Denman Island Local Trust Committee
Regular Meeting Agenda

Date:	September 8, 2015
Time:	10:30 am
Location:	Denman Seniors Hall
	1111 Northwest Rd, Denman Island, BC

Pages

1. CALL TO ORDER 10:30 AM - 10:35 AM
2. APPROVAL OF AGENDA
3. TOWN HALL AND QUESTIONS 10:35 AM - 10:50 AM
4. COMMUNITY INFORMATION MEETING - none
5. PUBLIC HEARING
   - 5.1 Recess for Public Hearing
     - 5.1.1 Bylaw Nos. 212 and 213
   - 5.2 Recall to Order
6. MINUTES
   - 6.1 Local Trust Committee Minutes dated July 21, 2015 – for adoption 4 - 16
   - 6.2 Section 26 Resolutions-without-meeting Report dated August 27, 2015 17 - 17
   - 6.3 Advisory Planning Commission Minutes - none
   - 6.4 Marine Advisory Planning Commission Draft Minutes - none
7. BUSINESS ARISING FROM MINUTES
   - 7.1 Follow-up Action List dated August 27, 2015 18 - 19
8. DELEGATIONS - none
9. CORRESPONDENCE

   (Correspondence received concerning current applications or projects is posted to the LTC webpage)
10. APPLICATIONS AND REFERRALS - none

11. LOCAL TRUST COMMITTEE PROJECTS

11.1 Aquaculture Practices (Driving on the Foreshore)

11.1.1 Staff Report dated August 18, 2015 20 - 43

11.2 Bylaw No. 212 and Bylaw No. 213 44 - 54

Bylaw No. 212 cited as "Denman Island Official Community Plan (Denman Island) Bylaw 185, Amendment No. 2, 2014" - for consideration of third reading and submission to Executive Committee and to the Minister of Community, Sport and Cultural Development for approval.

Bylaw No. 213 cited as "Denman Island Land Use Bylaw 186, Amendment No. 2, 2014" - for consideration of third reading and submission to Executive Committee for approval.

12. BREAK

13. REPORTS

13.1 Work Program Reports

13.1.1 Top Priorities Report August 27, 2015 55 - 55

13.1.2 Projects List Report dated August 27, 2015 56 - 57

13.2 Applications Report dated August 27, 2015 58 - 62

13.3 Trustee and Local Expense Report Dated July, 2015 63 - 63

13.4 Adopted Policies and Standing Resolutions 64 - 65

13.5 Local Trust Committee Webpage

13.6 Chair's Report

13.7 Trustee Reports

13.8 Electoral Area Director's Report

13.9 Trust Fund Board Report - August, 2015 66 - 66

14. NEW BUSINESS

14.1 Hornby Island Local Trust Committee Request by Resolutuion Regarding Ferry Terminal Signage

That the Hornby Island Local Trust Committee request the Denman Island Local Trust Committee give consideration to mentioning Hornby Island in the signage being renewed at Buckley Bay and also to mention that the islands are in the traditional territory of the Coast Salish First Nations.

14.2 Recent Developments in Marihuana Laws and Consideration of 2014 Staff Report 67 - 96

14.3 Meeting with San Juan County Council Regarding Economic Development on Islands

The draft agenda includes potential collaboration over joint business and tourism, farmers markets, product branding, marine Nexus passes for private and commercial boats, a Free Trade Zone, shared access to broadband, the ETGI project and an international Tour des Isle. There is also an oil spill response initiative scheduled the same day at the same location. For consideration: should DILTC send a delegate?

15. UPCOMING MEETINGS

15.1 Next Regular Meeting Scheduled for Tuesday, October 27, 2015 at 10:30 am at the Denman Seniors Centre, 1111 Northwest Road, Denman Island, BC

16. TOWN HALL

17. CLOSED MEETING - none

18. ADJOURNMENT

Denman Island Local Trust Committee
Minutes of Regular Meeting

Date: July 21, 2015
Location: Denman Seniors Hall
1111 Northwest Rd, Denman Island, BC

Members Present Susan Morrison, Chair
Laura Busheikin, Local Trustee
David Critchley, Local Trustee

Staff Present Rob Milne, Island Planner
Vicky Bockman, Recorder

Others Present Approximately ten (10) members of the public – am
Approximately five (5) members of the public – pm

1. CALL TO ORDER

Chair Morrison called the meeting to order at 10:30 am. She welcomed the public and introduced herself, Trustees, staff and recorder. She acknowledged that the meeting was being held in traditional territory of the Coast Salish First Nations.

2. APPROVAL OF AGENDA

The following changes to the agenda were presented for consideration:

Add:
14.2 Communications
14.3 Driving on the Foreshore
14.4 Advisory Planning Commission (APC) Membership
Move:
13.1 to after 14

By general consent the agenda was adopted as amended.

3. TOWN HALL AND QUESTIONS

Graham Brazier provided input into the draft Strategic Plan, commenting that he does not agree with the 7.1 Activity "Begin preliminary investigations into the possibility of forming a Gulf Island Regional District" as he views this as outside of the Trust's mandate to protect the Islands. He remarked that the hiring process for the Trust's Chief

Administrative Officer (CAO) provides an opportunity to review administrative structure in terms of the importance of First Nations relations and marine environment issues which he believes are under-represented in the current organization.

Liz Johnston advised that The Association for Denman Island Marine Stewards (ADIMS) has arranged a meeting with the Department of Fisheries and Oceans Canada (DFO) on July 28, 2015 to discuss the mapping project and marine concerns, and invited Trustees to attend that meeting.

4. COMMUNITY INFORMATION MEETING - none

5. PUBLIC HEARING - none

6. MINUTES

6.1 Local Trust Committee Minutes dated May 26, 2015 – for adoption

By general consent the Local Trust Committee meeting minutes of May 26, 2015 were adopted.

6.2 Section 26 Resolutions-without-meeting Report Dated July 9, 2015

Received for information.

6.3 Advisory Planning Commission Minutes - none

6.4 Marine Advisory Planning Commission Draft Minutes - none

7. BUSINESS ARISING FROM MINUTES

7.1 Follow-up Action List Dated July 9, 2015

Planner Milne presented the report and in response to a question that arose, he provided a summary of the outgoing letter regarding First Nations relations. Trustees discussed possible next steps to follow up on that action and Trustee Busheikin offered to assist in the effort.

DE-2015-042
It was MOVED and SECONDED,
that the Denman Island Local Trust Committee request Trustee Busheikin to visit the K'omoks First Nation office with an invitation to meet.

CARRIED

A Trustee suggested that it would be helpful to include the topic of bylaws in brackets in the Follow-up Action Report for clarity.

7.2 Phase 2 Local Trust Committee Input into Development of the Islands Trust Strategic Plan for 2014-2018

7.2.1 Memorandum dated June 30, 2015

Trustees discussed the continued input into the draft Strategic Plan with the following comments noted:

- a Trustee expressed frustration that an item submitted by the Local Trust Committee (LTC) as an Example of a Potential Strategy was changed to an Example of Activity and the significance of the categories was debated;
- a Trustee expressed concern with the size of the Plan and after further reflection believes the objectives should focus on getting the work done; and
- Trustees acknowledged the importance of public input into the draft Plan.

DE-2015-043
It was MOVED and SECONDED,
that the Denman Island Local Trust Committee respond to the invitation with regard to Strategic Plan input by requesting that the item "advocate to reduce negative impacts of shellfish aquaculture practices" be located in the column under Examples of Potential Strategies instead of the column relating to Examples of Activities.

CARRIED

The LTC deferred discussion of Attachment 3: identification of interests in addressing the topics identified as possible strategies for implementation this term.

By general consent continuation of agenda item 7.2.1 was moved to after item 12.

8. DELEGATIONS
The Association for Denman Island Marine Stewards

Edi Johnston, on behalf of ADIMS spoke on concerns regarding vehicles driving on beaches and the negative impact this has on the forage fish spawning habitat, providing a possible approach to manage the situation. She read a paper: "Delegation Notes for D.I. LTC meeting of July 21, 2015" which was distributed to the LTC. She asked the LTC to provide a letter of support to further the goal of restricting all but emergency vehicles

from driving on Denman Island beaches, and to give consideration to creation of an appropriate bylaw if the existing bylaw is not capable of protecting the W1 Marine Conservation zones.

Trustees thanked ADIMS for their work on this topic and appreciated the presentations that the group organized for the World Oceans Week event. They indicated that the research provided with this delegation was useful and expressed an interest in the outcome of consultation with Comox Valley Regional District (CVRD) and the meeting with Ministry of Transportation and Infrastructure (MOTI) that ADIMS is currently seeking.

Trustees discussed the letter of support being requested. Trustee Critchley indicated his intention to attend the July 28th meeting with ADIMS and DFO and to report back to the LTC on that discussion. The Trustees indicated their preference to consider the requested letter of support after that meeting in order to include what might evolve from that discussion.

9. CORRESPONDENCE

Margie Gang commented that she submitted a letter to the LTC for inclusion on the agenda however as it had not been incorporated, she wished to speak to the issue. She expressed concern regarding sinking and derelict dock debris in Graham Lake which is a source of drinking water for many households.

Trustees considered the role of the LTC in this matter and possible actions to take.

DE-2015-044
It was MOVED and SECONDED,
that the Denman Island Local Trust Committee send a letter to the Denman Island Residents Association's Graham Lake Dock Committee and Graham Lake Improvement District alerting them to issues with debris and derelict docks in the lake and asking if they are able to address this.

CARRIED

The LTC confirmed with Planner Milne that the letter will be reviewed by the Trustees before finalizing.

10. APPLICATIONS AND REFERRALS

10.1 DE-RZ-2015.1 (PANDESIGN, Hermanutz, Innes - 2100 Crescent Road)

10.1.1 Staff Report dated July, 2015 - to be distributed

Planner Milne presented the Staff Report addressing the outcomes of the formal referral of draft Bylaw Nos. 219 and 220 which proposes to facilitate the dedication of lands for a nature reserve and the transfer of density from those lands to a receiving parcel. He provided updates, noting that the Denman Island APC did support the application in its recent meeting to discuss the referral, and the Hornby Island LTC responded to the agency referral as "interests unaffected". He advised that the restrictive covenant is under preparation at this time and will be available for public review at the Public Hearing.

Trustees indicated their readiness to move forward with the amendment bylaws and public consultation.

DE-2015-045
It was MOVED and SECONDED,
that the Denman Island Local Trust Committee confirm that it has read the Directives Only Policies and that it agrees that Bylaw Nos. 219 and 220 are not contrary to or at variance with the Islands Trust Policy Statement.

CARRIED

DE-2015-046
It was MOVED and SECONDED,
that the Denman Island Local Trust Committee Bylaw No. 219, cited as "Denman Island Official Community Plan, 2008, Amendment No. 2, 2015", be read a second time.

CARRIED

DE-2015-047
It was MOVED and SECONDED,
that the Denman Island Local Trust Committee Bylaw No. 220, cited as "Denman Island Land Use Bylaw, 2008, Amendment No. 3, 2015", be read a second time.

CARRIED

DE-2015-048
It was MOVED and SECONDED,
that the Denman Island Local Trust Committee proceed to a Public Hearing for Bylaw Nos. 219 and 220 to be held prior to the regular meeting of the Local Trust Committee to be held on September 8, 2015 pending the completion of a draft of the required restrictive covenant for the "receiving" property available for public review.

CARRIED

Prior to the vote, Trustees discussed the Public Hearing start time to give consideration to constituents who may have daytime conflicts. They observed that in this case there have not been concerns brought forward to warrant conducting an evening hearing.

11. LOCAL TRUST COMMITTEE PROJECTS

11.1 Riparian Areas Regulation

11.1.1 Staff Report dated June 25, 2015

Planner Milne outlined the Staff Report with a summary of the agency referral responses received at the time of this report. He provided an update, noting that the Hornby Island LTC responded to the referral as "interests unaffected".

A Trustee proposed a small change to draft Bylaw No. 212 for clarity and Trustees considered that with this change they were ready to proceed to next steps with the project.

DE-2015-049
It was MOVED and SECONDED,
that the Denman Island Local Trust Committee amend draft Bylaw No. 212, Schedule 1, page 2 by adding the following words under the heading "Measurement of RAR and Non-RAR Development Permit Areas": "The Streams, Lakes and Wetlands Development Permit Area includes the following:".

CARRIED

Trustees discussed scheduling options for the Public Hearing.

A Trustee requested a change in the formatting of draft Bylaw No. 123 for clarity: In 4.4.3 Guidelines, Guideline 4: Insert a space between subset v) and vi).

DE-2015-050
It was MOVED and SECONDED,
that Bylaw No. 212, cited as "Denman Island Official Community Plan No. 185, 2008, Amendment No. 2, 2015", be considered for second reading.

CARRIED

DE-2015-051
It was MOVED and SECONDED,
that Bylaw No. 213, cited as "Denman Island Land Use Bylaw No. 186, 2008, Amendment No. 2, 2015", be considered for second reading.

CARRIED

DE-2015-052
It was MOVED and SECONDED,
that a Public Hearing be scheduled for September 8, 2015 for the proposed bylaws.

CARRIED

11.2 Visitor Accommodation Review

11.2.1 Staff Report dated June 29, 2015

Planner Milne summarized the Staff Report to review the outcome of the public Open House and discuss the next steps in the Visitor Accommodation Review project. He noted that the community has demonstrated support for the proposed bylaw amendment. He suggested that given the focused nature of this proposal that the referrals for review and comment be limited to the BC Assessment Authority and the Vancouver Island Health Authority.

Trustees appreciated the straightforward approach to addressing the need identified in the community. They confirmed with Planner Milne that the LTC has the authority to regulate this use and hearing no concerns, indicated their readiness to move forward.

DE-2015-053
It was MOVED and SECONDED,
that Bylaw No. 216 being the Denman Island Land Use Bylaw 186, Amendment No. 1, 2015 be given first reading.

CARRIED

DE-2015-054
It was MOVED and SECONDED,
that Bylaw No. 216 being the Denman Island Land Use Bylaw 186, Amendment No. 1, 2015 be referred out for review and comment to the BC Assessment Authority and the Vancouver Island Health Authority.

CARRIED

12. BREAK

By general consent the meeting was recessed at 11:42 am and reconvened at 12:15 pm.

7.2 Phase 2 Local Trust Committee Input into Development of the Islands Trust Strategic Plan for 2014-2018 (Continued)

7.2.1 Memorandum dated June 30, 2015 (Continued)

Trustees continued their discussion of the Strategic Plan. They reviewed Attachment 3 to indicate the LTC's interest in addressing topics as possible strategies for implementation this term.

Following is a recap of the results of the review:

- Topic is on the LTC Work Program:
  1.3, 1.6, 1.7, 2.1, 3.1, 5.2, 5.3, 6.1, 8.2, 9.3, 10.3;
- Topic May possibly be addressed by LTC this term:
  4.1, 5.4, 6.2; and
- Not applicable:
  4.2, 5.5, 5.6, 7.2.

DE-2015-055
It was MOVED and SECONDED,
that the Denman Island Local Trust Committee forward Attachment 3 about Strategic Plan input to the Chief Administrative Officer, Linda Adams, for inclusion in Strategic Plan discussion for Trust Council.

CARRIED

13. REPORTS

13.2 Applications Report Dated July 9, 2015

Planner Milne reviewed the Applications Report. Trustees observed that as of May 21, 2015, DE-SUP-2015.2 for Denman Island Memorial Society appears to have been ready to issue the permit and close the file. Planner Milne noted that he did not have any updates to the information provided at this time.

13.3 Trustee and Local Expense Report Dated June, 2015

Trustees reviewed the expense report. In response to a Trustee's question, Planner Milne provided an explanation of possible expenditures contributing to

LTC Meeting Expenses as of June and indicated that taking measures to reallocate categories of funds would not be generally necessary.

13.4 Adopted Policies and Standing Resolutions

Received for information.

13.5 Local Trust Committee Webpage

Planner Milne indicated that efforts will be made to include information regarding the two planned Public Hearings on the website to assist in the community's review of the material.

13.6 Chair's Report

Chair Morrison reported on Executive Committee activities that included discussion of the facilitated Strategic Planning session scheduled for the next Trust Council meeting and moving ahead with the CAO Hiring Committee business. She mentioned that there will be a four day Union of BC Municipalities convention in September.

13.7 Trustee Reports

Trustee Busheikin reported that she attended a Ferry Advisory Committee meeting and described some of the work being done by that group. She remarked that she attended an APC meeting held at the Old School and observed that the Old School building was not considered accessible to some with physical difficulties and could use improvement in that regard. She suggested that there might be grants available to address this concern. She noted that she has completed a Trustee Notebook article that asks for the public to provide input into the draft Strategic Plan and will be bringing drafts of the informational pamphlets she has been working on to the LTC for review.

Trustee Critchley reported on business conducted in several meetings that he has attended since the last LTC meeting including the Old School Committee, the CVRD Baynes Sound Plan, Trust Programs Committee, a community RCMP meeting, Trust Council, and the Visitor Accommodation Cooking Facilities Information Open House. He remarked that he held Trustee Office Hours and had a number of calls regarding concerns relating to possible noise and potential for fire resulting from a proposed festival which was voluntarily cancelled.

13.8 Electoral Area Director's Report - none

Trustees discussed maintaining the Electoral Area Director's Report standing agenda item and determined that it presents an opportunity for communication even if not utilized regularly.

13.9 Trust Fund Board Report - May, 2015

Chair Morrison provided an update on the Trust Fund Board's request to change the name to the Islands Trust Conservancy, reporting that the Assistant Deputy Minister with the Ministry of Community, Sport and Cultural Development who was supportive of the change is now leaving his post and there is concern that this may impact the initiative. She also provided an update on the Lasqueti Crown Land Acquisition project and noted that the Trust Fund Board is now working on input for the Strategic Plan.

By general consent agenda item 14.3 was moved to follow 13.9.

14.3 Driving on the Foreshore

Trustee Critchley proposed that the LTC consider an amending bylaw to make it explicit that driving on the foreshore is not permitted in various areas and provided the background for this matter. He presented a draft bylaw motion for LTC consideration and suggested that if the LTC supports the initiative that it be subsequently forwarded to staff and the Marine Advisory Planning Commission (MAPC) for review and comment. He outlined the differences between this approach and the previous effort by the LTC on this issue and supported going forward, recognized the need for the action, and observed that the Trust mandate to preserve and protect provides the justification to act.

Trustees considered the proposal.

