



A NOTICE OF A BUSINESS MEETING OF **THE DENMAN ISLAND LOCAL TRUST COMMITTEE**
to be held at 10:30 am on Tuesday, January 21, 2014 at the Denman Seniors Hall,
1111 Northwest Road, Denman Island, BC

AGENDA

		Page No.	*Approx. Time*
1.	CALL TO ORDER		10:30 am
2.	APPROVAL OF AGENDA		
3.	CHAIR'S REPORT		
4.	TRUSTEES' REPORT		
5.	MINUTES		10:45 am
5.1	Local Trust Committee Meeting Minutes dated November 26, 2013 – <i>for adoption</i>	1	
5.2	Section 26 Resolutions Without Meeting - <i>none</i>		
5.3	Denman Island Advisory Planning Commission Minutes - <i>none</i>		
5.4	Denman Island Marine Advisory Planning Commission Draft Minutes - <i>none</i>		
6.	BUSINESS ARISING FROM MINUTES		10:50 am
6.1	Follow-up Action List dated January 10, 2014 - <i>attached</i>	14	
7.	APPLICATIONS AND PERMITS		
8.	DELEGATIONS		
9.	TOWN HALL DISCUSSION		11:10 pm
10.	CORRESPONDENCE		
	<i>Correspondence specific to an active development application and/or project will be received by the Denman Island Local Trust Committee when that application and/or project is on the agenda for consideration.</i>		
10.1	Correspondence regarding Aquaculture Tenure Applications	16	
10.2	Letter dated December 20, 2013 from Woodward & Co., for K'Omoks First Nation regarding Assertion of K'Omoks First Nation Aboriginal Rights and Title at <i>Xelikw'</i> (Henry Bay) - <i>attached</i>	17	
10.3	Letter dated January 1, 2014 from Association for Denman Island Marine Stewards regarding Proposed Bylaw 207 - <i>attached</i>	59	
10.4	Email dated January 6, 2014 from Duncan Stewart regarding Henry Bay and Pentlatch Seafoods - <i>attached</i>	60	
10.5	Email dated December 4, 2013 from March Klaver, Regional Manager, Aquaculture Resource Management, Oceans Canada regarding Aquaculture within the Denman Island Local Trust Area - <i>attached</i>	61	
10.6	Email dated November 29, 2013 from Allan Danks regarding Letters of Support for the Cross Island Trail - <i>attached</i>	64	
10.7	Emails dated December 7 and 8, 2013 from Scott Donaldson regarding Secondary Dwellings - <i>attached</i>	66	

11.	REPORTS	12:00 pm
11.1	Work Program	
	11.1.1 Top Priorities Report and Projects Report dated January 10, 2014 - <i>attached</i>	69
11.2	Applications Log	
	11.2.1 Report dated January 10, 2014 - <i>attached</i>	71
11.3	Trustee and Local Expenses	
	11.3.1 Expenses posted to December, 2013- <i>attached</i>	76
11.4	Policies and Standing Resolutions	
	11.4.1 Report – <i>attached for information</i>	77
	BREAK	12:15 pm
12.	LOCAL TRUST COMMITTEE PROJECTS	12:30 pm
12.1	Housing Regulation Amendments for Land Use Bylaw	
	12.1.1 Staff Report dated December 16, 2013 regarding Draft Bylaws for the Implementation of Secondary Suites and Secondary Dwelling Units - <i>attached</i>	78
12.2	Aquaculture Practices	
	12.2.1 Bylaw Referral Response dated November 27, 2014 from Oceans Canada regarding Draft Bylaw No. 207 - <i>attached</i>	97
13.	NEW BUSINESS	1:00 pm
13.1	On-Island Planner Office Hours	99
	Memorandum dated December 18, 2014 - <i>attached</i>	
13.2	Trustee Busheikin -Submission to Ferry Commissioner regarding the Cable Ferry – <i>to be distributed for discussion</i>	
13.3	Jurisdiction over Aquaculture Operation	101
	Draft Briefing from Linda Adams, Islands Trust, CAO - <i>attached</i>	
14.	BYLAWS	
15.	CLOSED MEETING: The Denman Island Local Trust Committee closes the next part of the January 21, 2014 business meeting to discuss matters pursuant to Section 90(1)(i) (receipt of advice subject to solicitor-client privilege) of the <i>Community Charter</i> and that Staff be invited to attend this meeting	1:30 pm
16.	RECALL TO ORDER	
	Rise and Report from Closed Meeting	
17.	ISLANDS TRUST WEBSITE	
17.1	Denman Pages – <i>for discussion</i>	
18.	NEXT MEETING	
	Tuesday, February 25, 2014 at 10:30 am at The Denman Seniors Centre, 1111 Northwest Road, Denman Island, BC	
19.	TOWN HALL DISCUSSION – <i>time permitting</i>	
20.	ADJOURNMENT	2:00 pm

