



DATE OF MEETING: November 5, 2021  
TO: South Pender Island Local Trust Committee  
FROM: Kim Stockdill, Island Planner  
Southern Team  
COPY: Robert Kojima, Regional Planning Manager  
SUBJECT: SP LUB Amendments Project – Draft Bylaw No. 122

## RECOMMENDATION

**For the South Pender Island Local Trust Committee (LTC) to receive the draft bylaw and provide any revisions if necessary.**

## REPORT SUMMARY

The purpose of this report is to present a draft bylaw for the Land Use Bylaw (LUB) Amendments project (Attachment No. 1) and provide a timeline for the project.

## BACKGROUND

At the September 24, 2021 regular LTC meeting, staff presented a staff report outlining options for the LTC's consideration. The following resolution was passed:

### **SP-2021-049**

#### **It was **MOVED** and **SECONDED****

that the South Pender Island Local Trust Committee request staff to prepare a draft bylaw for the Land Use Bylaw Amendments Project and to incorporate three specific points:

- i) to increase setback to 20 feet for dwelling units in Rural Residential zones
- ii) to amend maximum floor area for dwelling units in Rural Residential zone as per Trustee Thorn and;
- iii) site specific zoning for non-conforming dwellings.

**CARRIED**

Background information regarding the project, staff reports, correspondence, and the Project Charter can be found on the South Pender Project webpage: <https://islandstrust.bc.ca/island-planning/south-pender/projects/>

## ANALYSIS

### ***Draft Bylaw No. 122***

The draft bylaw is attached for the LTC's review and the following topics are included in the bylaw.

### Maximum Floor Area Regulations (for Rural Residential 1, 2, & 3 zones)

The draft bylaw includes the following amendments to the Rural Residential 1 (RR1), Rural Residential 2 (RR2) and Rural Residential 3 (RR3) zones:

- Decreasing the maximum floor area for dwellings as specified at September 24, 2021 meeting.
- Increasing the setback for all rural residential dwellings and cottages from 3.0 metres (10 ft) to 6.0 metres (20 ft) for interior side lot lines and from 4.5 metres (15 ft) to 6.0 metres for exterior side lot lines. At the September 24, 2021 there was a discussion to only increase the setbacks for those lots with a width greater than 30 metres (100 feet). Due to the irregular shapes of most lots on South Pender, determining where to take this measurement would be difficult and subjective. If the LTC wishes to amend the setbacks from side lot lines for dwellings and cottages for only larger lots, staff recommend amending the draft bylaw to state that the 6.0 metre setback is only applicable to those lots greater than 0.4 ha. For example the regulation could read:
  - *Despite Subsection 5.1(6), the setback for a dwelling or cottage shall be 6.0 metres (20 ft.) from any interior or exterior lot line for a lot with an area greater than 0.4 ha.*

The draft bylaw does not contain the site specific zoning for those nine properties that would become legal non-conforming if the maximum floor area for dwellings is decreased. Staff will work with the Trustees to identify the nine properties and determine their exact floor areas in order to give the lots site specific zoning. Once those lots are identified, further amendments will be incorporated in the bylaw, along with the consequential map amendments.

### Agriculture Regulations

The draft bylaw includes the following amendments:

- Decreasing the maximum floor area for dwellings from 560 m<sup>2</sup> (6028 ft<sup>2</sup>) to 500 m<sup>2</sup> (5382 ft<sup>2</sup>) to align with Agricultural Land Commission (ALC) regulations.
- Increase the maximum floor area for cottages from 70 m<sup>2</sup> (753 ft<sup>2</sup>) to 90 m<sup>2</sup> (969 ft<sup>2</sup>). This is to align with the new ALC regulations coming into effect at the end of 2021. The new regulations would allow a secondary dwelling with a maximum floor area of 90 m<sup>2</sup> to be located on property in the Agricultural Land Reserve (ALR) to be used as an additional residence for housing family, as a rental suite, or for farm worker accommodation (without the requirement for the ALC's approval).
- Add definitions for the following terms: agri-tourism, agri-tourist accommodation, farm retail sales, and farm status.
- Add agri-tourism and agri-tourist as permitted accessory uses in the Agriculture (A) zone with conditions for those lots with Farm Status and located within the ALR. While agri-tourism is a farm use under the ALC regulations, this would recognize that use and establish that is accessory to principal the uses.
- Add farm retail sales as permitted accessory uses in the Agriculture (A) zone with conditions for those properties located within the ALR.
- Increasing the maximum floor area for home businesses located in the ALR from 65 m<sup>2</sup> (700 ft<sup>2</sup>) to 100 m<sup>2</sup> (1076 ft<sup>2</sup>) to align with ALC regulations.