DE-2015-056
It was MOVED and SECONDED,
that the Denman Island Local Trust Committee forward the driving on the foreshore draft bylaw amendment to staff and to the Marine Advisory Planning Commission, inviting their comments on it.

CARRIED

Discussion ensued and the following points were considered:

- how this project might fit into the Top Priorities and available resources;
- strategies to manage costs that might arise as a result of the undertaking;
- timing and process relating to the proposal;
- jurisdictional issues would need to be addressed;

- the beach access review might have a bearing on the matter; and
- creating the bylaw would be a first step to initiate further discussion.

By general consent agenda item 14.1 was moved to follow item 13.1.2.

13.1 Work Program Reports

13.1.1 Top Priorities Report Dated July 9, 2015

Trustees reviewed the Top Priorities and there were no changes requested at this time.

13.1.2 Projects List Report Dated July 9, 2015

Trustees reviewed the Projects List and there were no changes to the projects or activities at this time. Trustees observed that the status of several items from 2011 are still identified as "on going" and asked if Planner Milne might look into the possibility of the identifying these in another, more descriptive manner to provide more clarity.

14.1 LTC Budget Requests for 2016-2017

14.1.1 Memorandum dated July 9, 2015

Planner Milne summarized the memorandum requesting budget submissions and provided an analysis of the status of Denman Island LTC priorities. He indicated the rationale for the preliminary project requests identified in the report.

Trustees discussed the project requests and considered alternative choices; however, there were no changes requested to the Preliminary LTC Project Budget Request at this time.

DE-2015-057
It was MOVED and SECONDED,
that the Denman Island Local Trust Committee approve and forward the draft 2016-17 LTC Project Budget submission to Financial Planning Committee as presented.

CARRIED

14. NEW BUSINESS

By general consent agenda item 14.2 was removed from the agenda and will be considered in the *In Camera* meeting.

14.4 APC Membership

Trustee Busheikin observed that with five current APC members, there is an open position remaining and noted that it would be useful to appoint a sixth member to provide more flexibility in case of scheduling conflicts or other issues. She noted that the process allows the LTC to consider pending applications and Trustees indicated their desire to review these in today's *In Camera* meeting.

15. UPCOMING MEETINGS

15.1 Next Regular Meeting Scheduled for Tuesday, September 8, 2015 at 10:30 am at the Denman Seniors Centre, 1111 Northwest Road, Denman Island, BC

The LTC confirmed that the next regular meeting is scheduled for September 8, 2015 at 10:30 am at the Denman Seniors Centre.

16. TOWN HALL

Edi Johnston asked if ADIMS can expect a letter of support as requested in the delegation presentation, suggested possible items to include in such a letter, and commented that it would be helpful to the Denman Island Residents Association's Marine Guardians Committee and ADIMS to have the letter to bring to the proposed CVRD and MOTI meetings.

Trustees remarked that the LTC expressed their preference earlier in the meeting to consider writing a letter of support subsequent to the MOTI meeting. They noted that the LTC's proposed creation of a bylaw addressing these concerns needs to be considered in the approach.

Edi Johnston noted that the LTC discussed a referral to the MAPC and commented that an orientation meeting would delay the review and asked if this is necessary, given that all the members are returning members.

Planner Milne responded that an orientation meeting would not be necessary in this case and that the MAPC could move forward based on today's LTC proceedings.

Liz Johnston thanked Trustee Critchley for bringing forward the proposed creation of a draft bylaw to address driving on the foreshore and the LTC for its consideration of the matter.

Shelley McKeachie observed that reference was made in the discussion of the bylaw regarding driving on the foreshore to Bylaw Enforcement's caution to not pass a bylaw

unless it is enforceable. She countered this by noting that there are bylaws that are not enforced and that while there are many considerations for creating a bylaw, that enforcement caution might not be the best determination of whether or not to proceed.

17. CLOSED MEETING:

17.1 Motion to Close the Meeting

DE-2015-058
It was MOVED and SECONDED,
that the meeting be closed to the public in accordance with the *Community Charter*, Part 4, Division 3, s.90(1)(d) for the purpose of Adoption of *In Camera* Meeting Minutes dated May 26, 2015, s.90(1)(g) and (i) for the purpose of litigation and receipt of advice that is subject to solicitor-client privilege, for appointment of APC members s.(a) and discussion regarding communications and contractors and that the recorder and staff attend the meeting.

CARRIED

The meeting was closed to the public at 1:37 pm.

17.2 Recall to Order

The meeting was reopened to the public at 2:14 pm.

17.3 Rise and Report

Chair Morrison reported that in the closed meeting the LTC adopted *In Camera* meeting minutes of May 26, 2015, requested that the Executive Committee communicate with the CAO regarding LTC communications, and appointed Margie Gang to the APC.

18. ADJOURNMENT

By general consent the meeting was adjourned at 2:14 pm.

_____
Susan Morrison, Chair

Certified Correct:

_____
Vicky Bockman, Recorder

RWM From: May 01, 2015 To: August 27, 2015

Denman Island

Resolution #	Action	Resolution Description	Resolution Date
2015-03	In Favour	"That the Denman Island Local Trust Committee response to the referral of Hornby Island Local Trust Committee Bylaw No. 151 cited as "Hornby Island Official Community Plan (Hornby Island) Bylaw 149, 2014, Amendment No. 1, 2015" and Hornby Island Local Trust Committee Bylaw No. 152 cited as "Hornby Island Land Use Bylaw 150, 2014, Amendment No. 1, 2015" is: Interests Unaffected by Bylaws."	Jun 29, 2015
2015-02	In Favour	"That the Denman Island Local Trust Committee instruct staff to issue Development Permit DE-DP-2015.2 (CVRD)"	Jun 22, 2015
2015-01	In Favour	"THAT the Denman Island Local Trust Committee reschedule its Regular Business Meeting of Tuesday, June 2, 2015 to Tuesday, May 26, 2015."	May 07, 2015

Islands Trust

Follow Up Action Report w/ Target Date

Denman Island

Jan-20-2015

No.	Activity	Responsibility	Target Date	Status
1	that staff work on the Housekeeping Project as their time permits	Rob Milne		On Going

Mar-03-2015

No.	Activity	Responsibility	Target Date	Status
1	Staff were directed to advertise for membership in a Board Of Variance appointed jointly with other local trust committees in the Northern Region.	Lisa Webster-Gibson		On Going

Jul-21-2015

No.	Activity	Responsibility	Target Date	Status
1	a letter is to be sent to the DIRA, the Graham Lake dock committee and Graham Lake Improvement District alerting them to issues with debris and derelict docks in the lake.	Rob Milne		Done
1	Bylaw Nos. 219 and 220 (Pandesign)received second reading and a public hearing was delegated for September 8th to be held if the statutory restrictive covenant is available for public review	Rob Milne		On Going
1	Bylaw 212 (RAR) Schedule 1 page 2 to be amended by adding the following words under the heading "Measurement of RAR and Non-RAR development permit areas": The Streams Lakes and Wetland development permit areas include the following:	Rob Milne		Done
1	Bylaw Nos. 212 and 213 (RAR) received third reading and are to be considered at a public hearing to be held at the September 8, 2015 regular meeting of the LTC.	Rob Milne		On Going

1	Bylaw No. 216 (Visitor Accommodation) was given first reading and staff were directed to refer the bylaw to the BC Assessment authority and VIHA.	Rob Milne	On Going
1	The LTC directed that a resolution regarding driving on the foreshore be forwarded to staff and to the MAPC inviting their comments on it.	Rob Milne	Done
1	The LTC approved the motion that: The Denman Island Local Trust Committee approve and forward the draft 2016-2017 LTC Project Submission to the Financial Planning Committee as presented.	Rob Milne	Done
1	It was the decision of the LTC to appoint Margie Gang to the Denman Island APC as an even year appointment the term of which expires in 2016.	Becky McErlean Rob Milne	Done
1	It was the decision of the LTC to respond to the invitation with regard to Strategic Plan input to request that the item "Advocate to reduce negative impacts of shellfish aquaculture practices" be located in the column under examples of potential strategies instead of the column relating to examples of activities.	Rob Milne	Done

STAFF REPORT

Date: August 18, 2015 **File No.:** DE 6500-20

To: Denman Island Local Trust Committee
For meeting of September 8, 2015

From: Rob Milne
Island Planner

CC: Aleksandra Brzozowski, Acting Regional Planning Manager

Re: Revisions to Bylaw No. 207 (Aquaculture Practices)

Owner: Local Trust Committee initiated project

Problem/Issue:

To review and adopt measures that will address the impacts of shellfish farming upon the marine environment.

Background

The Denman Island Local Trust Committee (LTC) began consideration of issues related to the impacts of shellfish farming on the marine environment in 2012.

The LTC's earlier review and discussions regarding this issue, and the associated community concerns, identified three actions considered to be the most likely to be effective in addressing concerns related to aquaculture industry activities:

- Removal of predator netting from the beach;
- Banning driving on the foreshore; and
- Banning beach modifications

A preliminary report at the April 3, 2012 LTC meeting provided background information on the issue of aquaculture activities. A second report at the February 26, 2013 meeting presented further information on the extent of the LTC's authority to regulate activities that negatively impact the marine environment in Baynes Sound.

At its regular business meeting of February 26, 2013, the LTC passed the following resolution:

> ***DE-009-2013***
> That the Denman Island Local Trust Committee request staff to draft amendments to Bylaw No. 186 which would restrict all structures in the W3 Zone and to add amendments which ban vehicular driving on the foreshore in the W3 Zone.

At its regular business meeting of July 16, 2013 the LTC passed the following subsequent resolution:

DE-046-2013
That the Denman Island Local Trust Committee request staff to proceed with early referrals of the Draft Bylaw regarding bylaw amendments to the W3 Zone, and to bring the amending bylaw back to the Local Trust Committee for further consideration.

At its meeting of November 26, 2013 the LTC gave consideration to a staff report dated November 7, 2013 which reviewed the results of the early referral of draft Bylaw No. 207. The report suggested three recommendations for potential actions:

1. Choose not to proceed at this time due to questions related to legislated authority;
2. Defer further consideration of draft bylaw 207 until referral comments have been received from FLNRO tenures branch;
3. Choose to proceed to first reading and formally refer the draft bylaw for stakeholder comments.

Subsequent to those discussions the LTC adopted the following motion:

DE-077-2013
that the Denman Island Local Trust Committee proceed no further with Draft Bylaw No. 207 due to questions regarding legislative authority.

More recently at its July 21, 2015 meeting, the LTC gave consideration to a draft motion that was brought forward for consideration as a part of a solution to ongoing concerns regarding impacts upon the marine environment (Attachment 1). This approach differed from that of the previous discussions in that it proposes to address only the issue of driving upon the foreshore and would apply to the W1, W3 and W4 foreshores zones. The original draft version of Bylaw No. 207 proposed to address all three of the activities considered to be detrimental to the marine environment and would have applied to only the W3 zone. Following discussion of the draft motion, the LTC adopted the following motion:

DE-2015-056
that the Denman Island Local Trust Committee forward the driving on the foreshore draft bylaw amendment to staff and to the Marine Advisory Planning Commission, inviting their comments on it.

Staff Comments:

As implied by the wording of resolution DE-077-2013, which was adopted at the November 26, 2013 meeting, there remains some uncertainty regarding the Local Trust Committee's authority to regulate some aspects of the aquaculture industry. These concerns are reflected in the Golder Associates report dated February 18, 2013 (Attachment 2) and a legal opinion from the Islands Trust's solicitors, and apply most specifically to the original proposal to regulate the use of predator netting and beach modification. The proposed bylaw language found in Attachment 1, which is the focus of this report, excludes these two items and focuses instead upon use of vehicles and ground based machinery on the foreshore.

The language of the draft motion to amend draft Bylaw No. 207 is worded to recognize that caution. A copy of a revised version of Bylaw No. 207 which includes the proposed language is attached this report for consideration (Attachment 3).

It should be noted that the Bylaw Enforcement Manager has advised that the LTC should not proceed with the adoption of the bylaw unless it is prepared to enforce the provisions and understands that it is highly probable that the bylaw will be challenged in the courts.

Recommendations:

It is the recommendation of staff:

THAT the Local Trust Committee give consideration to the staff report and attached draft bylaw and provide direction to staff on how they wish to proceed.

Prepared and Submitted by:

Rob Milne August 19, 2015

Rob Milne RPP, MCIP
Island Planner

Date

Concurred in by:

Aleksandra Brzozowski August 24, 2015

Aleksandra Brzozowski
Acting Regional Planning Manager

Date

Motion re. Driving On The Foreshore

Motion:

That the Denman Island Local Trust Committee amend Bylaw 186, cited as "Denman Island Land Use Bylaw, 2008" as follows:

1) By adding to Part 3.7, "Water Zoning Tables" a new "Table 5 – Prohibited Uses" as shown below:

Table 5 – Prohibited Uses
The regulations in this table are intended to be applied in conjunction with the provisions of Table 1 "Permitted Uses" in order to provide additional guidance and clarity on acceptable implementation actions and practices associated with the permitted uses.

Zoning Code	Regulations
W1, W4	- despite Table 1 of this section, the use of vehicles and ground based machinery on the foreshore is prohibited.
W3	- despite Table 1 of this section, the use of vehicles and ground based machinery on the foreshore is prohibited except where specifically authorized by an aquaculture license issued by the Department of Fisheries and Oceans.

February 18, 2013

REPORT

REPORT TO THE DENMAN ISLAND LOCAL TRUST COMMITTEE

Review of Land Use Bylaw Options to Address Specific Aquaculture Related Activities

Submitted to:

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Report Number: 1214420001-001-R-Rev0
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Executive Summary

This report to the Denman Island Local Trust Committee is prepared in accordance with the terms of reference in the Service Contract No. 2012-0065. The purpose of the report is to research land use bylaw options to address citizen concerns with predator netting, driving of motorized vehicles on the foreshore, and physical beach modification to accommodate shellfish aquaculture. In undertaking this analysis, it became apparent that there are nuanced areas of constitutional and other law that would benefit from further analysis by a legal professional. Golder specifically notes that our analysis is focused on mechanisms by which local government might be able to effect the changes it seeks to bring about; however, we wish to be clear that we are not offering, nor was it in our scope of work to offer, legal analyses or opinions.

Summary of Findings:

1) Enacting *Denman Island Land Use Bylaw* regulations to address shellfish aquaculture ***predator netting*** may be an intrusion into areas of sole federal jurisdiction. If that is the case, such bylaws, if challenged could be stricken down as unconstitutional.

2) There may be jurisdiction under the *Islands Trust Act and Local Government Act* ***to ban or restrict access to driving on the foreshore*** through the *Land Use Bylaw* provided such regulation is clearly designed to address those areas within local government jurisdiction. Banning operation of motor vehicles lawfully associated with shellfish aquaculture operations, for reasons that seek to regulate areas of federal jurisdiction, may be unenforceable.

3) The spatial extent of motor vehicle use and access for the purpose of aquaculture operations should be reviewed in the context of the spatial bounds of the permits and approvals under which that operation is subject. This evaluation should identify if vehicle use is occurring outside the "four corners" of approval documents.

4) Beach modification activities such as the construction of seawalls are prohibited within the zoning setback area for all zones (Section 2.3(3) of the *Denman Island Land Use Bylaw*) and presumably other forms of modification could be restricted in accordance with s. 903 of the *Local Government Act*, where the footprint of such walls is on land under provincial jurisdiction, as the management of lands (with the exception of federally-owned lands) is within the constitutional jurisdiction of the Provinces.

5) There is the possibility that the review process under which licenses were granted may have fallen short of the necessary scope of review, particularly as many aquaculture operations were originally licensed provincially, prior to the Morton Decision. There are examples where permits have been rescinded because of lack of adherence to process. It was beyond our scope to evaluate whether this was the case at Denman Island and whether such opportunity might exist would be a matter for a legal professional to ascertain.

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1.0 INTRODUCTION AND SCOPE

1.1 Local Trust Committee Resolution

On May 1, 2012 the Denman Island Local Trust Committee resolved the following:

It was MOVED and SECONDED that the Local Trust Committee request staff to provide a report on bylaw enforcement mechanisms to:

a) Remove predator netting;

b) Ban driving on foreshore;

c) Ban beach modification.

Islands Trust staff clarified this resolution to mean "how those three things could be regulated in the Land Use Bylaw and how enforceable such regulations would be.[1]" Golder Associates Ltd. (Golder) was retained to assist the Denman Island Local Trust Committee with this resolution. This report provides perspectives with respect to controls for predator netting, driving on the foreshore and beach modification. In undertaking this analysis, it became apparent that there are nuanced areas of constitutional and other law that would benefit from further analysis by a legal professional. Golder specifically notes that our analysis is focused on mechanisms by which local government might be able to effect the changes it seeks to bring about; however, we wish to be clear that we are not offering, nor was it in our scope of work to offer, legal analysis or opinion. The authors are not qualified to do so.

2.0 CONTEXT

2.1 Shellfish Aquaculture Activity and Denman Island

Shellfish aquaculture activity in the Denman Island Local Trust Area occurs in Baynes Sound, between Vancouver Island and Denman Island, extending between Comox Harbour to the north and Deep Bay in the south. A staff report to the Denman Island Local Trust Committee, dated March 13, 2012, identifies Baynes Sound as one of the most significant commercial shellfish farming areas in the province as well as an ecologically diverse and important area.

Golder Associates staff, James van Hemert, visited the area on December 10, 2012 in order to familiarize himself with the nature and extent of shellfish aquaculture activity in Baynes sound. The visit involved walking the beaches, observing evidence of beach driving, shellfish farming debris, and farming infrastructure such as rafts and the location of farming leases. A PowerPoint slide presentation provided to Golder by the Association for Denman Island Marine Steward's (ADIMS) provided additional information on the extent of farming, images of the use of predator netting (not observable during the site visit), their environmental concerns related to beach modification, impacts to wildlife, the extent of farming debris and their concerns related to the industrialization of the shellfish farming and its impacts on the Sound's ecological functions.

Golder also visited the Deep Bay Marine Field Station which is concerned with the area's marine ecology and provides information on the practices and interests of the shellfish industry.

[1] E-mail from Courtney Simpson, Acting Regional Planning Manager, Islands Trust Northern Office, dated February 5, 2013.

