



File No.: SP LUB Amendments
Project

DATE OF MEETING: May 6, 2022
TO: South Pender Island Local Trust Committee
FROM: Kim Stockdill, Island Planner
Victoria Office
COPY: Robert Kojima, Regional Planning Manager
SUBJECT: Project Update & Post Public Hearing Report – LUB Amendments Project

RECOMMENDATIONS

1. That the South Pender Island Local Trust Committee proposed Bylaw No. 122, cited as “South Pender Island Land Use Bylaw No. 114, 2016, Amendment No. 2, 2021” be read a second time.
2. That the South Pender Island Local Trust Committee proposed Bylaw No. 122, cited as “South Pender Island Land Use Bylaw No. 114, 2016, Amendment No. 2, 2021” be read a third time.
3. That the South Pender Island Local Trust Committee proposed Bylaw No. 122 be forwarded to the Secretary of the Islands Trust for Executive Committee Approval.

REPORT SUMMARY

The purpose of this staff report is to provide an update on proposed Bylaw No. 122, and also provide options for the South Pender Island Local Trust Committee (LTC)’s consideration after the Public hearing.

BACKGROUND

The South Pender Island LTC passed the following resolutions at the February 4, 2022 regular LTC meeting:

SP-2022-017

It was Moved and Seconded,

that the South Pender Island Local Trust Committee amend draft bylaw 122 as follows:

by using the table on page 15 exhibiting four land use categories as Table 3 in the Staff Report in the right-hand column;

and,

the draft bylaw include clauses recognizing homes in terms of house size and setbacks that would have been built before the adoption of this new bylaw;

and,

that the bylaw include only one table.

CARRIED

SP-2022-018

It was Moved and Seconded,

that the South Pender Island Local Trust Committee amend draft Bylaw No. 122 as amended by amending the Groundwater Protection Regulation Section 3.14 to include a cottage as a new building.

CARRIED

SP-2022-019

It was Moved and Seconded,

that the South Pender Island Local Trust Committee Bylaw No. 122, cited as the “South Pender Island Land Use Bylaw No. 114, 2016, Amendment No. 2, 2021” as amended be read a first time.

CARRIED

SP-2022-020

It was Moved and Seconded,

that the South Pender Island Local Trust Committee has reviewed the Islands Trust Policy Statement Directives Only Checklist and determined that Bylaw No. 122, cited as “South Pender Island Land Use Bylaw No. 114, 2016, Amendment No. 2, 2021”, is not contrary to or at variance with the Islands Trust Policy Statement.

CARRIED

SP-2022-021

It was Moved and Seconded,

that the South Pender Island Local Trust Committee direct staff to schedule a Community Information Meeting and a Public Hearing for proposed Bylaw No. 122.

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/>. In addition, a blackline version of the Land Use Bylaw (LUB) with the integrated amendments of proposed Bylaw No. 122 can be found [here](#).

Proposed Bylaw No. 122

The proposed Bylaw No. 122 was given First Reading on March 4, 2022 and formal referrals were sent out to First Nations and agencies. Correspondence received regarding the project can be found on the [South Pender Project](#) webpage and formal public hearing submissions and referral responses can be found in the [public hearing binder](#).

A comment was received questioning if an existing ‘fence, pump/utility house, stairway, wharf and dock ramps or their footings’ is required to be sited 7.6 metres from the natural boundary (NB) of the sea if the proposed bylaw is adopted. As shown in Table 1, the blackline version of the new bylaw states that under Subsection 3.3(3), ‘fence, pump/utility house, stairway, wharf and dock ramps or their footings’ are allowed to be sited within the 15 metres from the NB of the sea. Subsection 3.3(4) then states that buildings and structures built prior to the adoption of the Bylaw No. 122 may be located just 7.6 metres from the NB. In order to add more clarity to the new bylaw, the LTC may consider amending proposed Bylaw No. 122 to make it explicitly clear that a ‘fence, pump/utility house, stairway, wharf and dock ramps or their footings’ built prior to the adoption of Bylaw No. 122 and within the setback is sited legally. Draft motion for the LTC’s consideration:

“ That the South Pender Island Local Trust Committee proposed Bylaw No. 122, cited as “South Pender Island Land Use Bylaw No. 114, 2016, Amendment No. 2, 2021” be amended by amending Section 2.5

by adding the words “except for a fence, pump/utility house, stairway, wharf and dock ramps or their footings” after the words ‘buildings or structures.’”

If the LTC votes in favour of the above amendment, Subsection 3.3(3) and 3.4(4) would read as follows:

(3) Buildings or other structures, except a fence, pump/utility house, stairway, wharf and dock ramps or their footings, shall not be sited within 15 metres (50 feet) 7.6 metres (25 feet) of the natural boundary of the sea and, for this purpose only, paved areas of asphalt, concrete or similar material are "structures".