### Shipping Containers

The draft bylaw includes two regulations for shipping containers. The first new regulation permits only one shipping container on properties over 0.4 ha in the Rural Residential 1 (RR1), Rural Residential 2 (RR2), and Rural Residential 3 zones (RR3). Subsequently shipping containers would not be a permitted accessory use on RR1, RR2, and RR3 properties less than 0.4 ha.

The second regulation would require any shipping container placed on a lot to be adequately screened (in compliance with the landscape screening regulations in the LUB).

LTC Consideration: The draft bylaw does not regulate the number of shipping containers in zones other than in the RR1, RR2, and RR3 zones. Direction from the LTC is required if the LTC wishes to regulate this use in other zones (Agriculture zone, Forestry zone, Commercial Resort zone, etc.).

#### Setback to the natural boundary of the sea – Stairways

The draft bylaw removes ‘stairways’ from Subsection 3.3(3) which exempts certain structures from complying with the 7.6 metres (25 feet) setback from the natural boundary. If the bylaw is adopted, a property owner would be required to apply for a variance in order to construct stairways within the 7.6 metre setback.

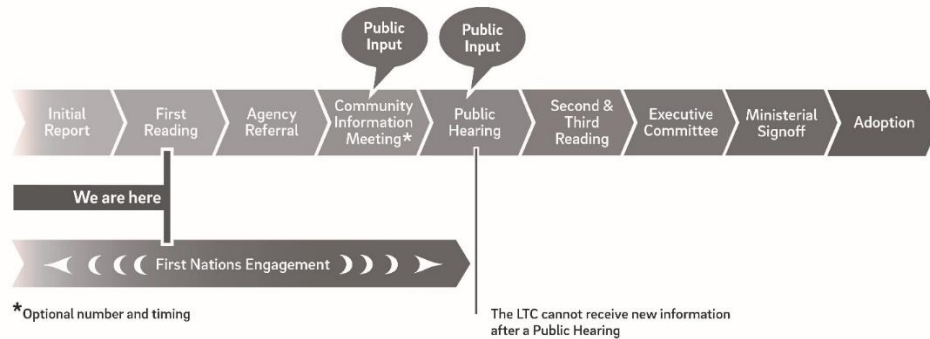
If the LTC wishes to make any amendments to the draft bylaw, the LTC should put a resolution forward as outlined in the ‘Alternatives’ section of this staff report – Alternative no. 1.

#### **Timeline**

Staff recommend the following timeline for the Minor OCP project:

- September 24, 2021 regular LTC meeting:
  - LTC gave direction to **staff to draft bylaw**
  
- November 5, 2021 regular LTC meeting:
  - LTC to review draft bylaw
  - LTC to give direction to staff to make any further amendments to the bylaw
  - Staff to send draft bylaw out for **referral** to First Nations and government agencies but will have to re-refer bylaw after First Reading to the ALC
  
- February 4, 2022 regular LTC meeting:
  - LTC can make amendments to draft bylaw
  - LTC to consider **First Reading of draft bylaw**
  - LTC to determine if proposed bylaw is in compliance **with current Islands Trust Policy Statement (ITPS)**
  - Staff to re-refer proposed bylaw to the ALC
  - LTC to give **direction to schedule a Community Information Meeting (CIM)** at next regular LTC meeting (tentatively scheduled for March 4, 2022)
  - LTC to give **direction to staff to schedule a Public Hearing** for the LTC meeting (May 6<sup>th</sup>)
  
- March 4, 2022 regular LTC meeting
  - **Community Information Meeting** for proposed Bylaw No. 122
  
- May 6, 2022 regular LTC meeting:
  - LTC to review comments/recommendations from formal referrals and from the March 4<sup>th</sup> CIM
  - **Formal Public Hearing is held** as part of May 6<sup>th</sup> regular meeting
  - LTC can amend proposed bylaw based on comments from the CIM and referrals
  - LTC to give **Second Reading and Third Reading**
  - LTC to refer **bylaw to EC for approval**

The above timeline is in line with the timeline outlined on the [Project Charter](#). The graphic below provides a visual representation of a typical bylaw adoption process. As this is a Land Use Bylaw amendment, approval from the Minister of Municipal Affairs is not required.