2.2 Local Trust Committee Existing Policy & Land Use Bylaw Summary

The Islands Trust Policy Statement provides policy direction in two relevant areas: Ecosystem Preservation and Protection (Part III) and Stewardship of Resources (Part IV). Subsections 3.4.2 through 3.4.5 of the former speak to the importance of protecting marine areas and adopting coastal zone management principles in consultation with all relevant agencies, governments, property owners and occupiers. Official community plans and regulatory bylaws are used to support and implement this policy direction and to address development and municipal operations such that they are carried out in a way that minimizes the impact on sensitive coastal areas. Subsections 4.5.1 through 4.5.7 of the bylaw, Stewardship of Resources, recognizes aquaculture is a valuable activity, provided that it is compatible with maintenance of ecosystems and community character. It is also evident to Golder that the conservation of ecological values is one aspect of "community character" of Denman Island. The policies provide direction with respect to aquaculture activities, provided they do not interfere with natural coastal processes, restrict public access, are directed away from areas of recreational significance, conflict with established or designated upland uses, and do not result in site alteration. A staff report, to the Local Trust Committee, dated March 13, 2012, provides further detail.

Consistent with the Islands Trust Policy Statement, Section C.3 of the Official Community Plan for Denman Island identifies objectives and policies related to the marine environment. Objective 8 recognizes that aquaculture is a valuable activity in the Trust area if compatible with maintenance of ecosystems and community character, practiced in a low impact, environmentally sound manner and encourages the employment of island residents in the industry. Policies 4 & 5 were added in 2010 to address shoreline management including the potential future adoption of a Marine Shorelines Development Permit Area. The policies envision the use of zoning and the use of setbacks and, where there is supporting mapping, the use of development permit areas to:

- Protect the integrity of the foreshore, shoreline, and natural coastal and intertidal processes;
- To discourage filling, deposition, excavation, or removal of foreshore and seabed materials;
- To discourage uses that disrupt natural features and processes;
- To allow for natural erosion and accretion processes, without endangering structures;
- Encourage owners of shoreline properties to retain, whenever possible, natural vegetation and natural features on areas adjacent to the foreshore; and
- To discourage filling, deposition, excavation, or removal of foreshore and seabed materials, except for maintenance of navigational channels and existing facilities.

Advocacy Policy 2, encourages Fisheries and Oceans Canada (DFO) to monitor aquaculture practices to ensure compliance with regulations intended to protect the marine environment, protect hearing spawning areas; and to prevent the discharge of sewage from private and commercial vessels traveling in Baynes sound or Lambert Channel.

Advocacy Policy 3 encourages the Ministry of Agriculture and Lands to give prior notification to the local trust committee and adjacent upland owners when existing aquaculture tenures come up for renewal, and to increase dialogue on agriculture practices and community interests with the Local Trust Committee through a community engagement program.

The Denman Island Land Use Bylaw (LUB) establishes the Water 3 Zone to cover areas of aquaculture leases current at the date of adoption of the bylaw. The intent of this zoning is to require that any new or expanded aquaculture operations apply for rezoning.

Staff noted in its review of policies and regulations regarding the impacts of shellfish farming on the marine environment (report of March 13, 2012), that they did not believe that the shellfish aquaculture industry, Integrated Land Management Bureau (ILMB) of the Province, or DFO would support any land use regulations requiring the removal of predator netting from the beach, restricting driving on the foreshore, or banning beach modification. Staff recommended that, as an alternative to pursuing a specific aquaculture–related land use bylaw to address the concerns of ADIMS, the LTC could instead focus a project on marine shorelands planning pursuant to OCP policies 4 & 5 in section C.3 (the Marine Environment). The project would be supported by strategy 2.3.2 of the 2008 – 2011 Islands Trust Council Strategic Plan: "develop and implement new planning tools for shoreline and Marine protection." In the words of staff, "such a project would involve reviewing the new shoreline classification mapping for Denman, organizing public education and consultation events on the importance of protecting shoreline area, and potentially adopting a development permit area for marine shorelines."[2]

2.3 Stakeholder interests

2.3.1 Association for Denman Island Marine Steward's

The Association for Denman Island Marine Steward's (ADIMS) is a citizen's group that seeks to protect and preserve the Denman Island Shores. It has been active in beach cleanup and advocacy and has made presentations of its concerns to the local trust committee. The group has expressed concern about the industrialization of the shellfish industry in Baynes sound, and is concerned about the extent to which the industry is impacting the environment and local residents. In a presentation made to Golder staff on December 10, 2012, representatives of ADIMS discussed their views on the extent and cumulative effects of the industry, environmental degradation and beach alterations, pollution with respect to noise, smell, and visual elements, hazards, and industry debris.

2.3.2 Aquaculture Shellfish Industry

The BC Shellfish Grower's Association (BCSGA) is seen as the voice of the shellfish industry and represents 70% of shellfish growers in BC as well as suppliers and service providers to the industry. Their stated mission is:

> *"To advance the sustainable growth and prosperity of the BC shellfish industry in a global economy by providing leadership, communication and advocacy to members, government, the public and other stakeholders while maintaining and improving the integrity of the marine environment."*

[2] Staff Report to the Denman Island Local Trust Committee, "Review policies and regulations regarding impacts of shellfish framing on the marine environment,", March 13, 2012

The BCSGA website states that shellfish aquaculture provides over 1,000 full-time jobs in rural and coastal communities and is an economic driver accounting for over $33 million in farm gate sales yearly.[3]

The BCSGA has drafted the Code of Practice for Shellfish Farming with the stated intent to:

> *"...serve as a guideline to shellfish aquaculture companies to ensure their operations are conducted in a manner that works in concert with the marine environment. The COP [Code of Practice] will provide guidance for addressing and minimizing negative environmental impacts and maximizing positive impacts related to normal farm practices on shellfish aquaculture tenures.* [4]

The Code recognizes the operational practices of beach modification, predator netting, and vehicle use in the foreshore area as being consistent with relevant regulations:

1) ***Beach modification*** may be necessary to optimize intertidal shellfish production. While modifications vary according to the site, species and culture methods, the following are typical examples of intertidal site preparation: gravelling of substrate, building of berms or raking of debris to optimize production.

2) There are a variety of pests and predators that can destroy shellfish crops. Shellfish farmers must ensure that their operational practices are conducted in a manner that minimizes impacts to both terrestrial and aquatic wildlife. ***Exclusion is the primary and preferred strategy to minimize damage by predators.*** However, improperly secured or damaged netting can prove to be harmful to birds or other marine life.

3) Marine vessels and equipment are an integral part of a shellfish operation. Marine vessels are necessary for the safe transport of employees as well as for handling and transporting of product. ***Depending on the site, vehicles may also be necessary for the transport of employees, equipment and product over intertidal areas.***[5]

Based on the Code of Practice, the activities which are the subject of this report are integral aspects to the normal operation of a shellfish growing facility and to the extent that bylaws would seek to interfere with these, they could be viewed as being unconstitutional.

2.3.3 Fisheries and Oceans Canada

Under the *Fisheries Act* and in accordance with the *Constitution Act (1867)* the federal government (as represented by DFO) has ultimate jurisdiction over all fisheries, including aquaculture shellfish farming. Shellfish farming has been determined by the courts to be a fishery (Morton Decision). DFO regulates the aquaculture industry in British Columbia, including marine finfish, shellfish and freshwater operations, but not marine plants.

A DFO Conservation and Protection (C&P) unit has been created under the BC Aquaculture Regulatory Program (BCARP), with the primary role of enforcing compliance with the *Fisheries Act* and the new *Pacific Aquaculture Regulations* for aquaculture operations.

[3] BCSGA website. Retrieved February 12, 2013 at http://bcsga.ca/

[4] Code of Practice for Shellfish Farming, 2002, p. 2.

[5] Ibid; pp. 3, 4, & 13.

2.3.4 Province of BC

The Province of BC has interests in the strategic development of the aquaculture industry, managing the aquaculture sector and in interacting with the federal government on licensing and tenure matters. Additional details on responsibilities are provided in the following sections.

2.4 Overview of Government Roles and Regulatory Authority

Jurisdiction over coastal areas in BC is split among federal, provincial and local governments, with some variation depending on the location along the coast and the relationship to the shore. All of BC's coast is subject to aboriginal claims based on traditional use by First Nations.[6] At a high level, the federal government is responsible for seacoast and inland fisheries, while the provinces are responsible for the management of lands. One area of underlying ecological overlap is that a component of fish habitat (e.g., riparian vegetation) grows on land. The riparian vegetation is part of fish habitat and DFO can have a say over the vegetation, so long as their intervention does not transgress into the constitutional domain of the provinces (land management). This situation has been approached through collaborative efforts at stewardship and local governments have been playing a "front line" role in conserving the ecological uses of riparian zones through development processes, environmentally sensitive areas and various other mechanisms. Overall, the outcome of such collaboration has been beneficial to environmental stewardship as well as to community sustainability and even property values.

The following descriptions of government roles are adapted from the Green Shores publication series[7].

2.4.1 The Provincial Government

According to provincial publications, the Province of BC owns most of the foreshore (the area between the low water level and the natural boundary) [8] as well as the beds of inland seas such as the Strait of Georgia, Juan de Fuca Strait and Johnstone Strait. These are Provincial Crown[9] lands. The Integrated Land Management Bureau administers these aquatic lands and issues permits, licences or leases for a wide range of uses – private and public moorage, wharves, marinas, and log storage to name a few. The Province also establishes regional coastal zone plans where these are needed. [10] Following the 2009 BC Supreme Court decision on fisheries jurisdiction, the province no longer issues licenses for aquaculture farming. Additional detail is provided in the section on "Removal of Predator Netting from the Beach."

Prior to the BC Supreme Court ruling of February 2009, which affirmed all jurisdiction for fisheries in the hands of the federal government and asserted that aquaculture is a fishery, BC's Right to Farm act covered **shellfish aquaculture** activities. The Act still applies to **plant aquaculture**[11]. The Right to Farm Act expressly states that farmers are not liable for nuisance due to normal farming practices such as odour, noise, dust, and disturbance.[12] It does not exempt them from compliance with other legislation such as the *Fisheries Act*.

---

[6] Province of BC, Coastal Shore Stewardship: A Guide for Planners, Builders, and Developers on Canada's Pacific Coast, p. 36.

[7] Ibid.

[8] The common definition of natural boundary is "the visible high water mark of any lake, stream, or other body of water where the presence and action of the water are so common and usual and so long continued in all ordinary years as to mark upon the soil of the bed of the lake, river stream, or other body of water a character distinct from that of the banks, both in vegetation and in the nature of the soil itself" (BC Land Act). In marine systems, the natural boundary is generally determined as the lower elevation of terrestrial vegetation or the upper boundary of distinctive aquatic vegetation.

[9] Crown land is a general term for all lands or lands covered by water that are not privately owned and remain in public ownership with either the federal or provincial government. In BC, the vast majority of Crown land (94% of all land in the Province) lies with the Province. When an individual or organization wishes to these lands, the Province may agree to enter into a tenure agreement to lease the land for a certain purpose over a set period of time.

[10] Green Shores Series, Province of BC, Issues sheet, 2009.

[11] http://www.al.gov.bc.ca/fisheries/

[12] Farm Practices Protection (Right to Farm) Act RSBC (1996) CHAPTER 131. Retrieved on February 13, 2013 at http://www.bclaws.ca/EPLibraries/bclaws_new/document/ID/freeside/00_96131_01

Golder notes that matters respecting ownership of the seabed are complex and there is considerable variation from location to location. For instance, there are portions of the Burrard Inlet seabed that are under private ownership. Additional complexity is added to this issue where ownership of waterlots is concerned. In the event that it becomes important to identify specific ownership at a given site, title should be established at that time.

2.4.2 The Federal Government

The federal government has jurisdiction over the seacoast and inland fisheries– from seaward of the low water mark. The DFO is responsible for managing and protecting fish populations and fish habitat under the *Fisheries Act*, including shoreline riparian habitats (but not the land), as well as for maintaining maritime safety through the Coast Guard. Transport Canada is responsible for preserving the public right of navigation under the *Navigable Waters Protection Act*[13]. The DFO has final jurisdiction and oversight of all fisheries in accordance with the *Constitution Act (1867)*.

2.4.2.1 Shellfish Aquaculture License Conditions

DFO' s Shellfish Aquaculture License Conditions define "Aquaculture activities" to include the seeding, culturing and harvesting of fish (the term "fish" has a broad definition under federal law; it is not limited to finfish), the operation of machinery including vehicles and vessels, the installation of structures and anchors and the maintenance of machinery, structures and equipment.[14]

Aquaculture license condition 9.4 anticipates ***predator exclusion devices (netting),*** stating that "The licence holder shall confine predator exclusion devices (netting) to the licensed area."

It further provides for the appropriate use of exclusion devices and the prohibition against dredging, infilling, or redistribution of native beach materials.

> *9.5 The license holder shall ensure that when predator exclusion devices are approved in a shellfish site management plan:*
>
> *(a) Predator exclusion devices are constructed of an acceptable material and of acceptable size to minimize entrapment and potential injury to fish species or wildlife; and*
>
> *(b) Predator exclusion devices are maintained, inspected and repaired on a regular basis.*
>
> *10.1 Dredging, infilling or redistribution of native beach materials is prohibited by this license, unless expressly approved in the DFO-approved site management plan.*

2.4.3 Local Governments

Local governments (municipalities, Islands Trust local trust committees, and regional districts) hold the authority to plan and regulate land use within their respective boundaries, which may extend over foreshore and nearshore areas. They do this through official community plans, zoning, development permits, subdivision authority, building permits, and a variety of regulatory bylaws that affect land development.[15]

[13] Green Shores Series, Province of BC, Issues sheet, 2009.

[14] Shellfish Aquaculture License Under the Pacific Aquaculture Regulations 2012

[15] Stewardship Series

Their powers are defined under BC's *Local Government Act* and as of December 2003, under the *Community Charter for Municipalities*. As such, local governments can have significant influence on land based activities that affect coastal shores and nearshore areas. These planning and regulatory powers also extend to areas covered by water. The *Local Government Act* defines land to include "the surface of water," and states that municipal boundaries can include "the whole or part of adjoining foreshore and any area below low water mark." This implies that the power to plan, zone and permit land uses covers freshwater bodies and marine foreshore and nearshore areas. Many local governments extend zoning into nearshore areas.[16] Water zoning usually addresses such matters as whether and to what dimensions docks may be constructed to serve abutting upland properties, whether vessels moored or docked in the zone may be used as residential accommodation, and so forth. [17] Lessees of the federal crown are not bound by local zoning bylaws, but those of the provincial crown are[18].

3.0 REMOVAL OF PREDATOR NETTING FROM THE BEACH

3.1 Regulatory Authority

Predator netting within the foreshore (referenced by the Local Trust Committee as "the beach") is part of the operational management of a shellfish aquaculture operation. The practices of shellfish aquaculture are overseen and administered by DFO. Aquaculture is deemed a fishery and a matter of exclusive federal jurisdiction. In February 2009, the BC Supreme Court ruled that marine finfish aquaculture on the coast of BC is a fishery and a matter of exclusive federal jurisdiction under the *Constitution Act [1867].*[19] [20] This ruling is known as the "Morton decision." The Court ordered that the existing regulatory framework stay in place for 12 months after which sections of the *BC Fisheries Act* (power to make regulations for aquaculture), the *Farm Practices Protection (Right to Farm) Act*, and the *Aquaculture Regulation* in its entirety will only have effect as they apply to the cultivation of marine plants.[21] In December 2010, the federal government assumed regulation of the finfish and shellfish aquaculture industries in BC However, the provincial government continues to license marine plant cultivation and issue tenures where operations take place on Crown land, and maintains the mandate to protect the provincial public interest in sustainable aquaculture development.[22]

In December 2010 the Canada-British Columbia Agreement on Aquaculture Management was signed. This agreement replaced the 1988 Memorandum of Understanding on Aquaculture Development and takes into account the changed jurisdictional picture arising from the Morton Decision. The 2010 Agreement's preamble notes that Canada and BC share the common goal of having an economically, socially and environmentally sustainable aquaculture sector in British Columbia, and that the parties recognize the need to develop collaborative regulatory and management arrangements designed specifically for the province.[23]

[16] Stewardship Series

[17] William Buholzer, British Columbia Planning Law and Practice, Section 7.6 "The Use of the Surface of Water," LexisNexis, Markham, Ontario.

[18] Ibid.

[19] Department of Oceans and Fisheries Canada (2013). Retrieved February 7, 2013 from http://www.dfo-mpo.gc.ca/aquaculture/aquDec-20091030-eng.htm.

[20] *Morton v. British Columbia* (Agriculture and Lands), 2009 BCSC 136.

[21] BC Ministry of Agriculture, Provincial Aquaculture and Commercial Fisheries website, retrieved by Islands Trust staff in 2009.

[22] BC Ministry of Agriculture, provincial aquaculture and commercial fisheries website, accessed February 7, 2013, http://www.al.gov.bc.ca/fisheries/.

[23] Policy and Practice Report: Aquaculture Regulation in British Columbia, Item 39, pp. 24 & 25, July 28, 2011; forming a portion of the "Cohen Commission" report.

The agreement identifies respective responsibilities, management activities and implementation. It applies to the management of aquaculture in the Province of BC. Specific federal responsibilities include:

- The conservation and protection of fish and fish habitat, proper management and control of fisheries, including aquaculture, and pollution prohibition measures (s. 5.2.1);
- Ensuring that a regulatory regime for the fisheries aspects of aquaculture is in place in British Columbia (s. 5.2.2); and
- Management of federal crown lands and may issue tenures and operating licenses with respect to proposed or existing aquaculture facilities that are located on federal lands (s.5.2.3)

Specific Provincial responsibilities include:

- 5.3.1 The British Columbia Ministry of Agriculture is the lead provincial agency for the strategic ***development of the aquaculture industry*** in British Columbia and for interacting with Canada on Aquaculture matters;
- 5.3.2 The British Columbia Ministry of Natural Resource Operations is the lead provincial agency for the ***management of the aquaculture sector and for interacting with Canada on aquaculture licensing and tenure matters***;

With respect to management activities:

- 6.1 Canada may issue aquaculture licenses under the *Fisheries Act* for all aquaculture activities to be undertaken in the Province of British Columbia;
- 6.2 British Columbia may issue land tenures under the *Land Act* for aquaculture purposes; and
- 6.3 The Parties will make best efforts to harmonize their decision making criteria;[24]

The passing of bylaws that would be seen to interfere with the normal operation of a shellfish farm may be in conflict with Section 91(12) of the *Constitution Act (1867)* which gives Canada jurisdiction over the seacoast and inland fisheries. On the presumption that an aquaculture operator would view predator nets as a necessary component of their operation (in our view, this is a reasonable inference to draw and is part of the Code of Practice for such operations), it would be in their commercial interests to challenge any bylaws that fetter their operation and it would seem that such bylaws would infringe on areas of federal responsibility (per S.91 [12] of the *Constitution Act [1867]*).

