC – no comment until such time as the proposed changes are made clear by the Trust.

12.4 Renewable Energy

IT staff – *siting exemptions for solar panels and power sheds*

18. Renewable energy installation should be encouraged on agricultural properties.

12.5 Mandatory rainwater catchment systems

IT staff – *Non-potable water storage requirements can be implemented through zoning regulations. Priority areas may be identified following completion of the groundwater review project. Define scope and application of a regulation i.e. new principal dwelling and cottages on wells, review experiences on Galiano, Saturna, coordinate with Groundwater Sustainability project.*

12.6 Commercial Zoning Review

IT Staff - *Review use categories, extend general uses to site specific zones, consider rezoning the old Port Washington Store site*

12.7 Ferry Terminal

IT Staff - *Upland portion of ferry terminal should be zoned a community service zone. Technical amendment only, terminal upgrades are planned, any significant expansion of terminal should be given separate zoning*

12.8 Incorporate TUPs into Zoning

IT staff – *convert the TUPs for medicine beach drop-off, 3334 Port Washington (Braden), Rural lot behind Driftwood and Disc park shelter to permanent zoning.*

12.9 Community Park Zoning

IT Staff - *Consult with Parks Commission, consider amendments to permit shelters and storage buildings*

12.10 Forestry & Agriculture Buildings

It Staff – *agricultural buildings defined by use only, consider amendments to permit higher buildings on AG lots with larger setbacks. Rural zoning does not specifically allow for non-agricultural buildings that are accessory to a dwelling; minor amendments should be considered to address persistent interpretation issues*

Farm Buildings on ALR land are described as “Necessary Structures and ancillary services” in the ALUR at Section 5.³²

- 1) *Subject to any limits and conditions set out in this Part, the use of agricultural land to construct, maintain or operate any of the following is designated as a farm use and may not be prohibited as described in section 4:*
 - a. *a structure, other than a residential structure, that is necessary for a farm use;*
 - b. *a driveway or utility that is necessary for a farm use.*
- 2) *For greater certainty, subsection (1) (a) includes all of the following:*
 - a. *a greenhouse;*
 - b. *a structure for use in an intensive livestock operation or for mushroom production;*
 - c. *an aquaculture facility.*

ALC sets height limitations³³: Local governments are encouraged to exclude farm buildings from restrictions on height. Crop protection and support structures such as deer fencing, netting supports and trellises must be excluded from height requirements. If a local government wishes to restrict height of farm structures then the maximum should be no less than:

- | | |
|---|-----------|
| • Grain bins (including delivery equipment) | 46 meters |
| • Silos | 34 meters |
| • Combo silo and grain storage | 41 meters |
| • Principal livestock buildings | 15 meters |
| • All other agricultural buildings | 15 meters |

19. Forestry and Agriculture buildings – by laws associated with agricultural buildings on ALR land should be guided by the ALC “Guide for Bylaw Development” suggesting maximum height restriction of 15 m, and for silos and grain elevation systems the maximum height should be 46 m

12.11 Accessory Buildings

IT Staff – Permit one non-residential building on RR zoned lots prior to construction of dwelling, review other LUBs, should be minor and limited

³² [Agricultural Land Reserve Use Regulation \(gov.bc.ca\)](http://gov.bc.ca)

³³ From Guide for Bylaw Development in Farming Areas (2015), page 19 section 2.4.7

Some local governments allow shipping containers to be considered an “accessory building”

12.12 Prohibited uses

IT Staff – update to address shipping containers, pit toilets and uses identified in other bylaws.

3.2 Prohibited Uses³⁴

3.2.1 The following uses, buildings and structures are prohibited in every zone:

- (1) yacht clubs and marinas the use of which is restricted to members of a private club;*
- (2) disposal of any waste matter on land or in marine areas, except such waste matter as may lawfully be discharged pursuant to a permit under the Sewage Disposal Regulation or the Waste Management Act;*
- (3) the disposal or storage of hazardous or toxic waste, other than the temporary storage of such waste in the Recycling Facility (RF) Zone and the Industrial (I1) Zone, and for the purposes of this exception "temporary" means that not more than 6 months' accumulation of such waste may be stored;*
- (4) fur farming, except as permitted in the Agricultural Land Reserve by a person licensed under the Fur Farm Act; and*
- (5) the sale and rental of personal watercraft.*

3.2.2 Land within 50 metres of the natural boundary of any lake, wetland, stream, or the Ecological (ECO) Zone shall not be used for any automobile repair, commercial boat repair, or commercial boat building use.

AAPC Comment

It appears from the IT Staff comment that they may be considering prohibiting shipping containers and pit toilets. This is not agreed by the AAPC.

Shipping containers should be allowed for agriculture – for storage and production. They are not currently listed as prohibited. They are designed for storage and transport of goods. They are secure (theft resistant), weather resistant, rodent proof, structurally sound and designed to be stacked, and they are affordable. They are used in controlled environment plant production. They are easily moved. Some jurisdictions have reviewed their use and have allowed for ag zones with screening dependent on the location, but often screening is not required. They are also used in commercial and industrial zones. Some allow them in residential areas.