*Approximate time is provided for the convenience of the public only and is subject to change without notice.



Denman Island Local Trust Committee Minutes of a Regular Meeting

Date of Meeting:	Tuesday, November 26, 2013
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:	Linda Adams, Chief Administrative Officer Rob Milne, Island Planner Courtney Simpson, Regional Planning Manager Katherine Vogt, Recorder
Media and Others Present:	Approximately (60) members of the public-am Approximately (40) members of the public-pm

1. CALL TO ORDER

Chair Luckham called the meeting to order at 10:34 am. He welcomed the public and introduced himself, the Local Trustees, Staff and Recorder. He acknowledged that the meeting is being held in traditional territory of Coast Salish First Nations.

2. APPROVAL OF AGENDA

The following additions to the agenda were presented for consideration:

- 10.10 Compilation of Correspondence November 12, 2013 to November 21, 2013 regarding Aquaculture Applications 1414123, 1414124, 1414125, 1414126, 1414127, and 1414128
- 10.11 Email letter from David Critchley dated November 21, 2013 regarding article published in the Comox Valley Record on November 18, 2013 regarding the aquaculture plans of Salish Sea Farms Ltd.
- 10.12 Late letter correspondence from Ralph McQuaig regarding vacation accommodation cooking facilities
- 13.2 Local Trust Committee Submission to BC Ferries Public Engagement Process

By general consent the agenda was approved, as amended.

3. CHAIR'S REPORT

Chair Luckham reported that as Vice Chair of the Executive Committee, he had been preparing for the upcoming Islands Trust Council meeting to be held December 3 -5, 2013, especially dealing with the details of the Trust Council's Draft Budget for 2014-2015.

4. TRUSTEES' REPORT

Trustee Graham reported that he had been attending Trust Council committee meetings online in preparation for the upcoming Islands Trust Council meeting. He noted that the Financial Planning Committee was wrestling with some large budget increases for presentation to the Trust Council. He acknowledged the recent groundswell of concern on Denman Island regarding aquaculture issues.

Trustee Busheikin reported that she had been attending meetings of the Denman Island Resident's Association and Ferry Advisory Committee, as well as becoming involved with RCMP policing issues. She expressed concern over aquaculture conflicts and had been seeking information from regional directors of the Comox Valley Regional District in order to gain some direction on how to best proceed with dealing with such conflicts. She acknowledged that the Denman Island Ferry Advisory Committee was handling a great deal of public submissions and that there were many concerns over possible impending cuts to local ferry service.

5. MINUTES

5.1 Local Trust Committee Meeting Minutes dated October 22, 2013

By general consent the minutes were adopted, as presented.

5.2 Section 26 Resolutions Without Meeting Log dated November 14, 2013

The Resolutions Without Meeting Log was reviewed for information.

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 November 14, 2013

Planner Milne reviewed the Follow-up Action List dated November 14, 2013, provided updates and responded to questions that arose. He reported that the stream mapping of Denman and Hornby Islands had begun the day before and would likely be finished within one week.

Planner Milne requested direction from Trustees on establishing communication with K'omoks First Nation.

Trustee Graham expressed appreciation that planning staff were reengaging with K'omoks First Nation.

Trustee Busheikin supported the establishing of contact with K'omoks First Nation and intended to participate in any future meetings that might be scheduled.

Chair Luckham commented that he had attempted to communicate with K'omoks First Nation and had not received any response, but was prepared to try again.