[24] BC Aquaculture Regulatory Program, archived materials retrieved from http://www.dfo-mpo.gc.ca/media/infocus-alaune/2010/04/agreement-entente-eng.htm, accessed February 13, 2013.

To the extent that the predator nets are causing an issue of public access or other nuisance, a possibility that could be explored is whether or not a sufficient environmental assessment was carried out at the time of the granting of permits (use of the term "permits" here is intended to broadly imply various forms of permits such as permits, licenses, approvals, authorizations, etc.) and whether the scope of the assessment adequately considered the impacts of the operation on others. Review of such details is beyond the scope of Golder's present assignment and would require access to and detailed review of files and correspondence as well as specialized legal advice. Such files may be accessible through an *Access to Information Act* request. There are examples of permits/authorizations being revoked because of an environmental assessment that did not adequately adhere to the required process; however, there is also the possibility that after expending considerable effort in this regard, it may be determined that the process withstands scrutiny. The details of such an evaluation would require the services of a qualified legal professional.

4.0 BANNING DRIVING ON THE FORESHORE

Driving activity within the foreshore could possibly be regulated through the Land Use Bylaw as a land-use activity in accordance with s. 903 of the *Local Government Act*. While the use of land use bylaws (*i.e.,* zoning) to regulate beach driving is common in the USA, we are not aware of local governments in BC that have exercised their land use regulatory powers to regulate vehicle driving. However, a search was not part of the scope of work carried out here.

Given that shellfish aquaculture license conditions may include the operation of vehicles in the definition of "aquaculture activities",[25] a prohibition against beach driving may be viewed as an extension into matters that are under federal jurisdiction (seacoast and inland fisheries). It would be necessary to regulate in a fashion that discriminates between driving that is necessary for shellfish farming and driving for other purposes. Potentially, it may be necessary to consider alternative means by which a shellfish grower could carry on their operation without driving vehicles on the beach to assist in differentiating necessity for the operation of a shellfish growing facility.

Local government may also control public access points to the beach and thereby discourage driving on the beach for community and land use reasons. The use of gates and other structures that restrict vehicular access while enabling public access (on foot) is commonly used in many areas and such a system could potentially be set up. Legal advice should be sought if this approach is pursued but control of access for reasons of controlling nuisance to residents would seem to be an appropriate basis for enactment of bylaws by local governments and within their reasonable authority.

The use of cooperative, multiparty approaches may result in greater progress with respect to citizen concerns. Depending on site-specific considerations, driving certain types of vehicles on a beach to an extent that results in substrate compression or other modification could result in negative environmental disturbance to the affected area. However, we understand that because aquaculture is deemed to be a fishery, such damage would be incidental to the operation of the fishery, in a manner similar to that of a bottom trawl fishery, where disturbance of the seabed is an inevitable outcome of such a fishery. It is difficult to reconcile the habitat protection function of DFO with a permitting function enabling such an activity in an ongoing basis and we do not attempt to do so here. As noted elsewhere in this report, multiparty approaches can be credited with positive conservation outcomes.

[25] Shellfish Aquaculture Licence under the Pacific Aquaculture Regulations 2012, Department of Fisheries and Oceans.

5.0 BANNING BEACH MODIFICATION

Beach modification activities such as the construction of seawalls are prohibited within the zoning setback area for all zones (Section 2.3(3) of the *Denman Island Land Use Bylaw* and presumably similar forms of modification could be restricted in accordance with s. 903 of the *Local Government Act*, provided they do not interfere with any approved aquaculture licenses.

> *S. 903(1) of Part 26 of the Local Government Act states that a local government may, by bylaw, (c) regulate within a zone the (i) the use of land, buildings and other structures (S.903 (1) (c) (i).*

6.0 NON-REGULATORY MECHANISMS

The Stewardship Series publication on Coastal Shores Stewardship jointly published by the Province of BC and the Government of Canada identifies a number of important non-regulatory mechanisms to enhance environmental stewardship.[26] Some of the considerations are described briefly below:

Stakeholder Involvement in Community Planning and Regional Growth Strategies

A stakeholder review is useful, either as a part of the primary Official Community Plan process or as a separate, special planning process. It identifies issues that affect planning and management of coastal areas in the community or region. A list of coastal stakeholders may include coastal landowner groups, aquaculture industries, recreational users and conservation organizations as well as regulatory agencies. Institutional stakeholders may include port corporations, harbour authorities, universities and research centres, and regional offices of Fisheries and Oceans Canada and Provincial ministries. The special place and role of First Nations, particularly where natural resources are concerned, must also be recognized.

Planning efforts can focus on strategic actionable items to promote coastal stewardship such as:

- Developing tactics to protect, restore and enhance natural coastal systems
- Providing opportunities for public recreational use and enjoyment of coastal areas.
- Planning for marine oriented industrial and commercial development.
- Planning an integrated coastal strategy with other levels of government.

[26] Coastal Shores Stewardship, a component of the Stewardship Series, published jointly by the Province of BC and the Government of Canada, p. 44.

Partnership Policies

Local governments can use intergovernmental agreements and partnerships with nongovernmental organizations to help achieve community goals for coastal areas. For example, these could be used to:

- Coordinate inventory and shore mapping with the provincial Coastal Management and Planning Office, the Conservation Data Centre, and others;
- Develop awareness of best management practices, and run workshops for agencies, developers, waterfront landowners, NGOs and staff; and
- Establish a Coastal Zone Technical Committee.

Partnerships can lead to collaboration in developing Environmental Management Programs such as the Little Qualicum River Estuary Regional Conservation Area 2010-2019 or such as collaboration between the Regional District of Nanaimo, Department of Fisheries and Oceans, BC Ministry of the Environment, and Ducks Unlimited[27]. Such programs enable a broader range of issues to form the basis of decision making and provide a forum to identify areas where research of alternatives may be necessary or desired.

7.0 FINDINGS

1) Enacting Denman Island Land Use Bylaw regulations to address shellfish aquaculture predator netting may be an intrusion into areas of federal jurisdiction. If that is the case, such bylaws, if challenged could be determined to be unconstitutional. Legal advice in this regard is necessary.
2) There may be jurisdiction under the *Islands Trust Act* and *Local Government Act* to ban or restrict driving on the foreshore through the *Land Use Bylaw* provided such regulation is clearly designed to address those areas within local government jurisdiction. This may preclude operation of motor vehicles lawfully associated with shellfish aquaculture operations.
3) The spatial extent of motor vehicle use and access for the purpose of aquaculture operations should be reviewed in the context of the spatial bounds of the permits and approvals under which that operation is subject. This evaluation should identify if vehicle use is occurring outside the "four corners" of approval documents.
4) Beach modification activities such as the construction of seawalls are prohibited within the zoning setback area for all zones (Section 2.3(3) of the *Denman Island Land Use Bylaw*) and presumably other forms of modification could be restricted in accordance with s. 903 of the *Local Government Act*, where the footprint of such walls is on land under provincial jurisdiction, as the management of lands (with the exception of federally-owned lands) is within the constitutional jurisdiction of the Provinces.
5) There is the possibility that the review process under which licenses were granted may have fallen short of the necessary scope of review, particularly as many aquaculture operations were originally licensed provincially, prior to the Morton Decision. There are examples where permits have been rescinded because of lack of diligence in process. It was beyond our scope to evaluate whether this was the case at Denman Island and whether such opportunity might exist would be a matter for a legal professional.

[27] Little Qualicum River Estuary Regional Conservation Area 2010-2019, Regional District of Nanaimo, retrieved February 13, 2012 at [PDF] LQRERCA Management Plan - Regional District of Nanaimowww.rdn.bc.ca/cms/wpattachments/wpID2040atID3337.pdf

8.0 RECOMMENDATIONS

1) We recommend multi-party engagement to address social, environmental, enforcement and farming issues. These may possibly be conducted in cooperation with the Association of Vancouver Island Coastal Communities, or other suitable parties/mechanisms. It is anticipated that Fisheries and Oceans Canada will need to participate in a multi-party strategy as they hold the legal authority that would be needed to bring about changes to the three main areas of concern addressed in this document.

2) We recommend consideration of a Development Permit Area for marine shorelines under S. 919.1 of the *Local Government Act* for "protection of the natural environment, its ecosystems, and biological diversity." A well-crafted set of guidelines could steer clear of any conflict with the federal *Fisheries Act* and existing shellfish aquaculture license provisions. As staff have pointed out in their report of March 13, 2012 to the Denman Island Local Trust Committee, such guidelines for new development "would provide an opportunity to organize public education and consultation events on the importance of protecting the shoreline area."[28]

3) We recommend that the Local Trust Committee engage a legal expert to review, evaluate the propriety of and prepare changes to the *Land Use Bylaw* to address driving on the beach and beach modification in a manner that does not interfere with the constitutional jurisdiction of Canada in managing the shellfish aquaculture licenses.

[28] Staff Report to the Denman Island Local Trust Committee, "Review policies and regulations regarding impacts of shellfish framing on the marine environment," March 13, 2012.

9.0 CLOSURE

We trust that the information contained in this report meets your present requirements. Please contact us if you have any questions or concerns regarding the above.

GOLDER ASSOCIATES LTD.

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Draft

DENMAN ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. 207

A bylaw to amend the Land Use Bylaw to add amendments which regulate vehicular driving and ground based machinery operating on the foreshore in the W1,W3 and W4 zones.

The Denman Island Local Trust Committee, being the Local Trust Committee having jurisdiction in respect of the Denman Island Local Trust Area in the Province of British Columbia pursuant to the *Islands Trust Act*, enacts as follows:

1 Denman Island Land Use Bylaw No. 186, cited as "Denman Island Land Use Bylaw, 2002", is amended as detailed on attached Schedule 'A' of this amending bylaw.

2 This Bylaw may be cited as "Denman Island Land Use Bylaw, 2002, Amendment No 1, 2013"

READ A FIRST TIME this day of , 2015

PUBLIC HEARING this day of , 2015

READ A SECOND TIME this day of , 2015

READ A THIRD TIME this day of , 2015

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST this day of , 2015

ADOPTED this day of , 2015

_____ Chairperson

_____ Secretary

DENMAN ISLAND LOCAL TRUST COMMITTEE
BYLAW NO.207

Schedule 'A'

1. Part 3.7, "Water Zoning Tables" is amended by the addition of a new "Table 5 – Prohibited Uses" as shown below:

Table 5 – Prohibited Uses

The regulations listed in this table are intended to be applied in conjunction with the provisions of Table1, "Permitted Uses" in order to provide additional guidance and clarity on acceptable implementation actions and practices associated with the permitted uses

Zoning code	Regulations
W1, W4	Despite Table 1 of this Section the use of vehicles and ground based machinery on the foreshore is prohibited
W3	Despite Table 1 of this Section the use of vehicles and ground based machinery on the foreshore is prohibited except where specifically authorized by an aquaculture license issued by the Department of Fisheries and Oceans

PROPOSED

Denman Island Local Trust Committee

BYLAW NO. 212

****

A BYLAW TO AMEND THE DENMAN ISLAND OFFICIAL COMMUNITY PLAN, NO. 185

****

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

1. Bylaw No 185, cited as ”Denman Island Official Community Plan (Denman Island) Bylaw No. 185, 2008” is amended as shown on Schedule 1, attached to and forming part of this bylaw.

2. This bylaw may be cited as “Denman Island Official Community Plan (Denman Island) Bylaw 185, Amendment No. 2, 2014”

READ A FIRST TIME THIS	21st	DAY OF	APRIL	, 2015
READ A SECOND TIME THIS	27th	DAY OF	JULY	, 2015
PUBLIC HEARING HELD THIS		DAY OF		, 2015
READ A THIRD TIME THIS		DAY OF		, 2015
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST				
THIS		DAY OF		, 2015
APPROVED BY THE MINISTER OF COMMUNITY, SPORT AND CULTURAL DEVELOPMENT				
THIS		DAY OF		, 2015
ADOPTED THIS		DAY OF		, 2015

SECRETARY **CHAIRPERSON**

Denman Island Local Trust Committee

Bylaw No. 212

Schedule 1

The Denman Island Official Community Plan Bylaw No. 185 cited as "Denman Island Official Community Plan (Denman Island) Bylaw No. 185, 2008", is amended as follows:

1. "Development Permit Area No. 4: Streams, Lakes and Wetlands" of Part "F";, Development Permit Areas" of Schedule "A" is deleted in its entirety and replaced with the following:

"**DEVELOPMENT PERMIT AREA NO. 4: STREAMS, LAKES AND WETLANDS**

Category
This development permit area (DPA) is established, pursuant to Section 919.1(1)(a) of the *Local Government Act,* for the protection of the natural environment, its ecosystems and biological diversity.

The Streams, Lakes and Wetlands DPA is designated as an area for which development approval information may be required as authorized by Section 920.01 of the *Local Government Act*. Development approval information in the form of a report from a qualified environmental professional (QEP) or another professional may be required.

Terms used in this section that are defined in the *Riparian Areas Regulation, BC Fish Protection Act* (RAR) are intended to be interpreted in accordance with the definition given in the Regulation, as it may be amended from time to time.

Area:
Development Permit Area No. 4 includes all land designated on Schedule E of this plan as being within the Stream, Lakes and Wetlands DPA. This DPA includes minor and major streams and wetlands, and watercourses and lakes designated as "RAR applicable" and "Non-RAR". See 'Measurement of RAR and Non-RAR Development Permit Areas' below for explanation of the differentiation between RAR and non-RAR applicable areas.

Justification:
Riparian areas are important because they include ecosystems that support a disproportionately high number of vascular plant, moss, amphibian and small mammal species for the area they occupy.

This development permit area includes streams, lakes, and wetlands that have been identified as important fish, wildlife, and plant habitats and as water supplies for rural and residential use. Trees and shrubs shade streams, preventing high water temperatures that can be harmful to fish and other aquatic animals and providing cover that enables fish to avoid predators. Mature trees along streams provide a source of large organic debris that maintains pools and cascades used by fish. Plant roots and ground-covering vegetation stabilize stream banks and help to maintain high water quality by filtering sediments and pollutants throughout a drainage system. Riparian and aquatic habitats are unique and necessary to many species of plants and

animals. Land use practices including land clearing, logging, road building, construction of buildings and structures, and location of septic systems in or near riparian areas can jeopardize these habitats and water quality. Protection of riparian vegetation and watercourses is therefore necessary to protect the natural environment, ecosystems and biological diversity of Denman Island.

It is the Object of the Islands Trust to "Preserve and protect the Trust Area and its unique amenities and environment of the Trust Area for the benefit of the residents of the Trust Area, and of British Columbia generally, in cooperation with municipalities, regional districts, improvement districts, other persons and organizations and the government of British Columbia."

It is a policy of the Islands Trust Council that local trust committees shall in their Official Community Plans and regulatory bylaws, address means to prevent further loss or degradation of freshwater bodies or water courses, wetlands or riparian zones and to protect aquatic wildlife.

Furthermore, the province of British Columbia's *Fish Protection Act* requires that local governments establish regulations to protect riparian areas. This designation is intended, in part, to protect riparian areas from development so that the areas can provide natural features, functions and conditions that support fish life processes.

Objectives:
The objectives of this development permit area are as follows:

1. To honour provincial designations of certain lands as for agricultural purposes
2. To protect the biological diversity and habitat values of riparian and aquatic ecosystems
3. To protect the natural environment necessary to conserve productive fish habitat, including both streams and the adjacent land and vegetation
4. To prevent the degradation of existing and future water supplies on Denman Island
5. To minimize adverse impacts of land use practices on wildlife habitats and plant habitats in riparian areas
6. To prevent water pollution

Measurement of RAR and Non-RAR Development Permit Areas

The Streams, Lakes and Wetlands Development Permit Area includes the following:

1. All riparian assessment areas related to the areas identified on schedule E as "RAR-applicable" streams, major wetlands, and lakes, as the term "streams" is defined in the Riparian Areas Regulation, which include any of the following that provide fish habitat:
    - a watercourse, whether it usually contains water or not;
    - a pond, lake, river, creek or brook; and
    - a ditch, spring or wetland that is connected by surface flow to something referred to in the two previous bullets.

and consisting of the surface of the water body and:

a) for a watercourse, a 30 metre strip on both sides of the stream measured from the high water mark;
b) for a ravine less than 60 metres wide, a strip on both sides of the stream measured from the high water mark to a point that is 30 metres beyond the top of the ravine bank;
c) for a ravine 60 metres wide or greater, a strip on both sides of the stream measured from the high water mark to a point that is 10 metres beyond the top of the ravine bank;
d) for a lake, wetland or other water body, 30 m around the water body measured from the high water mark of the water body;
e) for a ditch, a 5 metre strip on both sides of the ditch measured from the high water mark.

2. Other watercourses and wetlands, identified on Schedule E as "Non-RAR" applicable streams and minor wetlands, consisting of the surface area of the water body and a riparian area consisting of:

a) for a minor stream, a 10 metre strip on both sides of the of the watercourse, measured from the high water mark;
b) for a minor wetland, 10 m around the water body measured from the top of bank of the water body;

and Schedule E shall be so interpreted. The designation and delineation of Development Permit Area No. 4 consists of a digital record stored and maintained in a Geographic Information System (GIS) at the offices of the Islands Trust. The actual location of the streams and water bodies may need to be determined on a site-specific basis by a qualified environmental professional or a surveyor.

Development Approval Information

Development Permit Area No. 4 is designated as an area for which development approval information may be required as authorized by Section 920.01 of the Local Government Act. Development approval information in the form of a report from a qualified environmental professional (QEP) or another professional may be required due to special conditions and the objectives described above.

INFORMATION NOTE: Development Permit Area Guidelines for Development Permit Area No. 4: Streams, Lakes and Wetlands are in the Land Use Bylaw.