(4) Despite Subsection 3.3(3), buildings or structures, except a fence, pump/utility house, stairway, wharf and dock ramps or their footings, legally constructed prior to [insert date of Bylaw No. 122 adoption] shall not be sited within 7.6 metres (25 feet) of the natural boundary of the sea and, for this purpose only, paved areas of asphalt, concrete or similar material are "structures".

Table 1 – Excerpt from [Blackline LUB](#)

(3)	<i>Buildings or other structures, except a fence, pump/utility house, stairway, wharf and dock ramps or their footings, shall not be sited within <u>15 metres (50 feet)</u> 7.6 metres (25 feet) of the natural boundary of the sea and, for this purpose only, paved areas of asphalt, concrete or similar material are "structures".</i>
(4)	<i>Despite Subsection 3.3(3), buildings or structures legally constructed prior to [insert date of Bylaw No. 122 adoption] shall not be sited within <u>7.6 metres (25 feet)</u> of the natural boundary of the sea and, for this purpose only, paved areas of asphalt, concrete or similar material are "structures".</i>

The LTC has the discretion to amend the bylaw before or after the Public Hearing. A bylaw may be altered after the public hearing, based on information received or heard by the LTC at any point prior to the close of the hearing, provided that the amendments do not alter use or increase density, or decrease density without a landowner’s consent.

The next steps for proposed Bylaw No. 122 are outlined below under ‘Public Hearing’. Staff are recommending the LTC give Second and Third Reading to the bylaw, and to send the bylaw to Executive Committee for approval.

PUBLIC HEARING

A public hearing is scheduled for May 6, 2022. A public hearing is a quasi-judicial process within and following which specific procedures must be followed.

Following the hearing, the LTC may choose to give further readings to a bylaw, defeat a bylaw, or alter a bylaw within certain parameters. The procedural steps following the close of the hearing are as follows:

1. Consideration of Second Reading (this may include amendments to alter a bylaw).
2. Consideration of Third Reading.
3. Forwarding of the bylaw to Executive Committee for approval.
4. Reconsideration and adoption.

Following the close of the hearing, the LTC may not hear further submissions without holding a new hearing. The principle is that if new information is considered by the LTC, all other interested parties also need to have the opportunity to consider any new relevant material and to make further representations to the LTC. The courts have clarified that this does not open the door to endless public hearings: a local government body can legitimately decide that after a hearing it wishes to hear further from staff on issues raised at the hearing.

If the Executive Committee approves proposed Bylaw No. 122, the next step for the LTC would be to adopt the bylaw.

FIRST NATIONS: At this time the recommendations comply with the Islands Trust Reconciliation Declaration and the Local Trust Committee Standing Resolutions on Reconciliation.

Rationale for Recommendation:

The recommendations are supported by staff as no referral comments were received in objection. Staff also supports amending Section 2.5 of the proposed bylaw to add more clarity to the setback to the sea regulations.

ALTERNATIVES

1. Make amendments to the bylaw

The South Pender Island LTC may amend proposed Bylaw No. 122.

Resolution:

That the South Pender Island Local Trust Committee proposed Bylaw No. 122, cited as “South Pender Island Land Use Bylaw No. 114, 2016, Amendment No. 2, 2021” be amended by:...

2. Receive for information

The LTC may receive the report for information.

3. Proceed no further with the bylaw.

The LTC may decide to proceed no further with Bylaw Nos. 122.

Resolution:

That the South Pender Island Local Trust Committee proceed no further with Bylaw No. 122..

NEXT STEPS

Upon direction from LTC, staff will send proposed Bylaw No. 122 to the Islands Trust Executive Committee for approval.

Submitted By:	Kim Stockdill, Island Planner	April 26, 2022
Concurrence:	Robert Kojima, Regional Planning Manager	April 27, 2022

ATTACHMENTS

1. Proposed Bylaw No. 122

PROPOSED

SOUTH PENDER ISLAND LOCAL TRUST COMMITTEE BYLAW NO. 122

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

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* as referred to in Section 33 of the *Agricultural Land Reserve Use Regulation*.”

““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 70m² 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 words “7.6 metres (25 feet)” and replace it with “15 metres (50 feet)” in Subsection 3.3(3).

2.5 By adding the following new subsection after Subsection 3.3(3) and renumbering accordingly:

“Despite Subsection 3.3(3), *buildings or structures* legally constructed prior to [*insert date of Bylaw No. 122 adoption*] shall not be sited within 7.6 metres (25 feet) of the *natural boundary* of the sea and, for this purpose only, paved areas of asphalt, concrete or similar material are “*structures*”.”

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

- “(6) Shipping containers are a permitted accessory use on a *lot* subject to the following:
 - (a) On a *lot* less than 0.8 ha (2 acre) in area, a maximum of one (1) shipping container is permitted.
 - (b) On a *lot* 0.8 (2 acres) or greater in area, but less than 1.2 ha (3 acres) in area, a maximum of two (2) shipping containers are permitted.
 - (c) On a *lot* with an area greater than 1.2 ha (3 acres), a maximum of three (3) shipping containers are permitted.