There was brief discussion on Bylaw enforcement, with Chair Luckham noting that there was now an extended deferral of discussion related to Bylaw enforcement regarding the use of second dwellings. It was suggested that the target date for the June 5, 2012 item "Discussion of Bylaw Enforcement" be changed to May 1, 2014.

DE-074-2013

It was MOVED and SECONDED,

that the Denman Island Local Trust Committee request staff to remove from the Follow Up Action Report, Item number 1 of September 12, 2011 and item number 1 of February 26, 2013 and to amend item number 1 of June 5, 2012 so as to change the target date to May 1, 2014.

CARRIED

Planner Milne reported that the letter to the Department of Fisheries and Oceans through which the Denman Island Local Trust Committee (DILTC) was requesting a moratorium on Geoduck cultivation until environmental impacts could be assessed was completed. He noted that the 'State of the Bayne Sound' conference to be hosted by Vancouver Island University had been indefinitely postponed.

6.2 Henry Bay Aquaculture Tenure 1411213

6.2.1 Memorandum dated November 8, 2013

Planning Manager Simpson explained that the K'omoks First Nation assertion to aboriginal rights to fishing activities in Henry Bay through their October 11, 2013 letter to Chief Administrative Officer, Linda Adams, was beyond the mandate of local government agencies and could only be dealt with by provincial and federal agencies.

Trustee Busheikin agreed that aboriginal rights issues were not a local government matter, but wondered how local concerns might be addressed.

Trustee Graham expressed confusion about the last paragraph of the

letter from the K'omoks First Nation which asserts that they would hold the DILTC responsible for any acts of vandalism against Pentlatch Seafoods Ltd. fishing gear. He suggested that a process to engage the K'omoks First Nation as a neighbor would be beneficial.

7. APPLICATIONS AND PERMITS – None

PRESENTATION BY FOREST LANDS AND NATURAL RESOURCE OPERATIONS (FLNRO)

Aquaculture Practices and the FLNRO Land Tenuring Process and Procedures presented by Ken Albrecht, Technical Land Officer

Land Officer Albrecht gave an hour long power-point presentation to the DILTC and members of the public on the aquaculture tenure and licensing system in British Columbia, as well as an overview of current tenure sites and the various shellfish species grown on them. The presentation was interspersed with questions and discussion between Land Officer Albrecht and members of the public.

Land Officer Albrecht noted that previous to 2010, aquaculture tenures were managed by the Province, with the Federal Department of Fisheries and Oceans (DFO) acting more in an advisory capacity to prevent conflicts between fisheries. But the 2010 landmark British Columbia Supreme Court ruling in which Provincial regulation of the ocean fin-fish aquaculture industry was deemed unconstitutional and which transferred jurisdiction of management and protection of fisheries onto the DFO has left many gray areas in the shellfish tenure process, because shellfish aquaculture was included in the final court ruling.

Land Officer Albrecht noted that presently, the DFO issues aquaculture licenses while the Province issues aquaculture tenures from which it collects rent. An extensive application process involves referrals to the DFO, Transport Canada, Environment Canada, BC Parks, BC Ministry of Forests, BC Ministry of Environment and Municipal and local governments. Members of the public are informed about the application through advertising and staking. After all of these referral responses are scrutinized, the Land Officer writes a review and land use report and recommends approval or non-approval of the tenure. If the Province issues the tenure, the DFO is notified to issue the appropriate aquaculture license.

Land Officer Albrecht noted that approximately eleven aquaculture applications over the last decade around Baynes Sound have been halted due to local zoning issues. Applicants have been unwilling to apply for rezoning so decide to proceed no further with their application and it never reaches the public. In regard to the Pentlatch Seafoods Ltd. application, the land tenure boundary of the Pentlatch Seafoods Ltd. application was altered and relocated to make allowances for boater recreation and to preserve eelgrass, while possible conflicts with the herring fishery are being looked at.

In response to one public member questioning why rezoning was not an initial and integral part of the aquaculture application process, Land Officer Albrecht noted that the DFO and provincial agencies cannot be fettered by local governments.