2. Schedule E, Map 2 is deleted and replaced by Attachment "1" attached to and forming part of this bylaw.

Denman Island

Official Community Plan

Schedule E Map 2
North
DEVELOPMENT PERMIT AREAS

DRAFT

N

Development Permit Area No. 4

RAR Applicable Streams, Lakes and Wetlands

Non-RAR Applicable Streams, Lakes and Wetlands

Development Permit Area No. 5
Commercial

Development Permit Area No. 6
Community Boat Launch

Development Permit Area No. 7
Light Industrial

Water Courses

Water Bodies

ALR

0 250 500 1,000 1,500 Meters

Denman Island
Official Community Plan
Schedule E Map 2
South
DEVELOPMENT PERMIT AREAS
DRAFT

Development Permit Area No. 4

RAR Applicable Streams, Lakes and Wetlands

Non-RAR Applicable Streams, Lakes and Wetlands

Development Permit Area No. 5
Commercial

Development Permit Area No. 6
Community Boat Launch

Development Permit Area No. 7
Light Industrial

Water Courses

Water Bodies

ALR

Meters
0 250 500 1,000 1,500 2,000

PROPOSED

Denman Island Local Trust Committee

BYLAW NO. 213

****

A BYLAW TO AMEND THE DENMAN ISLAND LAND USE BYLAW, NO. 186

****

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

1. Bylaw No. 186, cited as "Denman Island Land Use Bylaw No. 186, 2008" is amended as shown on Schedule 1, attached to and forming part of this bylaw.

2. This bylaw may be cited as "Denman Island Land Use Bylaw 186, Amendment No. 2, 2014"

READ A FIRST TIME THIS	21ST	DAY OF	APRIL	, 2015
READ A SECOND TIME THIS	27th	DAY OF	JULY	, 2015
PUBLIC HEARING HELD THIS		DAY OF		, 2015
READ A THIRD TIME THIS		DAY OF		, 2015
APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST				
ADOPTED THIS		DAY OF		, 2015

SECRETARY

CHAIRPERSON

Denman Island Local Trust Committee

Bylaw No. 213

Schedule 1

Schedule "A" of Denman Island Land Use Bylaw No. 186 cited as "Denman Island Land Use Bylaw No. 186, 2008" is amended by:

1. Deleting "Part 4.4 Development Permit Area No. 4: Streams, Lakes and Wetlands – Guidelines" in its entirety and replacing it with the following text:

"4.4 Development Permit Area No. 4: Streams, Lakes and Wetlands - Guidelines

Prior to undertaking any development, subdivision or land alteration, an owner of property within the Streams, Lakes and Wetlands development permit area shall apply to the Denman Island Local Trust Committee for a development permit.

4.4.1 Applicability

The following activities shall require a development permit whenever they occur within the DPA, unless specifically exempted below:

a) Subdivision of land;
b) Construction of, addition to or alteration of a building or other structure;
c) Alteration of land;
d) Development as that term is defined in the *Riparian Areas Regulation, BC Fish Protection Act*; and
e) Installation of any structures within a stream or within the natural boundary of a lake.

A separate development permit, or additional development permit conditions in a single permit, may be required or imposed if the development is occurring in another development permit area designated in this plan.

4.4.2 Exemptions

The following activities are exempt from any requirement for a development permit:

a) works undertaken by a local government or a body established by a local government;

b) agricultural activities within a seasonally flooded agricultural field that is in the Agricultural Land Reserve as long as it can be determined by site inspection and/or by current orthophoto interpretation that it has been previously modified for agriculture. If it is not possible to make the determination by these means, other historical evidence that agricultural activities have occurred in the subject area within the last 50 years from the date of the application may be acceptable;

c) the following properties are recognized as containing seasonally flooded agricultural fields and are exempt from requiring a development permit for agricultural activities as long as they remain in the Agricultural Land Reserve:

Lot A, Section 32, Denman Island, Nanaimo District, Plan VIP 61295;

Lot 1, Section 17, Denman Island, Nanaimo District, Plan 43576;

Lot 2, Section 17, Denman Island, Nanaimo District, Plan 43576;

The South East ¼ of Section 26, Denman Island, Nanaimo District;

The North West ¼ of the North West ¼ of Section 22, Denman Island, Nanaimo District; and

The South West ¼ of Section 13, Denman Island, Nanaimo District;

d) for certainty, all uses that are not residential, commercial or industrial or accessory to such a use;

e) interior or exterior alterations, renovations, maintenance, reconstruction or repair to a pre-existing permanent building or structure to an extent that does not alter, extend or otherwise increase the footprint;

f) repair or replacement of a septic field on the same spot;

g) the removal of trees that have been examined by an arborist and certified to pose an immediate threat to life or property;

h) gardening and yard maintenance activities, not involving the application of artificial fertilizer, pesticides or herbicides, within a pre-existing *landscaped area*, including mowing, pruning, planting, and minor soil disturbance that does not alter the general contours of the land;

i) manual removal of invasive species and manual planting of native vegetation conducted in accordance with best management practices;

j) pruning of not more than two trees in one growing season and that is conducted in accordance with the standards and recommendations of the International Society of Arboriculture, and that does not involve: the lift pruning of lower limbs to the extent that the live crown ratio is less than 50%, the removal of more than 25% of the crown in one growing season, topping, or the pruning or removal of a structural root within the critical root zone;

k) ecological restoration or enhancement projects undertaken or authorized by a public body;

l) changes in or about a stream authorized under Section 9 of the Water Act;

m) work that is authorized by Fisheries and Oceans Canada by permit under Section 35 of the *Fisheries Act;*

n) emergency procedures to prevent, control or reduce immediate threats to life or property including:

   i. emergency actions for flood-protection and erosion protection,

   ii. clearing of an obstruction from a bridge or culvert or an obstruction to drainage flow, and

   iii. repairs to bridges and safety fences carried out in accordance with the *Water Act;*

o) farm operations as defined in the *Farm Practices Protection (Right to Farm) Act* and farm uses as defined in Section 2(2) of the *Agricultural Land Reserve Use, Subdivision, and Procedure Regulation* and horticulture as defined in the Denman Island Land Use Bylaw 177;

p) The construction of a fence if no native trees are removed and the disturbance of native vegetation is restricted to 0.5 meters on either side of the fence, or 1.5 meters on either side of the fence in agricultural areas;

q) The construction of a private trail if all of the following apply;

   i. The trail is 1 meter wide or less;

   ii. No native trees are removed;

iii. The surface of the trail is pervious (for example, soil, gravel or wood chips)

iv. The trail is designed to prevent soil erosion where slopes occur; and

v. Where the trail parallels the stream, the trail is more than 5 meters away from the high water mark of a stream;

r) Disturbance of soils more than 15 meters from the stream's high water mark or the top of the ravine bank if the total area of soil disturbance is less than 5 meters squared; and

s) The constructing of a small accessory building such as a pump house, gazebo, garden shed or playhouse more than 15 meters from the stream's high watermark or the top of the ravine bank if the building is located within an existing landscaped area and the total area of small accessory building is less than 10 meters squared.

Information Note: For best management practices on manual removal of invasive species and planting of native vegetation, property owners should contact organizations such as the Invasive Species Council of British Columbia and the Coastal Invasive Species Committee.

Information Note: Some activities not listed here that are regulated under other provincial or federal legislation may not require a development permit.

4.4.3 Guidelines

Prior to undertaking any development activities within the Streams, Lake and Wetlands DPA an owner of property shall apply to the Local Trust Committee for a development permit, and the following guidelines apply:

Guideline 1

In general, all development in this DPA should be undertaken in a manner that minimizes impact on and that restores or maintains the proper functioning condition of the riparian area, water bodies and ecosystems. Where a Qualified Environmental Professional (QEP) or other professional has made recommendations for mitigation measures, enhancement or restoration in order to lessen impacts on the riparian area and ecosystems, the Local Trust Committee may impose permit conditions, including a requirement for security in the form of an irrevocable letter of credit, to ensure the protection of riparian areas and ecosystems is consistent with the measures and recommendations described in the report.

Guideline 2

The development permit should not allow any development activities, including the storage or application of pesticides and other chemicals for non-essential cosmetic purposes, to take place within any Streamside Protection and Enhancement Area (SPEA) identified by the QEP or riparian buffer recommended by another professional adjacent to a non-RAR applicable watercourse, lake or wetland, and the owner should be required to implement a plan for protecting the SPEA or riparian buffer over the long term through measures that may be implemented as conditions of the development permit.

Guideline 3

Where the QEP or other professional's report describes an area as suitable for development with special mitigating measures, the development permit should only allow the development to occur in compliance with the measures described in the report. Monitoring and regular reporting by a QEP or other professional at the applicant's expense may be required during construction and development phases, as specified in a development permit.

Guideline 4

The following guidelines are applicable to floats and associated structures within the development permit area:

i) floats should not be placed in areas identified as important to fish life processes where installation of a float would compromise the functioning of the processes;

ii) a ramp or float should not rest on the bed of the water body;

iii) the use of treated wood in the water body should be avoided;

iv) floatation material should be contained within a durable shell to prevent disintegration;

v) pervious surfacing should be used on ramps and floats (e.g. grating or separated boards);

vi) any areas disturbed during installation should be restored;

vii) where a float is being replaced, all old materials should be removed from the riparian area.

Guideline 5

If the nature of the proposed project within the DPA changes after the professional report has been prepared such that it is reasonable to assume that the professional's assessment of the impact of the development may be affected, the Local Trust Committee may require the applicant to have the professional update the assessment at the applicant's expense and DP conditions may be amended accordingly.

Guideline 6

The Local Trust Committee may consider variances to subdivision or siting or size regulations where the variance may result in enhanced protection of a SPEA, riparian buffer or riparian ecosystem in compliance with recommendations of a professional's report."

Islands Trust

Top Priorities

Denman Island

No.	Description	Activity	Received/Initiated	Responsibility	Target Date	Status
1	Implementing Riparian Areas Regulation	Mapping of all streams and wetlands on Denman Island and amending DPA 4 to comply with RAR. RFP re-issued October 8th	Aug-03-2010	Rob Milne	Sep-01-2015	On Going
2	Review of vistor accommodations regulations	Proposed focus of review is on allowing the provision of cooking facilities for guests.		Rob Milne		On Going
3	Development of a Memorandum of Understanding with K'omoks First Nation.		Sep-16-2014	Rob Milne		On Going
4	Marine Issues		Mar-03-2015	Laura Busheikin David Critchley		On Going

Islands Trust

Projects

Denman Island

No.	Description	Activity	Received/Initiated	Status
1	A Protected Area Network on Denman Island		Mar-15-2011	On Going
1	Housekeeping project	1. Land Use Bylaw definition of intensive agriculture; remove "and excluding feedlots". 2. Formatting of Agriculture definition	Aug-15-2011	On Going
1	Regulations governing wind towers and Ocean Loop Geo-Exchange Systems.	Monitor recommendation from Trust Council.	Aug-15-2011	On Going
1	Regulation limiting the gross floor area of a dwelling		Oct-25-2011	On Going
1	Regulations to promote greenhouse gas emissions reduction.		Oct-25-2011	On Going
1	Review and Update of Development Procedures Bylaw No. 71		Dec-11-2012	On Going
1	Review of OCP/LUB regarding implementation of Denman Island Farm Plan and ensuring food security.	Include consideration of Exploring Food Security in the Islands Trust Area in the final report	Apr-02-2013	On Going
1	DCLTA Rural Affordable Housing Project Final Report dated June 20, 2013	Consideration of recommendations	Oct-22-2013	On Going
1	Review of LUB in consideration of the new Federal *Marihuana for Medical Purposes Regulation*	Review the Staff Report dated April 28, 2014.	Jul-15-2014	Done
1	Alternative Dispute Resolution	To be considered as part of the enforcement tool kit, possibly in cooperation with the Hornby Island Local Trust Committee	May-26-2015	On Going

1	Downtown Village Neighbourhood Planning	The plan might include reduction in greenhouse gas emissions; encouragement of a healthy, sustainable economy; and addressing of water and septic concerns.	May-26-2015	On Going

Applications w/ Status - Denman Island Status: Open

Applications

Agricultural Land Reserve

File Number	Applicant Name	Date Received	Purpose
DE-ALR-2014.1	Selwyn and Patricia Jones **Planner:** Teresa Rittemann	Nov-12-2014	Application for vineyard and farm to be included in the ALR

Planning Status

Status Date: Aug-19-2015

Letter received from applicant that they wish to confirm that they still wish to proceed with the inclusion.

Status Date: Aug-11-2015

Letter received from ALC. Commission willing to include into the ALR subject to conditions. IT will await further confirmation from ALC if/when conditions have been met.

Status Date: Jun-29-2015

No change in status.

Development Permit

File Number	Applicant Name	Date Received	Purpose
DE-DP-2006.2	Daniel/Debra Stoneman **Planner:** Courtney Simpson	Aug-31-2006	The use of presently cleared areas within the Komas Bluff permit area for agricultural use.

Planning Status

Status Date: Apr-04-2011

No change: waiting for info from applicant.

Status Date: Feb-04-2010

No change

Status Date: May-01-2009

No change

File Number	Applicant Name	Date Received	Purpose
DE-DP-2011.2	Ella Day **Planner:** Marnie Eggen	Mar-21-2011	For barn sited within DP #1: Komas Bluff

Planning Status

Status Date: Jul-29-2013

File passed on to Bylaw enforcement

Status Date: Oct-05-2012

Letter sent to applicant re: further info required

Status Date: Nov-01-2011

Awaiting info from applicant

File Number	Applicant Name	Date Received	Purpose
DE-DP-2013.1	Daniel & Debra Stoneman **Planner:** Courtney Simpson	Jun-17-2013	

Planning Status

Status Date: Jul-16-2013

Staff report to July 16 LTC meeting. LTC resolved to not issue permit but to amend 1999 development permit.

Status Date: Jul-16-2013

Staff preparing development permit amendment

Status Date: Jun-24-2013

Planner Reviewing File

Development Variance Permit

File Number	Applicant Name	Date Received	Purpose
DE-DVP-2011.1	Ella Day **Planner:** Marnie Eggen	May-13-2011	Barn on property line

Planning Status

Status Date: Jul-29-2013

no change; file passed on to bylaw enforcement

Status Date: Nov-09-2012

BCLS survey confirms barn sited on lot line; Applicant intends to apply for lot line adjustment

Status Date: Oct-05-2012

Letter sent to applicant requesting further information otherwise issue will be transfered over to bylaw enforcement

Rezoning

File Number	Applicant Name	Date Received	Purpose
DE-RZ-2015.1	Henning Neilsen	Jan-12-1900	To change Land Use Designation of a portion of the subject property from Residential to Conservation/recreation and that portion to be transferred to Islands Trust Fund - remainder to be used for residential

Planner: Rob Milne

Planning Status

Status Date: Apr-21-2015

LTC consideration of staff report. Resolution for staff to prepare draft bylaws for May 26, 2015 LTC meeting.

Subdivision

File Number	Applicant Name	Date Received	Purpose
DE-SUB-2013.2	Henning Nielsen **Planner:** Marnie Eggen	Dec-12-2013	

Planning Status

Status Date: Jun-17-2014

Received final subdivisino plan and water reports. Final signoff sent to MOTI and applicant on June 17, 2014

Status Date: Jan-14-2014

PLA with conditions received January 14, 2014

Status Date: Dec-23-2013

Subdivision referral report sent to DILTC, MOTI and applicant.

File Number	Applicant Name	Date Received	Purpose
DE-SUB-2014.1	Henning Nielsen **Planner:** Marnie Eggen	Feb-04-2014	Davidson Road 2 Lot subdivision

Planning Status

Status Date: Jan-05-2015

Final letter sent to MOTI.

Status Date: Mar-18-2014

Referral response emailed to MOTI

File Number	Applicant Name	Date Received	Purpose
DE-SUB-2015.1	Etienne & Louise De Villiers & Fraser	Dec-24-2014	2201 Tristone Road S.946 (2 lot subdivision)

Planner: Teresa Rittemann

Planning Status

Status Date: Aug-27-2015

No change in status. Planner TR emailed applicant on Aug 4 to check in on progress and to see if applicant had questions. No response from applicant.

Status Date: Jul-28-2015

IT received notice from the RAR Notification System that an assessment has been created (for the DP that is required in association with this file)

Status Date: Jun-29-2015

No change in status.

Siting and use Permit

File Number	Applicant Name	Date Received	Purpose
DE-SUP-2006.7	Daniel/Debra Stoneman	Aug-31-2006	Agricultural (including buildings consistent with ALR legislation)

Planner: Courtney Simpson

Planning Status

Status Date: Jan-08-2009

On hold pending outcome of court case

File Number	Applicant Name	Date Received	Purpose
DE-SUP-2009.14	Jean Ella Day	Nov-02-2009	2900 SWAN RD One 26 foot high barn.

Planner: Marnie Eggen

Planning Status

Status Date: Jun-30-2011

On hold until outcome of DP and DVP.

Status Date: Mar-03-2011

New info submitted by applicant indicates bld sited on lot line; options provided to applicant

Status Date: Jan-20-2011

Applicant submitted partial application

File Number	Applicant Name	Date Received	Purpose
DE-SUP-2014.10	Daniel & Debra Stoneman	Sep-29-2014	Residence, Garage, Chicken House, Beach Stairs, Woodshed

Planner: Rob Milne

Planning Status

Status Date: Nov-03-2014

On hold pending confirmation of compliance with condtions of approval for DE-DP-2014.2

File Number	Applicant Name	Date Received	Purpose
DE-SUP-2015.6	David STEELE	May-29-2015	Accessory building (car port/boat house) NOTE: I am trying to contact the applicant to see if we can include the pre-existing buildings in this SUP application. (Linda Prowse

Planner: Lisa Webster-Gibson

Planning Status

Islands Trust

LTC EXP SUMMARY REPORT F2016

Invoices posted to Month ending July 2015

615 Denman	Invoices posted to Month ending July 2015	Budget	Spent	Balance
65000-615	LTC "Trustee Expenses"	750.00	509.95	240.05
LTC Local				
65200-615	LTC - Local Exp - LTC Meeting Expenses	2,500.00	1,216.54	1,283.46
65210-615	LTC - Local Exp - APC Meeting Expenses	750.00	119.64	630.36
65220-615	LTC - Local Exp - Communications	300.00	75.00	225.00
65230-615	LTC - Local Exp - Special Projects	750.00	0.00	750.00
TOTAL LTC Local Expense		4,300.00	1,411.18	2,888.82
Projects				
73001-615-3001	Denman RAR	2,500.00	0.00	2,500.00
73001-615-4048	Denman Memo of Understanding with K'omoks FN	2,000.00	0.00	2,000.00
TOTAL Project Expenses		4,500.00	0.00	4,500.00

Denman Island Local Trust Committee

POLICIES AND STANDING RESOLUTIONS

No	Meeting Date	Resolution No.	Issue	Policy
1.	May 1, 2012	DE-041-2012	Enforcement Policy on Guest accommodation	It was It was **MOVED** and **SECONDED**: 1. That as the Denman Island Local Trust Committee intends to review the home based guest accommodation regulations in Bylaw No. 186 bylaw enforcement activity is restricted where the guest accommodation provides the following unlawful facilities: 1. a second set of cooking facilities is provided in a lawful dwelling for the use of guests; 2. accessory buildings are used as bedrooms for guest accommodation provided that no more than three bedrooms exist in total; 2. That despite section 1 and 2 above bylaw enforcement activity will not be restricted if: 1. there are issues related to health, safety, or environmental damage; 2. there is a written complaint about bona fide serious nuisance issues such as noise or parking congestion related to the guest accommodation; 3. That nothing in this enforcement policy should be interpreted as giving permission to violate the Land Use Bylaw and the Denman Island Trust Committee may change this policy at any time and may give direction to expand enforcement activities at any time without notice; 4. That unless the Denman Island Local Trust Committee extends the effective period on this enforcement policy it expires on December 31, 2012 or when the guest accommodation regulation review is complete, whichever is the sooner.
2.	October 22, 2013	DE-065-2013	Enforcement Policy on Guest accommodation	It was **MOVED** and **SECONDED**, that the Denman Island Local Trust Committee renew Standing Resolution No. DE-041-2012 to be extended to December 31, 2014.