Pit toilets are allowed at BC Parks locations, and there are a variety of types – some allow composting. They could be allowed on larger properties and should not be prohibited.

20. Prohibited Uses

³⁴ Land Use Bylaw, Part 3 General Regulations, Section 3.2 Prohibited Uses.

- Shipping Containers can be excellent storage, transport and potentially growing equipment on farms. They should not be prohibited, and in fact should be encouraged.
- Pit toilets should not be prohibited on farms.

12.13 Use permitted in all zones

IT Staff – *general review for accuracy.*

3.1 Uses Permitted in Any Zone³⁵

3.1.1 Except where specifically prohibited, the following uses, building and structures are permitted in any zone except the Ecological (ECO) Zone:

- (1) uses, buildings and structures, which are accessory to a principal permitted use, building or structure on the same lot, including accessory horticulture;*
- (2) parks other than playgrounds and playing fields, hiking and bicycling paths, horse riding trails and ecological reserves;*
- (3) road-side produce stands not exceeding 10 m² in floor area and used for the selling of farm products that are grown or reared on the land upon which the stand is located;*
- (4) water supply facilities, including reservoirs, treatment plants, pumping stations and intake structures;*
- (5) electricity and telephone lines for the distribution of service to North or South Pender Island, and water and sewer service lines;*
- (6) the use of land under the Private Managed Forest Land Act for forest management activities related to timber production or harvesting; and*
- (7) where agriculture is permitted in any zone, farm retail sales are permitted, providing the property has farm status under the BC. Assessment Act.*

AAPC Comment

It is not clear what is unclear or inaccurate, so cannot substantively address this area.

Agriculture should be permitted, encouraged and promoted in all zones, including ALR classified land, and all farmers have the rights provided under The Farm Practices Protection Act. Road-side farm stands should be permitted to sell farm products from a single grower or a group of growers who are selling cooperatively.

12.14 Technical Amendments

IT Staff list –

- multiple family dwelling definition,

³⁵ LUB - Part 3 – General Regulations, Section 3.1 – Uses Permitted in Any Zone

- definition and permitting of pumphouse and electrical sheds,
- siting exemptions for utility lines,
- magic lake tennis courts,
- secondary suites in the RC zone,
- various mapping corrections,
- clarity that no residential use of RVs,
- review of lot coverage calculation, and
- amending enforcement allowing bylaw officers to enter a premises at reasonable times and not necessary with prior notice.

21. Technical Amendments –

- Bylaw officer entry onto a farm premises without prior notice and reasonable grounds should not be permitted. There are health, biosecurity, liability and safety considerations on farms and rural properties. Additionally, all entries arising from complaints should be disclosed to the property owner, including the nature and source(s) identity of the complaint, prior to arranging entry. Anonymous complaints should not be investigated.

The Farm Practices (Right to Farm) Act includes a complaint process adjudicated by the Farm Industry Review Board. All complaints must be transparent and due process is critical to the effective administration of the Act. In the case of local bylaw officers entering without notice, possibly on the basis of anonymous complaints, and providing the targeted property owner with no knowledge of the nature and source of complaint does not meet reasonable standards of due process and natural justice.

13 Soil Removal

The importance of soil to agriculture has led the Committee to comment on this “Other Opportunity”.

IT Staff Comments – ³⁶

Other Opportunities (Outside of Project Scope)

While the purpose of this discussion paper is to focus on amendments to the LUB, it is important to note that additional measure [sic] supporting agriculture on North Pender. These initiatives are out of scope of the current project.

c. Soil Removal Bylaw

OCP Policy 2.2.18 - The Local Trust Committee may consider the regulation of the placement and removal of fill to protect the natural environment, including significant waterfowl habitat, and where possible, to preserve, maintain, and enhance soil for agricultural purposes Consideration of creating a soil removal and placement bylaw would be a discrete project and should consider the effectiveness and other factors.

13.1 Definitions

13.1.1 Agricultural Land Commission Act³⁷

*“fill” means “any material brought onto agricultural land other than materials exempted by regulation”:
ALCA, s. 1*

“soil” includes the entire mantle of unconsolidated material above bedrock other than minerals as defined in the Mineral Tenure Act;

“soil or fill use”

(a) means the removal of soil from, or the placement of fill on, agricultural land, and

(b) does not include a farm use or a residential use;

13.2 ALC / ALUR

There are established regulations for the removal or placement of soil on ALR land. An excerpt from the ALUR regarding soil removal from ALR land is provided below.

13.2.1 Permitted Soil or Fill Uses (Section 35)

³⁶ See Page 14, Trust Staff Agricultural Discussion Paper, July 2020.

³⁷ [Agricultural Land Commission Act \(gov.bc.ca\)](http://gov.bc.ca) – see Definitions.