- (7) Shipping containers must be screened from neighbouring *lots*, roads, or the sea by use of landscaping screening in compliance with Section 3.9.”

2.7 By adding the words “except for a *lot* located within the Agricultural Land Reserve, the combined *floor area* must not exceed 100 m² (1076 ft²)” 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 m² (700 ft²) except for a *lot* located within the Agricultural Land Reserve, the combined *floor area* must not exceed 100 m² (1076 ft²).’

2.8 By adding the words “or *cottage*” after the words ‘used as a dwelling’ to Subsection 3.14(1) so it reads:

‘A building permit shall not be issued for a new *building* to be used as a *dwelling* or *cottage* on a *lot* in the RR(1), RR(2) or RR(3) zones unless a *building* on the *lot* is equipped with a rainwater catchment system and cistern(s) for the storage of rainwater with a minimum cistern capacity of 9,000 litres (1980 gallons).

2.9 By deleting the words Table from Subsection 5.1(5) and replacing it with

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 ² (5000 ft ²)	255 m ² (2750 ft ²)
0.4 ha to < 1.2 ha (1 to 3 acres)	557 m ² (6000 ft ²)	279 m ² (3000 ft ²)
1.2 ha to < 4 ha (3 to 10 acres)	743 m ² (8000 ft ²)	325 m ² (3500 ft ²)
4.0 ha (10 acres) or greater	1858 m ² (20000 ft ²)	4372 m ² (4000 ft ²)

”

2.10 By add the following new subsection after Subsection 5.1(5):

“Despite Subsection 5.1.(5), on a *lot* that contains a legal *dwelling* constructed prior to the adoption of this bylaw, a replacement *dwelling* may constructed, or the existing *dwelling* re-constructed or altered, provided the *floor area* of the replacement, re-constructed or altered *dwelling* does not exceed the *floor area* of the *dwelling* on the *lot* at the time of the adoption of this bylaw.”

2.11 By adding the following new subsection after the newly created Subsection 5.1(6) and renumbering accordingly:

“The maximum *floor area* of a *cottage* must not exceed 70 m² (753 ft²).” ✓ ✓ ✓

2.12 By adding the following new subsection directly after the newly renumbered Subsection 5.1(9) and renumbering accordingly:

“Despite Subsection 5.1(9), the setback for a *dwelling* or *cottage* shall be 6.0 metres (20 ft.) from any interior or exterior *lot line*.” ✓ ✓ ✓

2.13 By add the following new subsection after Subsection 5.1(5):

“Despite Subsection 5.1.(9), on a *lot* that contains a legal *dwelling* or *cottage* constructed prior to the adoption of this bylaw, a replacement *dwelling* or *cottage* may constructed, or the existing *dwelling* or *cottage* re-constructed or altered, provided the distance from the interior or exterior *lot line* to the replacement, re-constructed or altered *dwelling* or *cottage* does not exceed the distance from the interior or exterior *lot line* to the *dwelling* or *cottage* on the *lot* at the time of the adoption of this bylaw.”

2.14 By removing “560 m² (6028 ft²) and replacing it with “500 m² (5382 ft²) in Subsection 5.5(9).

2.15 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);”

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

2.17 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;”

2.18 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 m² (969 ft²).”

2.19 By adding the following ‘Information Note’ after the newly created Subsection 5.5(10):

“Information Note: *The maximum floor area of a dwelling or cottage located within the Agricultural Land Reserve must be compliant with the Agricultural Land Commission Act, Regulation, and any Resolution for the Agricultural Land Commission.”*

2.20 By removing the word “Rescinded” adding the following to the newly renumbered Subsection 5.5(11):

“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 m² (3229 ft²).

2.21 By adding the following new subsections after Subsection 5.5(11) under ‘Conditions of Use’ and renumber accordingly:

“5.5(12) Agri-tourism buildings or structures are not permitted.

5.5(13) Agri-tourism must be in compliance with the Agricultural Land Reserve Use Regulation.

5.5(14) Agri-tourism and agri-tourist accommodation are only permitted on a lot with Farm Status.

5.5(15) Agri-tourism and agri-tourist accommodation are only permitted on a lot located in the Agricultural Land Reserve.

5.5(16) Agri-tourist accommodation must be accessory to an active agri-tourism activity.

5.5(17) Agri-tourist accommodation must be accessory to a farm use.

5.5(18) Agri-tourist accommodation buildings and structures must not exceed a lot coverage of 5 percent.

5.5(19) Agri-tourist accommodation must not be in use for more than 180 days in a calendar year.

5.5(20) Agri-tourist accommodation may include associated uses such as meeting rooms and dining facilities for paying registered guests contained wholly within the

agri-tourism accommodation unit, 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(21) 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.

2.22 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 m² (753 ft²).”

2.23 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 m² (753 ft²).”

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 4TH DAY OF MARCH 2022.

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