3.	September 16, 2014	DE-2014-054	Enforcement Policy on Guest accommodation	It was **MOVED** and **SECONDED**, that the Denman Island Local Trust Committee renew Standing Resolution No. DE-065-2013 to be extended to December 31, 2015.

Trust Fund Board Report to Local Trust Committees and Bowen Island Municipality
August 2015

Wallace Point Covenant signed – North Pender Island
A covenant has been signed to protect over 50% of a property at Wallace Point, the southernmost point of North Pender Island at the mouth of Bedwell Harbour. The 1.63 hectare covenanted area encompasses several distinct ecosystems and includes two wildlife trees, one of which has an active Bald Eagle nest. Dense bull kelp beds grow near the shoreline and there is a Rockfish Conservation Area offshore north and east of this property.

Meeting with Qualicum First Nation - Lasqueti Crown Land acquisition
Trust Fund Board representatives enjoyed a cordial lunch with the chief and councillors of the Qualicum First Nation followed by initial discussions about the possible acquisition of Crown land on Lasqueti for protection. The Trust Fund Board plans to host Qualicum representatives in the fall for a visit to Lasqueti to look at the land and other areas of significance to the Qualicum people.

Fairyslipper Forest Nature Reserve – Thetis Island land acquisition project
Islands Trust Fund is continuing to support its partners, Thetis Island Nature Conservancy and Cowichan Community Land Trust, as the project to protect Fairyslipper Forest moves into a new phase. So far, $180K has been raised – over one third of the $560k required to acquire a property on Lower Burchell Hill as Thetis Island's first nature reserve. Visit the Islands Trust Fund website to watch the video that has been created to encourage donations. www.IslandsTrustFund.bc.ca/Fairyslipper

Realtor Outreach – Pender Islands
Islands Trust Fund staff, in collaboration with the Pender Islands Conservancy Association (PICA), organized a land conservation outreach event for real estate and other professionals involved with selling properties on North and South Pender Islands. The event was well received by participants who commented that they felt much more knowledgeable about conservation covenants. Similar events will be considered for other islands. Local trustees will be contacted early in the planning process.

Grace Islet – Salt Spring Island
Islands Trust Fund is in touch with the Nature Conservancy of Canada with respect to a possible role in the ongoing protection and stewardship of Grace Islet.

Trespass at Mount Trematon Nature Reserve– Lasqueti Island
Islands Trust Fund has acted quickly to address a trespass at Mount Trematon Nature Reserve on Lasqueti Island. We are fortunate that such incidents are a rare occurrence but we are prepared to take appropriate action when they do happen.

Coastal Douglas-fir Conservation Strategy – Islands Trust Fund as an example
The Islands Trust Fund is providing a local government scenario for pursuing the Conservation Strategy of the Coastal Douglas-fir and Associated Ecosystems Conservation Partnership (CDFCP). Islands Trust Fund is an active member of this partnership which includes provincial agencies, NGOs, academics, and local governments. More information about the CDFCP Conservation Strategy will be included in September's Trust Council package.

Denman Island
Local Trust Committee
Minutes of a Regular Meeting

Date of Meeting:	Tuesday, June 10, 2014
Location:	Denman Seniors Hall 1111 Northwest Road, Denman Island, BC
Members Present:	Peter Luckham, Chair Laura Busheikin, Local Trustee David Graham, Local Trustee
Staff Present:	Rob Milne, Island Planner Vicky Bockman, Recorder
Media and Others Present:	Approximately three (3) members of the public

1. CALL TO ORDER

Chair Luckham called the meeting to order at 10:30 am. He welcomed the public and acknowledged that the meeting is being held in traditional territory of the Coast Salish First Nations.

2. APPROVAL OF AGENDA

The following addition to the agenda was presented for consideration:

10.1 Email from Lucinda Abbott dated June 4, 2014 regarding Vancouver Island Regional Library Branch on Denman Island

By general consent the agenda was approved, as amended.

3. CHAIR'S REPORT

Chair Luckham reported that preparations are underway for the next Trust Council meeting which will be held on Saturna Island. He commented that items of interest will include a presentation from a representative from Fisheries and Oceans Canada (DFO), a discussion of advocacy programs conducted by Islands Trust, and workplace safety for staff. He also remarked that there will be a Greenshores workshop held on Thetis Island, noting that it will be presented with a focus toward information for contractors who often have an initial influence on work that is done.

4. TRUSTEES' REPORT

Trustee Busheikin reported that the Ferry Advisory Committee met and is setting up a subcommittee to consult with BC Ferries and communities to work on revising the off-season ferry schedule for implementation in September. She indicated that there will be opportunity for public input in this work. She remarked that discussion is ongoing regarding the possibility of providing a number of spaces for Hornby Island traffic on the 8:00 am sailing from Denman West.

Trustee Busheikin stated that she attended a Trust Programs Committee meeting where recommendations for the Islands Trust Community Stewardship Awards were discussed. She provided a brief overview of the Economic Development for Rural Community session that she attended at Deep Bay and the Comox Valley Regional District Cross-Island Trail meeting on Denman Island which provided an opportunity for the public to review the plans and make comments on the next phase of the trail to be constructed. She reported that she attended Trustee Office Hours on two occasions and remarked that conversations at those sessions generally were concerning housing issues.

Trustee Graham reported that the Marcus Isbister Old School, which is the only property held by the Islands Trust Council, now has a new roof. He commented that he held Trustee Office Hours twice, setting up at the Saturday Farmers' Market; and noted that he and Trustee Busheikin conducted outreach for proposed Bylaw Nos. 210 and 211 there with mostly positive feedback from the public.

5. MINUTES

5.1 Local Trust Committee Meeting Minutes dated May 7, 2014

The following amendments to the minutes were presented for consideration:

- Page 3, item 6.2, last paragraph: replace "procedure requirements are" with "context is"; and
- Page 10, item 12.2.1, third bullet, last line: replace "determined" with "suggested".

By general consent the minutes were adopted, as amended.

5.2 Section 26 Resolutions Without Meeting – None

5.3 Denman Island Advisory Planning Commission Minutes – None

5.4 Denman Island Marine Advisory Planning Commission Minutes – None

6. BUSINESS ARISING FROM MINUTES

6.1 Follow-up Action List dated May 29, 2014

Planner Milne summarized the items on the Follow-up Action List. Trustee Graham provided an update on the May 7, 2014 activity, reporting that the Executive Committee has acknowledged Denman Island Local Trust Committee's reconsideration of requesting a meeting with the Ministry of Environment. Trustees noted that the status on this item is now "Done" and the activity can be removed from the list.

7. APPLICATIONS AND PERMITS - None

8. DELEGATIONS - None

9. TOWN HALL DISCUSSION

- Rick Paisley stated that the Anglican Church has offered to sell him one-third of an acre and wished to accommodate the financial needs of the church, and asked if there might be a cost effective way to proceed with this transaction.

- Planner Milne and Trustees suggested that Mr. Paisley provide Planner Milne with relevant correspondence to explore this matter further. Trustees requested that Planner Milne report back to the Committee.

- Rick Paisley requested that Trustees consider expanding regulations for secondary suites in proposed Bylaw Nos. 210 and 211 to include R1 properties.

- Rick Paisley expressed his concern regarding the loss of the boat launch that has occurred in the current Denman West ferry terminal construction. Trustees advised that BC Ferries has committed to funding a new boat launch located north of the Community Dock. The Local Trust Committee is on record as supporting retention of a boat launch and suggested Mr. Paisley contact Denman Island Residents Association representatives for more information.

10. CORRESPONDENCE

10.1 Email from Lucinda Abbott dated June 4, 2014 regarding Vancouver Island Regional Library Branch on Denman Island

Trustees discussed the correspondence and Trustee Busheikin offered to respond to the writer on behalf of the Committee to clarify that the Local Trust Committee has never received a referral for response on this issue nor has it ever turned down an opportunity for a branch of the library to be located on Denman Island.

11. REPORTS

11.1 Work Program Reports

11.1.1 Top Priorities and Projects List Report dated May 29, 2014

The Top Priorities and Projects List Report was summarized by Planner Milne. Trustees indicated their desire to add other important priorities such as “Review of visitor accommodation regulations” and “Review of OCP/LUB regarding implementation of Denman Island Farm Plan” to the Top Priorities List upon completion of one or more items currently on the list.

Trustees discussed the Projects List and deferred their consideration of placing additional items on the list at this time. They suggested that as the term nears completion a Staff Report addressing the status of the Projects would be useful to assist them in considering the possibility of consolidating, deleting or adding other items to the list.

11.2 Applications Log

11.2.1 Report dated May 29, 2014

The report was Received.

11.3 Trustee and Local Expenses

11.3.1 Expenses posted to end of May, 2014

The report was Received.

11.4 Policies and Standing Resolutions

11.4.1 Report

The report was Received.

12. LOCAL TRUST COMMITTEE PROJECTS - None

13. NEW BUSINESS

13.1 Forage Fish Mapping – Kate Emmings, Islands Trust Fund

13.1.1 Staff Report dated May 28, 2014

Trustees received the Forage Fish Mapping report and acknowledged their appreciation for the information provided. They discussed options for possible uses for the report with the following noted:

- Trustee Busheikin suggested that a project might be placed on the Projects List in the future to consider inclusion of forage fish habitat protection in the Official Community Plan and Land Use Bylaw; and
- Trustee Graham noted that this information warrants its own project and suggested that this document might be useful to inform a focused examination of the Marine section in the Official Community Plan that might include consideration of a Marine Development Permit.

13.2 New Federal Marihuana for Medical Purposes Regulation

13.2.1 Staff Report dated April 28, 2014

Planner Milne outlined the Staff Report prepared by Planner Eggen regarding the new *Federal Marihuana for Medical Purposes Regulation,* including background, summary of options and recommendations for the Local Trust Committee's consideration.

Trustees discussed the staff report and observed that the impacts of the regulation might be identified as a project for consideration at a future time.

DE-2014-039
It was MOVED and SECONDED,
that with regard to the production of medical marihuana under the *new Marihuana for Medical Purposes Regulation*, the Denman Island Local Trust Committee not amend Denman Island Bylaw No. 186 at this time.

CARRIED

14. BYLAWS - None

15. ISLANDS TRUST WEBSITE

15.1 Denman Page

Trustees requested that staff provide a link to the Forage Fish Habitat Mapping report on the Denman web page.

16. NEXT BUSINESS MEETING DATE

16.1 Community Information Meeting regarding Bylaw Nos. 210 and 211 and Public Hearing regarding Bylaw Nos. 210 and 211

A Community Information Meeting regarding Bylaw Nos. 210 and 211 will be held on Tuesday, June 10, 2014 at the Denman Community Hall – Back Hall, 1196 Northwest Road, Denman Island, BC at 6:00 pm with a Public Hearing to follow at 7:00 pm.

16.2 Regular Business Meeting

The next meeting of the Denman Island Local Trust Committee will take place on Tuesday, July 15, 2014 at 10:30 am at the Denman Seniors Centre, 1111 Northwest Road, Denman Island, BC.

17. TOWN HALL DISCUSSION - None

18. ADJOURNMENT

By general consent the meeting was adjourned at 11:22 am.

_____
Peter Luckham, Chair

CERTIFIED CORRECT:

_____
Vicky Bockman, Recorder

STAFF REPORT

Date: April 28, 2014 **File No.:** 6500 -20

To: Executive Committee acting as a Local Trust Committee ***(Ballenas – Winchelsea Islands)***
Denman Island Local Trust Committee
Gabriola Island Local Trust Committee
Gambier Island Local Trust Committee
Hornby Island Local Trust Committee
Lasqueti Island Local Trust Committee
Thetis Island Local Trust Committee

From: Marnie Eggen, Planner 1

CC: Regional Planning Managers
David Marlor, Director of Local Planning Services

Re: New Federal *Marihuana for Medical Purposes Regulation*

THE PROPOSAL:

The purpose of this report is to provide Local Trust Committees with the following:

- an overview of the new *Marihuana for Medical Purposes Regulation;*
- an overview of its implications for the Islands Trust Northern Region;
- an analysis of zones in Northern Region local trust areas that would currently permit medical marihuana production and request direction on amending bylaws; and
- an explanation of how notices of intent from proponents are being processed when received in the Northern Office.

BACKGROUND:

Implementation of the new Federal *Marihuana for Medical Purposes Regulations* (MMPR) is underway. The new regulations (June 2013) came into force on April 1, 2014. However, as a result of a Federal Court Order, brought down March 21, 2014, those operating under the old regulations, *Medical Marihuana Access Program* (MMAR), are allowed to continue to produce medical marihuana past the original expiry date of March 31, 2014. The Order, however, does not affect the right of commercial medical marihuana producers to proceed with applications to Health Canada for licenses under the MMPR.

The new system relies on a more secure supply and distribution system that is based on federally licensed production facilities.

The federal government has indicated the following:

1. That it will respect local government zoning and bylaws when determining whether to issue production licenses;
2. That only enclosed and indoor grow operations will be licensed;
3. That only dried marihuana may be produced and sold;
4. The site must be designed in a manner that prevents unauthorized access and there must be visual monitoring of the perimeter of the site at all times.

Marihuana for Medical Purposes Regulation may be found at: http://gazette.gc.ca/rp-pr/p2/2013/2013-06-19/html/sor-dors119-eng.php

Health Canada

Health Canada indicates, as of November, 2013, that it has received over 250 applications from individuals or companies seeking to become certified producers. Under the new regulation, applicants for a production licence are required to notify the local government, local police force and local fire officials of intention to apply to Health Canada.

As defined within the Regulation,

> *" "local government" includes the government of*
>
> - *(a) an incorporated or unincorporated city, metropolitan area, town, village or municipality;"*

Health Canada has indicated that it will not publically release the location of production sites. In the licencing process, it is looking to assure that producers are familiar with and able to comply with local government land use, development and servicing provisions. Health Canada does enable producers to publicize the location, and recognizes that an application to amend zoning or for a variance permit requires notification of the location.

Agricultural Land Commission

The British Columbia Agricultural Land Commission (ALC) has released an information bulletin stating that "if a land owner is lawfully sanctioned to produce marihuana for medical purposes, the farming of said plant in the Agricultural Land Reserve (ALR) is permitted and would be interpreted by the Agricultural Land Commission as being consistent with the definition of "farm use" under the *ALC Act*." Production of the plant indoors is considered farming, similar to a vegetable greenhouse operation. A small business office, testing lab, processing and drying, packaging shipping areas, cloning room and anything else directly related to the growing and processing of the plant are considered to be accessory uses associated with farm use. Determining an accessory use is contingent on the use being necessary and commensurate with the primary function of the property/building to produce an agricultural product. If a land use activity is proposed that is not specifically related to the growing of an agricultural product including a stand-alone research and development facility, an application to the Land Commission for non-farm use would be required.

Anecdotally, the Land Commission advises that a standard production and distribution facility may range from 10,000 to 50,000 square feet in size. Similarly to other indoor plant production,

common nuisances for surrounding property owners may include odors, noise associated with air ventilation and generators, and night time lighting.

The Information Bulletin may be found at:
http://www.alc.gov.bc.ca/publications/ALC_Info_Bulletin_Marijuana_Amended_Jan_2014.pdf

Union of BC Municipalities

The Union of BC Municipalities (UBCM) wrote to the federal Health Minister in June 2013 to draw attention to gaps in the federal licensing process that could allow an application to be approved which does not meet local government regulations. Responding to this concern, Health Canada is initiating phone confirmation directly to local governments to ensure that it has received notice of the application. Staff is not aware of any licenses issued under the new regulations to date within the Islands Trust Area. Islands Trust has received a handful of notices of intent.

Notice of intent to Local Governments

Health Canada has designed a program that provides improved security of production and responds to the medical needs of Canadians. Implementing the program across Canada has not enabled federal authorities to tailor its process to each unique level of local government.

Health Canada requires that applicants, prior to submitting an application, must "provide written notice to local authorities to inform them of their intention to submit an application". It also states that notice must be delivered to a senior official of the local government, of the RCMP, and of the local fire authority. To date, two notices of intent have been received for the Northern Region and the letter of response, copied to Health Canada, has included the following information:

- provisions of the applicable Land Use Bylaw, any applicable Development Permit Area provisions;
- reference to other agencies that work in cooperation with Islands Trust to manage development and servicing within the Trust Area; and
- a request that Health Canada refer the completed application with site plan for confirmation of compliance with the applicable Local Trust Committee bylaws.

Further information from Health Canada indicates that Health Canada won't be referring the completed application to local governments. As a result, staff will be requesting a full set of site plans from the applicant. As further information is provided from Health Canada, these processes may change. Local trust committees are not being copied or otherwise notified of these responses to notices of intent.

Health Canada is working with the Federation of Canadian Municipalities to develop a Fact Sheet. It has not confirmed if local elected officials are to be advised of the application, nor has it reconciled how the perspectives of the locally elected officials would be gathered if the location and address is protected by federal privacy and security provisions. At best, the comments of a local trust committee may be considered in-camera under section 90 (1) (m) of the *Community Charter*.