Other issues raised by members of the public were:

- the problem of tenure creep where applicants go beyond their allotted tenure boundaries;
- high cadmium levels in oysters;
- how aboriginal treaty negotiations would affect the aquaculture application process;
- that the Salish Sea Farms applications are unprecedented and massive while the advertising and staking requirements to inform the public were insignificant and too small; and
- that aquaculture operations could affect local parks and salmon spawning streams.

Land Officer Albrecht responded to these public concerns by noting:

- that tenure creep could be handled by a letter from the DFO and requests for compliance or fining for non-compliance;
- that high cadmium levels in oysters was a DFO responsibility;
- that long-term aboriginal treaty negotiations could tie up the applications process for years but that he himself had nothing to do with that process, though he does work with interim measures agreements;
- that he was in agreement that the public advertising part of the aquaculture applications process was too minimal and could be improved in the future; and
- that local parks and stream sites would be preserved and protected from aquaculture operations.

By general consent the meeting was recessed at 12:17 pm and reconvened at 12:30 pm.

AQUACULTURE DISCUSSION UPDATE

Linda Adams, CAO, Islands Trust regarding Meeting with FLNRO Ministry regarding Aquaculture Tenures

Chair Luckham introduced Linda Adams, Chief Administrative Officer of the Islands Trust, to members of the public, noting the wealth of experience she had to share and her 23 years of service with the Islands Trust.

Chief Administrative Officer Adams provided an update on the Henry Bay/Pentlatch Seafoods Ltd. issue from the Islands Trust perspective.

She noted that whereas it used to be common practice that crown license applications were referred to local governments before being issued; that since 2002/2003, coincident with a change in government and a province-wide backlog of applications, this referral process was discontinued and crown licenses were granted without local government rezoning always being in place. Rather, the license contained a clause which expected the license holder to observe and comply with local ordinances after obtaining their license. Despite local government frustration, the Province has maintained this new process, which applies to all crown licenses, not just aquaculture tenures.

With regard to the K'omoks First Nation license, the Islands Trust had been expecting them to apply for rezoning and were surprised when rafts started to appear in Henry Bay. A letter was sent to K'omoks First Nation as per the regular bylaw enforcement process and was responded to by them in terms of their assertion of Aboriginal rights to fishing activity in the territory of Henry Bay. Given that the First Nations of British Columbia have never actually ceded their rights to territory and that major treaty negotiations are ongoing between the Provincial and Federal Governments and various First Nations, the K'omoks First Nation claims to Henry Bay fishing rights is beyond the scope of local government to adjudicate.

Also, there is a huge initiative for First Nations communities to become economically sustainable which further complicates matters and adds to the idea that a legal challenge by the Islands Trust against the K'omoks First Nation may not be advisable, successful, or affordable. The Islands Trust is seeking further dialogue with the K'omoks First Nation and Aboriginal treaty negotiators.

There was some discussion on the lack of local government input into these treaty processes.

Planning Manager Simpson noted that provincial and federal treaty negotiators had expressed the need for local governments to be updated on the ongoing treaty process and that the Islands Trust would have an opportunity in the near future to ask questions and provide some input to the negotiators.

8. DELEGATIONS

8.2 The Association of Denman Island Marine Stewards regarding Marine issues

Edi Johnston spoke on behalf of the Association of Denman Island Marine Stewards (ADIMS) by reading out their written submission titled "ADIMS Delegation notes for November 26, 2013 LTC Meeting".

The submission called for more effort from the Province, the Department of Fisheries and Oceans, the Denman Island Local Trust Committee and the Islands Trust Council to preserve and protect the local marine environment. It questioned why there were no marine parks around the island and called for a complete ban on vehicular driving on local foreshores.

John Johnston spoke on behalf of the (ADIMS) by reading from prepared notes regarding Pentlatch Seafoods Ltd. tenure in Henry Bay. He described in terms of a positive historical precedent how K'omoks First Nation and the DILTC had negotiated for two years to allow for the 2004 rezoning of three areas in the Sandy Island and Seal Islets as W 3 (1) aquaculture which prohibited the use of structures or predator netting.

He suggested that based on these previous negotiations and past compliance, that the K'omoks First Nation was now in clear violation of their Provincial tenure terms and should have it withdrawn by the Province. Also, that it was imperative that:

- the DILTC take legal action to force, by injunction, a Cease and Desist Order

- against any further construction by Pentlatch Seafoods Ltd. in Henry bay;
- that the DILTC immediately inform the DFO about the tenure non-compliance; and
- that the Trust Council set as a priority for 2014 the establishment of memorandums of understanding between local trust committees and First Nations communities.