### Statutory Requirements

In accordance with regular statutory requirements, a public hearing is required for any bylaw amendment and it is normal practice to hold a Community Information Meeting (CIM) prior to that. Staff recommend scheduling a CIM at a separate LTC meeting from the public hearing (as outlined above under ‘Timeline’). A Public Hearing would then be tentatively scheduled for the May 6, 2022 regular LTC meeting.

### Rationale for Recommendation

The LTC gave direction to staff to draft bylaw amendments based on recommendations made in the September 24<sup>th</sup>, 2021 staff report. Staff have presented a draft bylaw for the LTC’s review based on their recommendation and the project charter. As the bylaw is still in draft form and further amendments are required, staff at this time have no recommendations until the draft bylaw is finalized.

### ALTERNATIVES

The LTC may consider the following alternatives to the staff recommendation:

#### 1. Direction to amend draft bylaw

The LTC may wish to make amendments to the draft bylaw. Recommended wording for the resolution is as follows:

*That the South Pender Island Local Trust Committee amend draft Bylaw No. 122 by...*

#### 2. Request further information

The LTC may request further information prior to making a decision. If selecting this alternative, the LTC should describe the specific information needed and the rationale for this request. Recommended wording for the resolution is as follows:

*That the South Pender Island Local Trust Committee request staff to provide further information on...*

#### 3. Refer staff report with draft bylaw to the Advisory Planning Commission

The LTC may opt to refer the staff report with the draft bylaw to the Advisory Planning Commission to provide comments on the draft bylaw or other possible amendments. Recommended wording for the resolution is as follows:

*That the South Pender Island Local Trust Committee request staff to refer the staff report dated November 5, 2021 and draft Bylaw No. 122 regarding the Minor OCP Amendments Project to the South Pender Island Advisory Planning Commission for comment.*

**4. Proceed no further**

The LTC may choose to make no amendments to the South Pender OCP. The project would be removed from the Top Priority List.

**NEXT STEPS**

Based on direction from the LTC, staff will:

- Continue to make amendments to the draft LUB
- Send draft bylaw out for referral

Submitted By:	Kim Stockdill Island Planner	October 29, 2021
Concurrence:	Robert Kojima, Regional Planning Manager	October 29, 2021

**Attachments:**

1. Draft Bylaw No. 122 (LUB amendment)
2. Notes taken by Trustee Wright at Community Gathering on October 23, 2021

**SOUTH PENDER ISLAND LOCAL TRUST COMMITTEE  
BYLAW NO. 122**

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**A BYLAW TO AMEND SOUTH PENDER ISLAND LAND USE BYLAW No. 114, 2016**

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The South Pender Island Local Trust Committee, being the Trust Committee having jurisdiction in respect of the South Pender Island Trust Area under the *Islands Trust Act*, enacts as follows:

1. Citation

This bylaw may be cited for all purposes as “South Pender Island Land Use Bylaw No. 114, 2016, Amendment No.2, 2021”.

2. South Pender Island Local Trust Committee Bylaw No. 114, cited as “South Pender Island Land Use Bylaw No. 114, 2016” is amended as follows:

2.1 By adding the following new definitions to Section 1.1 ‘Definitions’:

““agri-tourism” means an activity referred to in Section 12 of the *Agricultural Land Reserve Use Regulation*.”

““agri-tourist accommodation” means a use accessory to a *farm use* for the purpose of accommodating commercial guests within specific structures on specific portions of a *lot*.”

““farm retail sales” means the retail sale of tangible farm products grown or raised on a farm or association to which the owner of the farm belongs.”

““Farm Status” means land classified as a farm pursuant to the *(BC) Assessment Act*.”

2.2 By removing the words “floor area of 70m<sup>2</sup> or less” and replacing it with “limited floor area” in the definition of ‘cottage’.

2.3 By removing the word “outer” and replacing it with “inner” in the definition of ‘floor area’.

2.4 By removing the word “stairway” from Subsection 3.3(3).

2.5 By adding the following two new subsections to Section 3.5 ‘Accessory Buildings and Structures’ as follows:

(6) “One accessory shipping container may be placed on a lot greater than 0.4 hectares in area in the Rural Residential 1, Rural Residential 2, and the Rural Residential 3 zones.”

(7) “Shipping containers must be screened from neighbouring lots, roads, or

the sea by use of landscape screening in compliance with Section 3.9.”

