

LUB setbacks

This submission is in response to the January 9, 2024 notice from trustees of their intention to review the recently enacted setback provisions in our Land Use Bylaw No. 114 (LUB). There are two new changes in setback regulations:

1. Subsection 3.3(3) increases the minimum setback for buildings from the natural boundary of the sea from 25 to 50 ft.
2. Subsection 5.1(8) Increases the minimum setback of dwellings from side lot lines from 10 to 20 ft.

Changes to the LUB also include new provisions that make legal any existing legally constructed building currently sited within the 50 ft. minimum from the boundary of the sea or dwelling within 20 feet from the side lot line and allows those buildings to be replaced in the same location in the future in the event that they need to be replaced.

The LUB also allows for a variance to these regulations where exceptional circumstances exist. A variance application provides the opportunity for adjacent landowners to express concerns over any negative impacts the variance would have to their property.

We strongly support the new changes on setbacks for the following reasons:

- These changes were duly enacted after careful consideration at extensive LTC meetings in 2021-22.
- They more fully comply with the goals in our Official Community Plan (OCP) than the previous setback provisions.
- They provide greater protection for the natural environment and support maintaining the ecological integrity of sensitive ecosystems.
- They provide a balanced approach of increased protection of the environment while offering property owners protection through the replacement and variance provisions.
- They support the privacy provisions and freedom from disturbance in our OCP policy.
- They are consistent with retaining the rural character of our island.

We oppose any attempt by trustees to remove or reduce these improvements in our setback regulations without giving these changes an opportunity to work for the benefit of our community and the environment and without any compelling reason to make a change.

In their consultation notice the trustees state that the current LUB provisions for setbacks “require some adjustments to the Land Use Bylaw wording in order to become more broadly accepted by South Pender’s community at large.” Trustees do not identify any particular problem with the current LUB provisions for setbacks and do not provide any reasons to show that change to the current setback regulations is “required”.

The “framework” trustees propose to make changes/amendments to our current setback regulations invites community members to provide their own “potential reasons and goals” to support changes/amendments and to “spell out details of how the reasons and goals are connected to the amendments and how exactly the amendments address the specific goals.”

It appears trustees are putting the onus on community members to identify the “reasons and goals” for changing the current setback provisions. In our view, if trustees believe changes to the current setback provisions are “required”, the onus should be on the trustees to identify the reasons they believe the changes are required.

There should be no onus on community members to identify “goals” for making changes to the current setback regulations. Our OCP identifies the goals that provide the basis for our LUB and guides any changes to our LUB. Trust Policy 5.4.1 requires that every bylaw passed and action taken by the LTC has to be consistent with the OCP.

Our key OCP goals can be summarized as follows:

- To maintain the island’s rural character to support a sense of privacy and tranquility (2.2.1),
- To protect the natural features and biological diversity of the island (2.2.2),
- To protect the archaeological and historic features of the Island’s cultural settlement (2.2.3)
- To ensure land use, development, and associated servicing are compatible with the rural island character and that their growth is gradual and sustainable (2.2.4), and
- To support the reduction of greenhouse gas emissions (2.2.7).

In our view, any objective comparison of the previous LUB setback provisions and our current setback provisions will show that the current setback provisions more fully comply with our OCP goals. If the trustees feel differently, the onus is on them to explain to the community why they believe this is the case. The onus is also on the trustees to explain how any proposed change to the current setback provisions would more closely adhere to the OCP goals which they are obligated to comply with in any changes to the LUB.

Setbacks from the sea

We view the increased setback from the natural boundary of the sea as a very positive change. It is well established that the coastline zone contains some of the most sensitive ecosystems in the trust area.¹ South Pender’s shoreline ecosystems are under threat from habitat loss and fragmentation, climate change and unsustainable use. The additional 25 feet of setback in this zone will help conserve sensitive ecosystems and support ecological integrity. It will also assist in the mitigation of climate change impacts.

¹ OCP section 5.1.3 states: “...portions of the coastline contain natural features and habitat of high vulnerability to disturbance and important ecological value, eg, coastal cliff ecosystems.

As noted in the Islands Trust Shoreline Protection Model Bylaw Report² (2021):

Most jurisdictions now require setbacks on lands within 15 metres upland of the highest high tide mark of the ocean, or the top of bank, whichever is the larger. This is consistent with the Provincial Guidelines as part of its strategy to address climate change impacts. (p.22)

Section 5.2 of our OCP encourages protection of Heritage Cultural Resources including archaeological evidence of First Nation use. It is well established that the coastline holds areas of cultural importance to the W̱SÁNEĆ First Nation and to Coast Salish People whose presence on S,DÁYES/Pender dates back more than 5,000 years.³

In 2019, Islands Trust Council passed a Reconciliation Declaration and committed to a Reconciliation Action Plan as per the Truth and Reconciliation Commission (TRC) Calls to Action. Islands Trust is committed to building meaningful relationships with First Nations in the Trust Area, protecting cultural heritage, and upholding the principles embodied within the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP), the BC Declaration on the Rights of Indigenous Peoples Act (DRIPA). The protection of the coastline region with the 50ft. setback provides important protection.

South Pender's coastline is recognized as one of the locations where the endangered and federally protected Sharp-tailed Snake has been identified. The Pender Island Conservancy received a \$50,000 grant toward the acquisition of Brooks Point Regional Park for the protection of the coastline habitat of this endangered specie. PICA is currently undertaking habitat restoration research at the park for protection of the Sharped-tailed Snake. The increase to 50 ft. for the shoreline setback provides a measure of protection for the Sharp-tailed Snake which can be found on rocky cliffs and South facing slopes.

Side lot line setbacks

The increase in the lot line setback from 10 to 20 ft. supports the OCP goal of maintaining the Island's rural character and supports a sense of privacy and tranquility identified in the OCP. OCP policy 2.4.1 requires trustees to consider the effects of any proposal on the compatibility, suitability and effects on adjacent development of any objectionable disturbance including noise, lighting, etc. OCP policy 3.1.1 identifies the residential objective of maintaining a living environment that is "...free from disturbance and the sense of overcrowding."

A key factor in the new setback provision is that any legally existing dwelling that is currently within the 20 foot setback is deemed legal under the LUB and can be replaced in the same location in the event that replacement is required. The availability of a variance application provides an opportunity to address exceptional circumstances.

² Found online at: <https://islandstrust.bc.ca/document/shoreline-protection-model-bylaw-report-march-2021>

³ The Pender Canal Excavations and the Development of Coast Salish Culture", found online at: [ebarisky%2C+1465-6042-1-CE.pdf](https://www.islandstrust.bc.ca/document/pender-canal-excavations-and-the-development-of-coast-salish-culture)

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Conclusion

We strongly support the current LUB setback provisions and urge the trustees to retain the 50 ft. setback in subsection 3.3(3) and the 20 ft. setback in 5.1(8).

Thank you for considering our views.

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