9. TOWN HALL DISCUSSION

On the topic of housing, the following comments were noted:

- Louise Bell spoke regarding her short term concerns over the two local draft bylaws on secondary dwelling units and suites. She submitted a written copy titled “Town Hall Presentation to the Denman Island Local Trust Committee: Tuesday, November 26, 2013” which asserts that Draft Bylaw Nos. 206 and 208 are inconsistent with Objective 3 and Policy 11 in Part E.1 of the Official Community Plan (OCP) because these bylaws are not explicitly for special needs and affordable housing. The submission also points out various errors and inconsistencies within Draft Bylaw Nos. 206 and 208, and suggests certain specific revisions and clarifications.
- Harlene Holm spoke regarding her submission to the DILTC dated November 26, 2013 regarding the Staff report and proposed bylaw amendments dated November 7, 2013. It points out numerous problems with the new draft bylaws dealing with affordable housing and suggests that the DILTC set aside its review and conduct an open community forum to discuss these issues.

On the topic of marine issues the following comments were noted:

- Concern was expressed that funds for mapping forage fish beaches may be removed from the year two budget.
- It was suggested that there was a need for more local scientific research regarding the use of PVC pipes in the aquaculture industry, as there are concerns about the use of cadmium and lead stabilizers in the construction of this pipe, as well as the fine particle breakdown of such pipe.
- It was noted that the assertion by K’omoks First Nation that they have aboriginal rights to harvest shellfish in Henry bay is not supported by ethno historical evidence. Also, that the courts have rejected aboriginal rights to commercially harvest Geoduck because of their location below the tidal zone.

By general consent the meeting was recessed at 2:01pm and reconvened at 2:14pm.

10. CORRESPONDENCE

Chair Luckham spoke to members of the public about the importance of presenting their concerns to the DILTC in writing and that any correspondence, including emails, be specifically addressed to the DILTC to ensure placement on the agenda.

Planner Milne added that all submissions, including late submissions that are addressed

to the DILTC get placed on the agenda.

10.1 Letter dated September 27, 2013 from Simon Palmer, President of Denman WORKS! Regarding Bylaw 186 and Visitor Accommodation Providers

Committee members received the above noted email for information.

10.2 Email dated October 25, 2013 from Simon Palmer, President of Denman WORKS! Regarding Visitor Accommodation, Bylaw 186 and Cooking Facilities

Committee members received the above noted email for information.

10.3 Email dated October 25, 2013 from Helen and Peter Mason to Authorizing Agency Nanaimo regarding Project #102799 Salish Sea Farms

Committee members received the above noted email for information.

10.4 Letter dated October 30, 2013 to Habitat Conservation Trust Foundation from Trustee Busheikin regarding Support for The Association of Denman Island Marine Stewards' Sustainable Shellfish Farming in Baynes Sound Project

Committee members received the above noted letter for information.

10.5 Letter dated November 2, 2013 from The Association of Denman Island Marine Stewards regarding Pentlatch Seafoods Ltd. in Henry Bay

Committee members received the above noted letter for information.

10.6 Letter from City of Salmon Arm dated October 28, 2013 to Agricultural Advisory Committees regarding Agricultural Land Commission (ALC) Budget

Committee members received the above noted letter for information.

10.7 Email dated November 12, 2013 from John Allan regarding Aquaculture Licenses

Committee members received the above noted email for information.

10.8 Email dated November 13, 2013 from Doug Hay to FLNRO regarding Geoduck Aquaculture vs Herring Spawning in Lambert Channel

Committee members received the above noted email for information.

10.9 Email dated November 12, 2013 and Report from Simon Palmer, President, Denman Housing Association

Committee members received the above noted email for information.

10.10 Compilation of Correspondence November 12, 2013 to November 21, 2013 Regarding Aquaculture Applications 1414123, 1414124, 1414125, 1414126. 1414127, and 1414128

Committee members received the above noted compilation for information.