2.6 By adding the words “except for a *lot* located within the Agricultural Land Reserve, the combined *floor area* must not exceed 100 m<sup>2</sup> (1076 ft<sup>2</sup>)” at the end of Subsection 3.6(4) so it reads:

‘The combined *floor area* used in all *home businesses* on a *lot*, except a *bed and breakfast*, must not exceed 65 m<sup>2</sup> (700 ft<sup>2</sup>) except for a *lot* located within the Agricultural Land Reserve, the combined *floor area* must not exceed 100 m<sup>2</sup> (1076 ft<sup>2</sup>).’

2.7 By deleting Subsection 5.1 (5) and replacing it with:

Maximum *Floor Area* per *lot*:

✓ ✓ ✓

Lot Area	The total floor area of all buildings may not exceed:	The floor area of a dwelling may not exceed:
Less than 0.4 ha (1 acre)	465 m <sup>2</sup> (5000ft <sup>2</sup> )	255 m <sup>2</sup> (2750ft <sup>2</sup> )
0.4 ha to 0.79 ha (1 to 2 acres)	557 m <sup>2</sup> (6000ft <sup>2</sup> )	348 m <sup>2</sup> (3750ft <sup>2</sup> )
0.8 ha to 1.59 ha (2 to 4 acres)	743 m <sup>2</sup> (8000ft <sup>2</sup> )	372 m <sup>2</sup> (4000ft <sup>2</sup> )
1.6 ha to 3.99 ha (4 to 10 acres)	836 m <sup>2</sup> (9000 ft <sup>2</sup> )	418 m <sup>2</sup> (4500ft <sup>2</sup> )
4.0 ha (10 acres) or greater	1858 m <sup>2</sup> (20000ft <sup>2</sup> )	465 m <sup>2</sup> (5000ft <sup>2</sup> )

2.8 By adding the following new Subsection after Subsection 5.1(5) and renumbering accordingly:

“The maximum *floor area* of a *cottage* must not exceed 70 m<sup>2</sup> (753 ft<sup>2</sup>).”

✓ ✓ ✓

2.9 By adding the following new Subsection directly after the newly renumbered Subsection 5.1(7) and renumbering accordingly:

“Despite Subsection 5.1(6), the setback for a *dwelling* or *cottage* shall be 6.0 metres (20 ft.) from any interior or exterior *lot line*.”

✓ ✓ ✓

2.10 By removing “560 m<sup>2</sup> (6028 ft<sup>2</sup>) and replacing it with “500 m<sup>2</sup> (5382 ft<sup>2</sup>) in Subsection 5.5(9).

2.11 By removing the word “Rescinded” from Article 5.5(1)(d) and replacing it with “Accessory *agri-tourism* subject to Subsections 5.5(11) to 5.5(14);”

2.12 By adding the words “and *farm retail sales.*” after the words ‘on the same lot’ in Article 5.5(1)(e).

2.13 By adding the following new article after Article 5.5(1)(d) and renumber accordingly:

“Accessory agri-tourist accommodation, subject to Subsections 5.5(13) to 5.5(19), and as permitted by the Agricultural Land Commission;”

2.14 By adding the following new subsection after Subsection 5.5(9) and renumbering accordingly:

“The maximum *floor area* of a *cottage* must not exceed 90 m<sup>2</sup> (969 ft<sup>2</sup>).”

2.15 By removing the word “Rescinded” adding the following to Subsection 5.5(10):

“*Farm retail sales* are permitted on a lot located within the Agricultural Land Reserve, and the total indoor and outdoor *floor area* for the *farm retail sales* shall not exceed 300 m<sup>2</sup> (3229 ft<sup>2</sup>).

2.16 By adding the following new subsections after Subsection 5.5(10) under ‘Conditions of Use’ and renumber accordingly:

“5.5(11) *Agri-tourism buildings or structures* are not permitted.

5.5(12) *Agri-tourism* must be in compliance with the *Agricultural Land Reserve Use Regulation*.

5.5(13) *Agri-tourism* and *agri-tourist accommodation* are only permitted on a *lot* with *Farm Status*.

5.5(14) *Agri-tourism* and *agri-tourist accommodation* are only permitted on a *lot* located in the Agricultural Land Reserve.

5.5(15) *Agri-tourist accommodation* must be *accessory* to an active *agri-tourism* activity.

5.5(16) *Agri-tourist accommodation* must be *accessory* to a *farm use*.

5.5(16) *Agri-tourist accommodation buildings and structures* must not exceed a *lot coverage* of 5 percent.

5.5(17) *Agri-tourist accommodation* must not be in use for more than 180 days in a calendar year.

5.5(18) *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 Agriculture (A) Zone.



5.5(19) The maximum number of guests that may be accommodated in any *agri-tourist accommodation* at any one time, either alone or in combination with a *bed and breakfast*, is not to exceed 10 guests or 10 bedrooms.