Local Government Development and Servicing Regulations

Land use and zoning bylaws of an individual local trust area provide regulations concerning land use. Servicing of new development may be governed by bylaws of an applicable regional district, water purveyor, fire service area, or community association.

Bylaws applicable to the Northern local trust areas that regulate land use and servicing of new development include those of Cowichan Valley Regional District, Nanaimo Regional District, Comox Valley Regional District, Sunshine Coast Regional District, Metro Vancouver (e.g. Building Bylaws), applicable Water Purveyors (e.g. Comox Valley RD), and the local trust area land use bylaws.

Islands Trust Policy Statement

The *Islands Trust Act* established the Islands Trust as a unique land-use planning agency, acting for residents and having a special conservation-oriented responsibility. The Policy Statement provides a general strategy for land use planning in partnership with provincial and federal agencies to achieve Object of the Trust (Reference BC *Islands Trust Act* and *Islands Trust Policy Statement*, 1993). Specific strategies addressed include ecosystem protection, stewardship of resources, and sustainable communities. Within the policy statement, there is commitment that some uses are not suited to the Trust Area.

The production of marihuana for medicinal purposes is not addressed explicitly in the Policy Statement. Several policies address all forms of development and essential servicing such as transportation or water supply, and environmental quality such as the following:

3.1.9 *Trust Council encourages actions and programs of other government agencies which… prevent pollution of the air, land and fresh and marine waters of the Trust Area.*

4.1.2 *Trust Council shall consult with the Ministry of Agriculture (name changed) and the British Columbia Land Reserve Commission to request that agricultural 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.*

4.4.1 *It is Trust Council's policy that islands in the Trust Area should be self-sufficient in regard to their supply of freshwater.*

5.1.2 *It is Trust Council's policy that the intensity of noise and lighting in and through the Trust Area should be compatible with community character.*

STAFF COMMENTS:

Medical marihuana production under the MMPR is best considered an industrial land use due to the scale and characteristics of the buildings the use must be carried out in for security and economic reasons. It is also considered an agricultural land use by the Agricultural Land Commission (ALC). As the ALC has recognized the licensed production of medical marihuana as a "farm use" under the *ALC Act*, medical marihuana production facilities are permitted on all lands that are located in the Agricultural Land Reserve. Local trust committees should consider

whether to permit the production of medical marihuana use elsewhere, e.g. as an industrial use. Additionally, as outlined in the Islands Trust Policy Statement above, the production of medical marihuana may not be an appropriate use for some areas; for example, small lots, smaller islands that are solely residential in character, or islands that have no ALR or industrial zoned lands. Also, consideration should be given to the likelihood of such operations on islands where services are limited, such as no connection to power, no ferry service, limited water supply. Staff advise local trust committees to use a clear land use planning rationale in their decision making process.

It is very difficult to predict how many, if any, producers will be licensed in the Northern local trust areas. Although Health Canada has received at least 250 applications, it is also very hard to predict how many producers will fill the market in Canada. Health Canada has not imposed any limits, but is taking the approach of letting the market decide.

Many BC local governments have adopted or are currently adopting bylaw amendments addressing the new MMPR. The zones where this use is generally being permitted is industrial and agricultural. Setbacks and minimum parcel size are key components of bylaw amendments. Setbacks are generally being set at 30 m and larger, and minimum parcel size ranges from approximately 2 ha to 260 ha.

Zones that Currently Permit the Production of Medical Marihuana in the Northern Region

The following outlines the various land use bylaws and zones where the production of medical marihuana, licensed under the MMPR, would be permitted currently in the land use bylaws in the Northern Region. Staff has provided comments on considerations for the local trust committees. The details of the applicable zoning provisions related to the production of medical marihuana for each Northern Region land use bylaw listed below are included in the attachments to this report.

Executive Committee Local Trust Area (Ballenas – Winchelsea Islands)

The Ballenas-Winchelsea Islands (B-W LTA (EC)) proposed Land Use Bylaw No. 28 permits the production of medical marihuana under the new MMPR in the Residential (R) zone because "agriculture" is a permitted use and "agriculture" as defined in the bylaw would encompass such a use (see Table 1 in Attachments). While horticulture is permitted in all zones, it does not permit commercial production except as a home occupation under Residential (R) zoning, where floor area limitation (700 sq. ft. max) would likely preclude this use. Industrial uses are prohibited in all zones and there are no ALR lands. Given this and the small size of the islands, limited services, and relatively high ecological value, staff suggests that the LTC consider amending the LUB to prohibit the production of medical marihuana in all zones.

Denman Island Local Trust Area

The current Denman Island LUB No. 186 permits the production of medical marihuana licensed under the MMPR in the following zones because "agriculture" and "horticulture" are permitted uses, and "agriculture" and "horticulture" as defined in the bylaw would encompass such a use (see Table 2 in Attachments):

- Residential (R1)
- Rural Residential (R2)
- Cohousing (R3)
- Agriculture (AG)
- Forest (F)
- Resource (RE)

Denman Island has a light industrial zone, but it does not permit medical marihuana production as currently written. Staff suggest that the LTC should consider amending the LUB to further limit the zones in which the activity can be conducted, but consider allowing the use in the light industrial zone.

Gabriola Island Local Trust Area

The current Gabriola Island LUB No. 177 and Draft Bylaw Amendment No. 275 permits the production of medical marihuana licensed under the MMPR in the following zones because "agriculture," "horticulture," "commons agriculture," and/or "light industry" are permitted uses, and as defined in the bylaw, they would encompass such a use (see Table 3 in Attachments):

- Small Rural Residential (SRR) on lots over 2 ha
- Large Rural Residential (LRR) on lots over 2 ha
- Agriculture (AG)
- Resource (R)
- Resource Residential (RR1)
- Forestry (F) (as per Draft Bylaw Amendment No. 275 (17/04/14))
- Seniors and Special Needs (as per Draft Bylaw Amendment No. 275 (17/04/14))
- Gabriola Commons Comprehensive Development Zone (GC)
- Industrial – Light (I)

Staff suggest that the LTC consider amending the LUB to further limit the zones in which the activity can be conducted, but continue to allow the use in the light industrial zone.

The current Mudge Island LUB No. 228 (includes Mudge, Link and Round Islands) is considered to permit the production of medical marihuana licensed under the MMPR in the Rural Residential zone because agriculture is a permitted use (see Table 4 in Attachments). Although agriculture is not defined in the bylaw, staff conclude that the production of medical marihuana wouldn't be precluded. These small islands do not have any ALR land or industrial zoned lands. Since Link and Round Islands are not serviced by power, a medical marihuana operation under the MMPR may not be feasible. Given the small size of the islands and residential character, staff suggests that the LTC consider amending the LUB to prohibit the production of medical marihuana in all zones.

The current Decourcy Island Zoning Bylaw No. 44 permits the production of medical marihuana licensed under the MMPR in the Rural zone because "agriculture" is a permitted use, and as defined in the bylaw, "agriculture" would encompass such a use (see Table 5 in Attachments). This small island does not have any ALR land or industrial zoned lands. Given its small size and residential character, staff suggests that the LTC should consider amending the LUB to prohibit the production of medical marihuana in all zones.

Gambier Island Local Trust Area

The current Gambier Island LUB No. 86 permits the production of medical marihuana licensed under the MMPR in the following zones because "agriculture" is a permitted use, and as defined in the bylaw, "agriculture" would encompass such a use (see Table 6 in Attachments):

- Settlement Residential (SR)
- Rural Residential (RR)
- Agriculture (A)
- Sea Ranch Comprehensive Development (CD1) (Areas 1 & 2)

Gambier has some ALR lands and some industrial zoned lands. Staff suggest that the LTC consider amending the LUB to further limit the zones in which the activity can be conducted, but consider allowing the use in the industrial zone.

The current Keats Island LUB No. 78 permits the production of medical marihuana licensed under the MMPR in the following zones because "agriculture" is a permitted use, and as defined in the bylaw, "agriculture" would encompass such a use (see Table 7 in Attachments):

- Rural Residential (RR)
- Rural Comprehensive (RC)
- Private Institutional 2 (PI2)

Keats Island does not have any ALR lands or any industrial zoned lands. Given this and that the island is largely residential in character, staff suggest that the LTC consider amending the LUB to prohibit the use.

The current Gambier Associated Islands LUB No. 120 permits the production of medical marihuana licensed under the MMPR in the Rural Residential (RR1) zone because "agriculture" is a permitted use, and as defined in the bylaw, "agriculture" would encompass such a use (see Table 8 in Attachments). These relatively small islands do not have any ALR land currently or any industrial zoned lands. Since the majority of the islands are not serviced, a medical marihuana operation under the MMPR may not be feasible. Given the foregoing and that the islands are mainly residential in character, staff suggests that the LTC consider amending the LUB to prohibit the production of medical marihuana in all zones.

Hornby Island Local Trust Area

The current Hornby Island LUB No. 86 permits the production of medical marihuana licensed under the MMPR in the following zones because "agriculture" is a permitted use, and as defined in the bylaw, "agriculture" would encompass such a use (see Table 9 in Attachments):

- Rural Residential (R3) & R3(a)
- Large Lot Residential/Water Resource Protection (LR/WSPA)
- Agriculture (A)
- Upland (UP)
- Land Cooperative 1 (LC1)

There are ALR lands, but no industrial zoned lands currently on Hornby. See the proposed Hornby Island LUB No. 150 below for staff comments.

The proposed Hornby Island LUB No. 150 permits the production of medical marihuana licensed under the MMPR in the following zones because "agriculture" is a permitted use in those zones, and as defined in the bylaw, "agriculture" would encompass such a use (see Table 10 in Attachments):

- Residential 2 – Large Lot (R2)
- Residential 4 – Forest (R4)
- Agriculture 1 (A1)
- Agriculture 2 – Agriculture/Residential (A2)
- Agriculture 3 – Agriculture/Residential (A3)
- Agriculture 4 – Agriculture/Residential (A4)

There are ALR lands on Hornby, but no industrial zoned lands in the proposed bylaw. Staff suggests that the LTC consider revising the proposed LUB to further limit the zones in which the activity can be conducted.

Lasqueti Island Local Trust Area

The current Lasqueti Island LUB No. 78 permits the production of medical marihuana licensed under the MMPR in the Land Based (LB) zone because "agriculture" is a permitted use in that zone, and as defined in the bylaw, "agriculture" would encompass such a use (see Table 11 in Attachments). There are ALR lands and industrial zones on Lasqueti Island, but the industrial zones do not permit medical marihuana production as currently written. Since there are no electrical transmission lines currently to Lasqueti Island or anticipated in the future, a medical marihuana operation under the MMPR may not be feasible. Staff suggests that the LTC may consider amending the LUB to further limit the activity in the LB zone, but consider allowing the use in the industrial zones.

Thetis Island Local Trust Area

The current Thetis Island LUB No. 89 doesn't permit the production of medical marihuana licensed under the MMPR because "agriculture" and "intensive agriculture" as defined in the bylaw and the *Local Government Act* do not encompass such a use (see Table 12 in Attachments). However, the use would be permitted regardless on ALR lands, which are zoned A1 on Thetis Island. There are no industrial zoned lands on Thetis Island. Staff suggests that the LTC consider amending the LUB to allow this use in the A1 zone on ALR lands.

The current Valdes Island Rural Land Use Bylaw No. 42 permits the production of medical marihuana licensed under the MMPR in the following zones because "agriculture" is a permitted use in those zones, and as defined in the bylaw, "agriculture" would encompass such a use (see Table 13 in Attachments):

- Rural 1 (R1)
- Rural 2 (R2)

There are no ALR lands on Valdes Island or are there any industrial zones. Since, there are no utilities supplying electrical power to Valdes currently and they are discouraged in the RLUB, a medical marihuana operation under the MMPR may not be feasible. Given the foregoing and

that the island is largely residential/recreational in character, staff suggest that the LTC consider amending the LUB to prohibit the use.

The current Ruxton Island Zoning Bylaw No. 13 does not permit the production of medical marihuana licensed under the MMPR in any zone. Ruxton is included in the Thetis Associated Islands OCP and LUB project; see the proposed Thetis Associated Islands proposed LUB No. 94 for staff comments.

The Thetis Associated Islands proposed LUB No. 94 does not permit the production of medical marihuana licensed under the MMPR in any zone because the definition of horticulture specifically excludes the commercial production of medical marihuana. There are no ALR lands, and the proposed Official Community Plan recognizes that there are no current or anticipated agricultural or industrial operations in these small islands. Given this and the fact that the islands are relatively small and residential in character, staff suggests no amendments to the proposed LUB.

SUMMARY OF OPTIONS:

Staff recommends that local trust committees consider and direct staff on their preferred approach for bylaw amendments in consideration of the new MMPR. Local Trust Committees have the following options:

a) **Do nothing:** this may be an appropriate response for some islands, for example, if it is considered to be unlikely that anyone would establish a medical marihuana production facility under the new MMPR, especially on islands with no ALR. Should be balanced with consideration of the suitability of the use given the character/zoning of some islands.

b) **Add to the projects list:** this may also be an appropriate response balancing the likelihood of someone establishing a medical marihuana production facility under the new MMPR with the other projects on an LTC's work program.

c) **Add to the top priorities list and direct staff to provide more information:** If the LTC chooses this option, direction on the nature of bylaw amendments the LTC would like to consider should be provided. For example, the LTC is encouraged to consider if the use should be limited to agriculture zone only. Staff will then return with more information on other considerations such a minimum lot size for the use, setbacks and screening.

RECOMMENDATIONS:

1. **THAT**, with regard to the production of medical marihuana under the new *Marihuana for Medical Purposes Regulation*, the (*insert Island*) Local Trust Committee not amend (insert Island name) Island Bylaw No. (insert no.) at this time.

   OR

2. **THAT** the (*insert Island*) Local Trust Committee direct staff to add to the projects list an amendment to the (insert Island name) Island Bylaw No. (insert no.) regarding the production of medical marihuana under the *Marihuana for Medical Purposes Regulation*.

   OR

3. **THAT** the (*insert Island*) Local Trust Committee direct staff to add to their top priorities list an amendment to the (insert Island name) Island Bylaw No. (insert no.) regarding the production of medical marihuana under the *Marihuana for Medical Purposes Regulation* and direct staff to provide further information on limiting and/or including the use by (insert direction), and provide further information regarding other provisions such as minimum lot size, setbacks and screening.

Prepared and Submitted by:

Marnie Eggen	April 28, 2014
Marnie Eggen, Planner 1	Date

Concurred in by:

Courtney Simpson	May 6, 2014
Courtney Simpson, Regional Planning Manager	Date

Attachments:

1. Table 1: Ballenas – Winchelsea Islands (B-W LTA (EC)) proposed LUB No. 28

2. Table 2: Denman Island LUB No. 186

3. Table 3: Gabriola Island LUB No. 177
   Table 4: Mudge Island LUB No. 228
   Table 5: Decourcy Island Zoning Bylaw No. 44

4. Table 6: Gambier Island LUB No. 86
   Table 7: Keats Island LUB No. 78
   Table 8: Gambier Associated Islands LUB No. 120

5. Table 9: Hornby Island LUB No. 86
   Table 10: Proposed Hornby Land Use Bylaw No. 150

6. Table 11: Lasqueti Island LUB No. 78

7. Table 12: Thetis Island LUB No. 89
   Table 13: Valdes Island Rural Land Use Bylaw No. 42

Attachment 1

Table 1: Ballenas – Winchelsea Islands (B-W LTA (EC)) proposed LUB No. 28

Agriculture: means the use of land for the growing, rearing, harvesting, or production of plants, crops, livestock and other farm animals but does not include aquaculture, intensive livestock operations, fur farming or mushroom farming.

Zones Where Permitted	***Provisions limiting the extent of the use***
Residential (R)	• 10% lot coverage • 6 m setback to any lot line; 15 m from NB of Sea

Horticulture: means the use of land for the rearing of plants

Zones Where Permitted	***Provisions limiting the extent of the use***
Permitted in all zones	• Commercial production only permitted as a Home Occupation under Residential (R) zoning, where floor area limitation (700 sq. ft. max) would likely preclude this industrial use.

The indoor production of medical marihuana is not permitted in the remaining zones on the Ballenas – Winchelsea Islands:

- Community Service (CS)
- Conservation (CN)
- Park (P)
- Nature Protection (NP)

Attachment 2

Table 2: Denman Island LUB No. 186

AGRICULTURE means the use of land, buildings or structures for any of the following activities: growing, producing, raising or keeping animals or plants, including mushrooms, or the primary products of those plants or animals;
Storage, processing or direct marketing by a farmer of farm products ….

And

HORTICULTURE means the growing of flowers, fruits, vegetables and other plants and includes the sale of such products when grown by the land owners on their lot.

Zones Where Permitted	***Provisions limiting the extent of the use***

Residential (R1)
Rural Residential (R2)
Cohousing (R3)
	• 25% lot coverage in R1 and R2, and not applicable in R3;
	• 8m setback in R1 and R2 zones;
	• Setbacks:
	  • from the front lot line – R1 and R2=7.5m / R3=30m;
	  • from the rear or side lot line – R1 and R2=3m / R3 = 30m;
	  • from the exterior side lot line – R1 and R2=4.5m / R3 = 30m.

Agriculture (AG)
Forest (F)
Resource (RE)
	• Lot coverage including greenhouses:
	  • Agriculture = 75%;
	  • Forest = 5%;
	  • Resource = 10%;
	  • Lot coverage excluding greenhouses;
	  • Agriculture = 35%;
	  • Forest = 5%;
	  • Resource = 10%;
	• Setbacks for buildings and structures other than residential:
	  • Front or exterior = A= 10m; F and RE = 30m;
	  • Rear or side = A = 4.5m; F and RE = 15m.

The indoor production of medical marihuana is not permitted in the following zones on Denman Island:

- Commercial (C)
- Light Industrial (L)
- Institutional (IN)
- Conservation (CN)
- Park (P)

Attachment 3

Table 3: Gabriola Island LUB No. 177

agriculture means growing, rearing producing or harvesting agricultural crops, livestock and other animals for economic gain and includes the processing on a *lot* of primary agricultural products harvested, reared or produced on that *lot*, plus the storage of machinery, implements and agricultural supplies for the farm;

Zones Where Permitted	***Provisions limiting the extent of the use***
Residential: • SRR on lots over 2 ha; • LRR lots over 2 ha	• 20% lot coverage for SRR; 10% for LRR; • On lots 1 ha or larger, 10 m setback; • Setback for greenhouses > 46 sq. m. floor area in size is 20 m from any lot line.