10.11 Email dated November 21, 2013 from David Critchley regarding K'omoks First Nations plans for Geoduck preparation in Spring of 2014

Committee members received the above noted email for information.

10.12 Email dated November 16, 2013 from Ralph S. McCuaig regarding visitor accommodations and cooking facilities.

Committee members received the above noted email for information.

11. REPORTS

11.1 Work Program Reports

11.1.1 Top Priorities Report and Projects Report dated November 14, 2013

Planner Milne summarized the report and provided updates.

DE-075-2013

It was MOVED and SECONDED,

that the Denman Island Local Trust Committee add Review of Visitor Accommodations Regulations with a focus on allowing the provision of cooking facilities for guests to the projects list.

CARRIED

11.2 Applications Log

11.2.1 Report dated November 14, 2013

The Applications Log was received for information.

11.3 Trustee and Local Expenses

11.3.1 Expenses posted to October 31, 2013

The expenses posted to September 30, 2013 were received for information.

11.4 Policies and Standing Resolutions

11.4.1 Report

The Policies and Standing Resolutions Report was received for

information.

12. LOCAL TRUST COMMITTEE PROJECTS

12.1 Housing Regulation Amendments for Land Use Bylaw

12.1.1 Staff Report dated November 7, 2013 regarding Draft Bylaws for the Implementation of Secondary Suites and Secondary Dwelling Units

Planner Milne summarized the report which contained two newly crafted bylaws intended to provide for the implementation of secondary suites and secondary dwelling units on lands designated as “ Rural “ or Sustainable Resource “ by the Official Community Plan, through the use of Temporary Use Permits. He noted that the language and fees structure for Temporary Use permits was in need of revision and any changes would need approval from the Executive Committee.

He suggested that once these bylaws were amended and revised, that they could be forwarded to the Advisory Planning Committee and other stakeholder agencies after the February local Trust meeting, and then be taken through a public hearing type process on March 31, 2013 or April 1, 2013.

Trustee Graham appreciated the focus and clarity of the report and preferred to send it directly to the Advisory Planning Committee (APC) for perusal since they would have a broader community perspective than his own. He expressed the need to step back a bit from the report in order to gain greater objectivity on it.

Trustee Busheikin expressed satisfaction with the general direction of the report but was concerned that any revisions that needed to be made should be done before being handed to the APC. She offered a number of specific revisions to various sections of the report and the proposed bylaws, noting that their clarity and consistency was important since members of the public would go to the bylaws to find out what they could and could not do.

There was some general discussion on the use and utility of Temporary Use Permits (TUPs) and whether they might be used in such a way so as not to create more affordable housing options in the community, which was their intent. There was also some concern that they might be prejudicially issued or not issued. It was noted that a TUP could be turned down if it did not meet community needs but that trustees could not dictate landlord behavior towards tenants or the amount of rent that might be charged for a suite or dwelling. TUPs were ambiguous, but they did allow for flexibility and individual permits could be withdrawn if they created too many problems.

DE-076-2013
It was MOVED and SECONDED,

that the Denman Island Local Trust Committee request staff to bring a revised Denman Housing Needs Consultation Report and Draft Bylaws reflecting changes proposed and discussed at the November 26, 2013 meeting.

CARRIED

13. NEW BUSINESS

13.1 Advisory Planning Commission – Ad for Expressions of Interest

Planner Milne advised that three Advisory Planning Commission terms will expire in February, 2014.

13.2 Local Trust Committee Submission to BC Ferries Public Engagement Process

There was discussion regarding a proposed submission to BC Ferries Public Engagement Process, that Trustees Graham and Busheiken will work together and finalize the submission.

14. BYLAWS

14.1 Draft Bylaw No. 207 (Aquaculture Practices)

14.1.1. Staff Summary report dated November 7, 2013

Planner Milne presented his report on the proposed Draft Bylaw No. 207 which would ban beach modification, ban driving on the foreshore, and remove predator netting from the beach. He noted that staff had sent out 25 referrals regarding the proposed bylaw and had received nine responses to date. They had not yet received a response from the Tenuring Branch of the Forests Lands and Natural Resource Operations (FLNRO). Of all responses received to date, only the BC Shellfish Growers Association gave non-approval and they had not been sent a referral by Islands Trust.