2.17 By adding the following new subsection after Subsection 5.6(7) and renumbering accordingly:

“The maximum *floor area* of a *cottage* must not exceed 70 m<sup>2</sup> (753 ft<sup>2</sup>).”

2.18 By adding the following new subsection after Subsection 5.7(6) and renumbering accordingly:

“The maximum *floor area* of a *cottage* must not exceed 70 m<sup>2</sup> (753 ft<sup>2</sup>).”

### 3. SEVERABILITY

If any provision of this Bylaw is for any reason held to be invalid by a decision of any Court of competent jurisdiction, the invalid provision must be severed from the Bylaw and the decision that such provision is invalid must not affect the validity of the remaining provisions of the Bylaw.

READ A FIRST TIME THIS	___ - ___ DAY OF	_____	20___
PUBLIC HEARING HELD THIS	_____ DAY OF	_____	20___
READ A SECOND TIME THIS	_____ DAY OF	_____	20___
READ A THIRD TIME THIS	_____ DAY OF	_____	20___
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS	_____ DAY OF	_____	20___
ADOPTED THIS	_____ DAY OF	_____	20___

\_\_\_\_\_  
CHAIR

\_\_\_\_\_  
SECRETARY

## Community Information gathering – Maximum Floor Area for Residences, Oct 23, 2021

The meeting began at 10:30 at the SP Fire Hall with 25 members of the public in attendance. Cameron Thorn acted as moderator. Steve Wright was in the audience and did not participate in the discussion but took notes of the meeting. The question of whether this was legally a formal LTC meeting was raised, not as a complaint or concern, but to note that both trustees were in the same room and the discussion will relate to items which will be on the LTCs agenda. People expressed their appreciation for holding informal meetings and felt it was useful in presenting an opportunity for open dialogue.

The first issue raised was about the potential for existing properties to be designated as “legal non-conforming”. The concern centered on the number of structures (homes and accessory bldgs), the appraised value of properties being diminished, and implications about insurance policies that may result from that designation. The question over replacement of the current, legal structure to the existing size if destroyed was also raised. It was stated that trustees intended any changes to bylaws would not penalize existing structures. An example was provided in which if the side setback was increased, the new setback could apply to residences, not accessory buildings. This was welcomed by a number of attendees. A suggestion was made to present a deeper explanation about what “legal non-conforming” was, its meaning and its implications as there seemed to be some differences in understanding of the possible repercussions.

The discussion turned to whether this initiative was necessary should not proceed further because the previous LTC advanced a similar project in 2017 in which a compromise arose from much debate and resulted in the current figures for residential floor area. Comments followed ranging from a distrust in the data being provided, to the limited number of undeveloped lots (54) making this exercise over-reactive, to being pushed purely for political reasons. It was suggested that because the majority of persons at this meeting opposed the initiative, then trustees should not continue with this project and should they do so, it was evidence that they were not listening to the “community”. It was explained that trustees should act pro-actively when recognizing trends elsewhere to protect or maintain the character and natural resources of the island and that house size plays a significant role. It was added that the number of attendees in the meeting did not in fact represent a “majority” and it was important to hear from all residents/property owners. One response was to provide evidence that 51% of residents supported this initiative and if that is successful, those opposing the proposal would then support it.

Recognizing that the atmosphere in the meeting was becoming overtly aggressive, it was suggested that hostility and polarization were not helpful in this debate. A speaker stated that they were uncomfortable with the atmosphere and that was a primary reason why they and others did not attend these types of meetings. They went on to explain why they supported the trustees in this and other proposals to maintain the character of the island and if people liked the island as it is now, then steps have to be taken to maintain it for future generations. Other speakers agreed with those sentiments and it lowered the temperature and nature of the discussion. One suggestion was that the discussion was focused on the metrics of the floor area rather than the principles and objectives of any changes. They continued to say if retention of the character was what everyone agreed upon then the community should begin to consider options of how that can be done. It was agreed that setbacks, height of buildings, total lot coverage, could also go a long way in meeting those objectives.

Solutions offered by speakers included whether any new regulations could apply only to new development, consideration of incentives, the use of variances to help respond to site specific issues found to be problematic to owners, and to defer amendments because the cost of construction was prohibitive to building larger homes.

The meeting came to a close with more agreement in principle than it began with and a desire for trustees to consider what had been said and present a re-consideration of the proposal along with more information at a future meeting.

This is a synopsis of the meeting from notes taken by Steve Wright