Subject to section 36 [prohibited fill], the removal of soil from, or the placement of fill on, agricultural land for one or more of the following purposes is permitted if all applicable conditions are met:

- a. constructing or maintaining a structure for farm use or for a principal residence if both of the following conditions are met:
 - i. the total area from which soil is removed or on which fill is placed is 1 000 m² or less;*
 - ii. if the area from which the soil is removed or on which the fill is placed is in a floodplain, the resulting elevation level is consistent with the minimum elevation level established under all applicable local government enactments and first nation government laws, if any, respecting flood protection in the floodplain;**
- b. constructing or maintaining berms for producing cranberries, if any fill placed on the area is
 - i. no higher than 2 m above the natural grade, and*
 - ii. no wider than 10 m at the base;**
- c. constructing or maintaining flood protection dikes, drainage, irrigation and livestock watering works for farm use, if the total annual volume of soil removed or fill placed is 320 m³/16 ha or less;*
- d. maintaining an existing farm road, if the total annual volume of soil removed or fill placed is equal to or less than the ratio of 50 m³ of soil or fill to 100 m of existing road length;*
- e. using clean sand as a top-dress for berry production, if the total annual volume of soil removed or fill placed is 100 m³/ha or less;*
- f. applying soil amendments, if incorporated into the soil to a depth of 30 cm or less;*
- g. conducting soil research and testing, if the soil removed or fill placed is limited to the amount necessary for the research or testing.*

13.2.2 Prohibited fill (Sec 36)

- 1. Except as permitted under subsection (2), the following must not be used as fill on agricultural land:
 - a. construction or demolition waste, including masonry rubble, concrete, cement, rebar, drywall and wood waste;*
 - b. asphalt;*
 - c. glass;*
 - d. synthetic polymers;*
 - e. treated wood;*
 - f. unchipped lumber.**
- 2. Recycled concrete aggregate and recycled asphalt pavement may be used as fill on agricultural land for the purpose of maintaining an existing farm road as described in section 35 (d).*
- 3. For the purposes of subsection (2), "recycled concrete aggregate" and "recycled asphalt pavement" mean concrete and asphalt that
 - a. have been recovered from a demolition process,*
 - b. have been crushed to a particle size
 - i. that may pass through a 1.905 cm screen, in the case of recycled concrete aggregate, or*
 - ii. of 1.905 cm³ or smaller, in the case of recycled asphalt pavement, and***

- c. *do not include, or are not combined with, metal, plastic, rubber, wood, glass, paper, organic materials or other contaminants.*

13.2.3 Applications for Soil and Fill Use

*Soil and Fill Use applications for fill placement under Section 20.3 of the Agricultural Land Commission Act (the "ALCA") may be approved where it can be demonstrated to the satisfaction of the Agricultural Land Commission (the "Commission") that:*³⁸

- a) *Fill placement will aid the farm/farming activity;*
- b) *Fill placement will not reduce the agricultural capability of the land, degrade soils, or limit the range of crops that can be grown on the subject property compared to the current crop suitability of the land;*
- c) *Applicants are able to demonstrate that fill placement is the only means available to address implementation of standard agricultural best practices;*
- d) *Fill placement will aid in the rehabilitation of agricultural lands severely impacted by past fill activities or other activities that have degraded agricultural land whether permitted or not permitted;*
- e) *Fill placement will not foul, obstruct, or impede the flow of any waterway;*
- f) *If fill is required for drainage improvements, the proposed fill height does not exceed more than 0.5 metres above the maximum height of the water table (as confirmed by a Qualified Registered Professional) which is equivalent to a Class 1 excess water limitation.*
- g) *The final finished grade of the subject property compliments adjacent landforms and provides for a smooth transition between the land contours and drainage channels on adjacent lands and the reclaimed area.*
- h) *Fill placement activities should not extend beyond two years. Extensions will not be granted beyond the expiry date indicated in a Commission decision letter unless applicants can demonstrate that there are extenuating circumstances for not being able to complete the project within the prescribed time period.*

13.3 **AAPC Comments**

13.3.1 Recommendation

- 22. The Committee recommends that the ALUR requirements for soil removal and / or placement for agriculture on ALR land be adopted for all land capable of supporting agricultural plant growth whether in the AG zone.
- 23. The ALUR regulations for soil removal / placement be supplemented by the following requirements:
 - a. If soil is removed, it be placed where it will be available for future agricultural use,

³⁸ [https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/policies/alc - policy l-23 - placement of fill for soil bound agricultural activities.pdf](https://www.alc.gov.bc.ca/assets/alc/assets/legislation-and-regulation/policies/alc_-_policy_l-23_-_placement_of_fill_for_soil_bound_agricultural_activities.pdf)

- b. Authorization for removal or placement be approved administratively by the IT Staff,
- c. Applications specifically not require 3rd party, professional consulting reports in cases involving less than[250 m³/ha].³⁹

13.3.2 Rationale

The ALC / ALUR provides established requirements for the movement of soil onto or off of agricultural land. These are intended to maintain soil inventory capable of plant production which is a guiding principle of sustainable agriculture.

Reasonable regulations regarding soil movement should be incorporated into the LUB allowing for the preservation of soil by ensuring that, when it is removed for whatever purpose, it is placed where it can be used for agricultural production.

³⁹ 250 m³ / ha = 2.5 cm / m² average coverage.