Agriculture:
• AG (ALR)
	• Lot coverage:
	  • outside ALR - 35%;
	  • on ALR - 35% excluding greenhouses;
	  • on ALR - 75% total;
	• 20 m setback for agricultural buildings;
	• 7.5 m setback for greenhouses in ALR;
	• 20 m setback for greenhouses > 46 sq. m. in size outside of ALR.

Resource:
• R;
• RR1
	• On both R and RR1, 10% lot coverage;
	• On R, lots 1 ha or more, 10 m setback from all lot lines and on lots < 1 ha, setbacks are:
	  • 6.0 m from the front lot line;
	  • 4.5 m from exterior side lot line;
	  • 1.5 m from interior lot line.
	• On RR1, lots less than 2 ha, 6 m setback from all lot lines and lots 2 ha and larger, 10 m setback from all lot lines;
	• Setback for greenhouses > 46 sq. m. floor area in size is 20 m from any lot line.

As Per Draft Bylaw Amendment No. 275 (17/04/14):
• F
	• 10% lot coverage;
	• On lots 1 ha or more, 10 m setback from all lot lines and on lots lots < 1 ha, setbacks are:
	  • 6.0 m from the front lot line;
	  • 4.5 m from exterior side lot line;
	  • 1.5 m from interior lot line
	• Setback for greenhouses > 46 sq. m. floor area in size is 20 m from any lot line.

horticulture means growing of fruits, vegetable, flowers or ornamental plants for resale

Zones Where Permitted	***Provisions limiting the extent of the use***
Residential: • SRR including the sale of	• See above.

products	
Resource: • RR1	• See above
Per Draft Bylaw Amendment No. 275 (17/04/14): • SSN	• 20% lot coverage; • 6 m setback from all lot lines.

commons agriculture means community based agricultural uses that include; growing, rearing, producing or harvesting agricultural crops, livestock and other animals and includes the processing on a lot of primary agricultural products harvested, reared or produced on that lot, plus the storage of machinery, implements and agricultural supplies for the farm, and includes the sale of agricultural products grown or raised on the lot, but specifically excludes intensive agriculture

Zones Where Permitted	***Provisions limiting the extent of the use***
Resource: GC	• 12% lot coverage, including greenhouses; • Minimum setback for all agriculture buildings and structures is 20 metres from any lot line.
Regulations applicable to agriculture in all zones	• Height of agricultural buildings is 12 m max.

light Industry means processing, fabricating, assembling, storing, transporting, distributing, wholesaling, testing, servicing, repairing or salvaging goods or materials;

Zones Where Permitted	***Provisions limiting the extent of the use***
Industrial - Light(I) not requiring sanitary sewer for disposal of industrial wastes	• 50% lot coverage; • Max. floor area ratio is 0.35; • 10 m setback from all lot lines; • Max. of two industrial buildings.

The indoor production of medical marihuana is not permitted in the following zones on Gabriola Island as per LUB No. 177 and proposed bylaw amendment No. 275:

- Forestry/Wilderness Recreation 1(FWR1)
- Gravel Pit (GP)
- Village Commercial 1(VC1)
- Village Commercial 2 (VC2)
- District Commercial 1 (DC1)
- Local Commercial 1 – Neighbourhood Pubs(LC1)
- Local Commercial 2 –Restaurants(LC2)
- Local Commercial 3 - Garden Centres(LC3)
- Ferry Parking(FP)
- Tourist Commercial 1 (TC1)
- Tourist Commercial 2 - Campground(TC2)
- P1 Parks 1 – Provincial and Regional
- P2 Parks 2 – Passive Recreation Community Park

- P3 Parks 3 – Active Recreation Community Park
- IN1 Institutional 1
- IN2 Institutional 2
- IN3 Institutional 3
- YC Yacht Club Outstation - Upland

Table 4: Mudge Island LUB No. 228

Agriculture – (no definition)	
Zones Where Permitted	***Provisions limiting the extent of the use***

Rural Residential (RR)	• On lots 0.4 ha or less setbacks are:
	  • 6 m from front or rear lot line;
	  • 1.5 m from interior lot lines;
	  • m from any exterior side lot line.
	• On lots 0.4 ha or larger, 10 m setback to all lot lines.

The indoor production of medical marihuana is not permitted in the following zones on the Mudge Island:

- Park and Institutional (PI)

Table 5: Decourcy Island Zoning Bylaw No. 44

"AGRICULTURE" means the growing, harvesting, processing, storage, and selling of crops, livestock, and poultry originating on the site, and includes the storage, repair, and servicing of farm machinery and implements used on that site, and includes accessory buildings and structures, excluding those used for human habitation, necessary for farm operations	
Zones Where Permitted	***Provisions limiting the extent of the use***
Rural Zone	• 10% lot coverage; • 15 m height max. for buildings; • 30 m setback from any lot line.

The indoor production of medical marihuana is not permitted in the following zones on the Decourcy Island:

- Settlement Residential (S)
- Public Recreation (PR)

Attachment 4

Table 6: Gambier Island LUB No. 86

AGRICULTURE means the use of land, buildings or structures for the growing, rearing, producing or harvesting of agricultural plants, crops, livestock, and other farm animals and includes the processing and sale of products harvested, reared or produced on that lot and the storage of machinery, implements and supplies for use by the agricultural operation.

FARM USE means activities designated as farm use by the Agricultural Land Reserve Use, Subdivision and Procedure Regulation.

(INTENSIVE AGRICULTURE (prohibited in all zones) means for the purposes of this Bylaw the confinement of livestock and fur bearing animals, the growing of mushrooms, land-based aquaculture, hydroponic growing of plants, or growing of plants in illuminated greenhouses between dusk and dawn, whether the use is conducted outside or within a building or structure.)

Zones Where Permitted	***Provisions limiting the extent of the use***

Settlement Residential (SR), agriculture permitted on lots 2 ha or larger
 	
Rural Residential (RR) agriculture is permitted on lots 1 ha or larger
	• Lot coverage for SR AND RR:
	  • Lots less than 1 hectare in area: 25%;
	  • Lots 1 hectare to less than 2 hectare in area: 20%;
	  • Lots 2 hectares to less than 3 hectares in area: 18%;
	  • Lots 3 hectares to less than 4 hectare in area: 15%;
	  • Lots 4 hectares to less than 10 hectares in area: 12%
	  • Lots 10 hectares and greater in area: 10%.
	
	• Setbacks for SR and RR zones:
	  • 7.5 metres from any front or rear lot line;
	  • 3 metres from any interior side lot line;
	  • 4.5 metres from any exterior side lot line.

Agriculture (A)	• Lot coverage is 10% • Setback of 30 m from front lot line, 15 from rear, interior, exterior lot lines.
Sea Ranch Comprehensive Development (CD1), agriculture permitted in “Area 1” and Farm Use permitted in “Area 2”	• Lot coverage - maximum 3000 sq ft for all buildings and structures on common property. • Minimum setback for any building or structure accessory to farm use from any lot line, including a strata lot line, is 15 metres.

The indoor production of medical marihuana is not permitted in the following zones on Gambier Island:

- Forest (F)
- Local Commercial (C1)
- Industrial (I)
- Community Service (S1)
- Local Service (S2)
- Recreation Service (S3)

- Community Nature Park (P1)
- Community Park (P2)
- Provincial Park (PP)
- Wilderness Conservation (G1)
- Nature Reserve (G2)

Table 7: Keats Island LUB No. 78

AGRICULTURE means the use of land for the growing, rearing, harvesting, or production of agricultural plants, crops, livestock, and other farm animals on land-based areas.

Zones Where Permitted	***Provisions limiting the extent of the use***

Rural Residential (RR), agriculture permitted on lots larger than 2 ha
 	
Rural Comprehensive (RC), agriculture permitted on lots larger than 2 ha
	• Lot coverage for RR is 25% & 20% for RC;
	• Setbacks for RR and RC zones:
	  • 5.0 m of any front lot line;
	  • 1.5 m of any rear lot line;
	  • 1.5 m of any interior side lot line; or
	  • 3.0 m of any exterior side lot line.

Private Institutional 2 (PI2), agriculture permitted on lots larger than 2 ha	• Lot coverage is 5%;
	• Setbacks:
	  • 5.0 metres of any front lot line;
	  • 1.5 metres of any rear lot line;
	  • 1.5 metres of any interior side lot line;
	  • 3.0 metres of any exterior side lot line.

The indoor production of medical marihuana is not permitted in the following zones on Keats Island:

- Community Residential (CR1)
- Community Residential (CR2)
- Comprehensive Development (CD1)
- Private Institutional 1 (PI1)
- Private Conservation (PC)
- Community Service 1 (CS1)
- Community Service 2 (C2)
- Natural Area Community Park (P1)

Table 8: Gambier Associated Islands LUB No. 120

AGRICULTURE means the use of land for the growing, rearing, harvesting, or production of agricultural plants, crops, livestock and other farm animals.	
Zones Where Permitted	***Provisions limiting the extent of the use***
Rural Residential (RR1), Anvil Island, North and South Thormanby Islands, Turnagain Island, Jack Tolmie Island, Echo Island, Tiki Island, Grant Island, North, East, South and West Trail Islands, Surrey Islets, Bertha Islet, Merry Island, Franklin Island, Woolridge Island, Popham Islands, Mickey Island, Ragged Island, New (Silver) Island and Hermit Island.	• 25% lot coverage; • 7.5 m setback from any lot line.

The indoor production of medical marihuana is not permitted in the following zones on the Gambier Associated Islands:

- Small Lot Rural Residential (SRR)
- Rural Residential 2 (RR2)
- Rural Residential 3 (RR3)
- Rural Residential 4 (RR4)
- Rural Residential 5 (RR5)
- Private Institutional (PI1)
- Park (Park)
- Private Conservation (PC)
- Forest (F)
- Community Service (CS)

Attachment 5

Table 9: Hornby Island LUB No. 86

agriculture means the use of land for the growing, rearing, producing and harvesting of agricultural products and animals, including the processing on an individual farm of the primary agricultural products harvested, reared or produced on that farm;	
Zones Where Permitted	***Provisions limiting the extent of the use***

Rural Residential (R3) Zone and R3(a) (Agriculture as an accessory use)	• 10% lot coverage on lots 1 ha or larger
	• 15% lot coverage on lots less than 1 ha
	• Setbacks:
	  • 8 m from a front lot line;
	  • 8 m from a rear lot line, and on lots less than 1 ac, 6 m;
	  • 6 m from an interior side lot line, and on lots less than 1 ac, 3 m;
	  • 8 m from an exterior side lot line, and on lots less than 1 ac, 6 m.

Large Lot Residential/Water Resource Protection (LR/WSPA) Zone	• 10% lot coverage on lots 1 ha or larger;
	• 15% lot coverage on lots less than 1 ha;
	• Setbacks:
	  • 8 m from a front and rear lot line;
	  • 8 m from the interior side lot line adjacent to lot 3 of Plan 48077, and at least 6 metres from any other interior side lot line;
	  • 8 m from an exterior side lot line.

Agricultural (AG) Zone	• 10% lot coverage; • 8 m setback from all lot lines;
Upland (UP) Zone	• 5% lot coverage; • 8 m setback from all lot lines.

Land Cooperative 1 (LC 1) Zone	• 10% lot coverage;
	• Setbacks:
	  • 8 m setback from front, rear and exterior lot lines;
	  • 6 m setback from interior lot lines.

The indoor production of medical marihuana is not permitted in the following zones on Hornby Island:

- Small Lot Residential (R1) Zone
- Compact Residential (R2) Zone
- Public Use (PU) Zone And Pu(B)
- Institutional Residential (I2) Zone
- Rural Service (C1) Zone
- Retail Commercial (C2) Zone
- Service Station Commercial (C2-1) Zone
- Comprehensive Commercial (C3) Zone
- Commercial Resort (C4) Zone
- Commercial Resort-Marina (C5) Zone

- Commercial Resort-Marina 1 (C5-1) Zone
- Commercial Campground (C6) Zone
- Commercial Campground 1 (C6-1) Zone
- Commercial Parking (C7) Zone
- Groundwater Recharge Area/Sustainable Ecosystem Management Area (GW-EMA) Zone
- Public Park (PR1) Zone
- Public Park Undeveloped (PR2) Zone

Table 10: Proposed Hornby Land Use Bylaw No. 150

agriculture means the use of land, buildings or structures for the growing, rearing, harvesting, processing, marketing or production of agricultural plants, crops or livestock.

Zones Where Permitted	***Provisions limiting the extent of the use***
Residential 2 – Large Lot (R2) Zone, agriculture permitted on lots 2 ha and larger	• On lots 1 ha or more, 10 % lot coverage & on lots < 1ha lot coverage is 15%; • 8 m setback from front, rear, exterior lots lines and 6 m from interior lot lines.
Residential 4 – Forest (R4) Zone, agriculture permitted on lots 2 ha and larger	• Lot coverage is 5%; • 8 m setback from all lot lines.
Agriculture 1 (A1) Zone	• On lots 1 ha or more , 10 % lot coverage & on lots < 1ha lot coverage is 15%; • 8 m setback from all lot lines.
Agriculture 2 – Agricultural/Residential (A2) Zone	• On lots 1.0 ha or more, lot coverage is 5 % & on lots < 1 ha, lot coverage is 15%; • 8 m setback from all lot lines.
Agriculture 3 - Agriculture/Residential (A3) Zone	• 10% lot coverage; • 8 m setback from front, rear, exterior lots lines and 6 m from interior lot lines.
Agriculture 4 – Agricultural/Residential (A4) Zone	• On lots 1.0 ha or more, lot coverage is 5 %, on lots < 1 ha lot coverage is 15%; • 8 m setback from all lot lines.

The indoor production of medical marihuana is not permitted in the following zones in the proposed bylaw:

- Residential 1 – Small Lot (R1) Zone
- Residential 3 – Community Housing (R3) Zone
- Residential 3A – Community Housing (R3A) Zone
- Commercial 1 – Retail (C1) Zone
- Commercial 2 – Limited Commercial (C2) Zone
- Commercial 3 – Comprehensive Commercial (C3) Zone
- Commercial 4 – Resort (C4) Zone
- Commercial 5 – Comprehensive Commercial (C5) Zone
- Commercial 6 – Resort (C6) Zone
- Commercial 7 – Campground (C7) Zone
- Commercial 8 – Campground (C8) Zone
- Ecosystem Protection/Groundwater Recharge (EP1) Zone
- Water Supply Protection Area (WS) Zone
- Public Park 1 (P1) Zone
- Public Park 2 – Undeveloped (P2) Park Zone
- Public Use (PU) Zone

Attachment 6

Table 11: Lasqueti Island LUB No. 78

AGRICULTURE means:
on non-Agricultural Land Reserve areas, means the use of land, buildings or structures for the growing, rearing, producing or harvesting of crops, livestock, poultry and other animals subject to Provincial Regulation and includes the processing and sale of products harvested, reared or produced on that parcel and the storage of machinery, implements and supplies for use by the agricultural operation; and
on land within the Agriculture Land Reserve, in addition to the above, means the use of land for activities designated as farm use in terms of the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* and the use of land for farm operation, as defined in the *Farm Practices Protection (Right to Farm) Act*; and
agricultural uses include the processing of farm products grown off the farm where at least 50% (by volume) of the inputs for the processed farm products are grown or reared on the farm;

Zones Where Permitted	***Provisions limiting the extent of the use***
Land Based (LB)	• No lot coverage regulations; • No setback regulations.

The indoor production of medical marihuana is not permitted in the following zones on Lasqueti Island:

- Institutional 1 (IN1)
- Commercial 1 (C1)
- Commercial 2 (C2)
- Commercial 3 (C3)
- Industrial 1 (I1)
- Industrial 2 (I2)
- Industrial 3 (I3)
- Industrial 4 (I4)
- Industrial 5 (I5)

Attachment 7

Table 12: Thetis Island LUB No. 89

AGRICULTURE means the use of land for the rearing of plants and animals.
NOTE: This bylaw defines "intensive agriculture as below in Section 915 of the *Local Government Act*.

Section 215 *Local Government Act*:
In this section, "intensive agriculture" means the use of land, buildings and other structures by a commercial enterprise or an institution for
(a) the confinement of poultry, livestock or fur bearing animals, or
(b) the growing of mushrooms.
(2) Despite a zoning bylaw, if land is located in an agricultural land reserve under the *Agricultural Land Commission Act* and that land is not subject to section 23 (1) of that Act, intensive agriculture is permitted as a use.
(3) Subsections (1) and (2) cease to have effect in an area after a zoning bylaw for that area is approved under section 903 (5).

Indoor production of medical marihuana would NOT be permitted under the above definitions; however, regardless, the use is permitted on ALR lands.

Zones Where Permitted	***Provisions limiting the extent of the use***

Agriculture (A-1) ALR Lands	• Lot coverage is 10%;
	• Setbacks:
	  • Buildings and structures for agriculture use, not intensive agriculture must be sited not less than:
	  • 10 metres from front and exterior side lot lines;
	  • 4.5 metres from rear or side lot lines; and
	  • 4.5 metres from all wells and streams.
	  • All other buildings and structures must not be sited less than:
	  • 7.5 metres from front, rear and exterior lot lines;
	  • 3.0 metres from an interior side lot line.

The indoor production of medical marihuana is not permitted in the following zones on Thetis Island:

- Rural 2 (R2)
- Institutional 1, 2, 3 (I1, I2, I3)
- Public Utility 2 (S2)
- Rural Residential (R1)
- Commercial 1 (C1)
- Commercial 2 (C2)
- Community Service (C1)

Table 13: Valdes Island Rural Land Use Bylaw No. 42

AGRICULTURE means a use providing for the growing, rearing, producing and harvesting of agricultural products including the processing on an individual farm of the primary agricultural products harvested, reared or produced on that farm and the storage or repair of farm machinery and implements.

Zones Where Permitted	***Provisions limiting the extent of the use***
Rural 1, 2 (R1,R2)	• Agriculture permitted in Rural 1 and 2 zones; • Lot coverage is 5%; • No building shall be located within 3 metres (9.8 feet) of any lot line or within 4.5 metres (14.8 feet) of front and exterior lot lines.

The indoor production of medical marihuana is not permitted in the following zones on Valdes Island:

- Forest Wilderness (FW)
- Recreational Resource (RR)
- Recreation Home (RH)