Trustee Graham expressed concern that there had been no response from the Department of Fisheries and Oceans (DFO) Management Agency. He suggested that the Province was indifferent to the management practices on the tenures they issued, but that the DFO should be more responsive, yet they responded that their interests were unaffected by the draft bylaw.

It was noted that the DFO would only be interested in issues regarding extreme harmful alteration and destruction of habitat that had already occurred.

Trustee Busheikin noted that a previous legal review had determined that the DILTC had no legal authority to ban aquaculture-oriented beach activities, but that the DILTC decided to move ahead anyway because there were no other options.

There was some discussion that the bans proposed in Draft Bylaw No. 207 were beyond the scope of the DILTC and that the committee could waste time and resources by attempting to do things outside of their jurisdiction, as well as unrealistically raise the expectations of the community.

There was some discussion about whether beach netting could be considered a "structure".

Trustee Graham expressed that of the three recommendations given by planning staff in regard to going forward on this issue that he preferred option number two, which would defer further consideration of Draft Bylaw 207 until referral comments had been received from FLNRO Tenures Branch. He also suggested going back to the Aquaculture Management Branch of the DFO to seek a more detailed response from them regarding their support for predator netting.

Chair Luckham commented that Draft Bylaw No. 207 was spearheaded by the appalling management practices of industrialized aquaculture operations and that ideally it would not be necessary if other authorities would enforce best management practices on the industry, but that it was a gambit that had unfortunately failed. He preferred option number one, which was to choose not to proceed at this time due to questions related to legislative authority.

DE-077-2013

It was MOVED and SECONDED,

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

CARRIED

15. ISLANDS TRUST WEBSITE

15.1 Denman Page - None

16. NEXT BUSINESS MEETING DATE

The next meeting of the Denman Island Local Trust Committee will take place on Tuesday, January, 21, 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 3:32 pm.

Peter Luckham, Chair

CERTIFIED CORRECT:

Katherine Vogt, Recorder



Islands Trust

Follow Up Action Report w/ Target Date

Denman Island Jun-05-2012

No.	Activity	Responsibility	Target Date	Status
1	Add "Discussion of Bylaw Enforcement" to the Denman Island Local Trust Committee business meeting in 18 months time (December, 2013) possibly to coincide with a discussion on affordable housing.	Rob Milne	May-01-2014	On Going

Nov-06-2012

No.	Activity	Responsibility	Target Date	Status
1	Staff to write a letter or email to agencies that deal with shellfish aquaculture requesting that when engaging with planning and consultation they invite the Association of Denman Island Marine Stewards to participate.	Rob Milne	Dec-11-2012	Done

Dec-11-2012

No.	Activity	Responsibility	Target Date	Status
1	Prepare report and amended draft bylaw addressing APC comments for draft DPA 4 guidelines. Recommend to LTC that revised DPA 4 and draft DAI are referred to the APC together. Update Jan 22, 2013: Revised DPA 4 guidelines to move forward in concert with RAR mapping, to take place later in 2013.	Rob Milne	Jan-22-2013	On Going

Jun-04-2013

No.	Activity	Responsibility	Target Date	Status
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- 1 Staff to set up a meeting with Department of Fisheries and Oceans aquaculture management personnel regarding aquaculture practices in Baynes Sound

Rob Milne

Done

Letter of Opposition to Salish Sea Farms Ltd. Applications

To: BC Manager Aquaculture (MFLNRO)
 Ministry of Forests, Lands & Natural Resource Operations
 2500 Cliffe Avenue, Courtenay, BC V9N 5M6
 Email: AuthorizingAgency.Nanaimo@gov.bc.ca

To: Manager, Aquaculture (MFLNRO)

Re: Applications within Denman Island Trust Zoning Jurisdiction:
 File # 1414124 File (Henry Bay) # 1414125 (Komas Bluff East Denman Island)
 File #1414126 (NE Side of Denman Island)

Re: Applications within Comox Valley Regional District Jurisdiction
 File #1414123 (S. Seal Bay), File #1414127 (Lazo Point) File #1414128 (NE Kye Bay)

I oppose the application for License of Occupation for Aquaculture (geoduck on bottom)
 for the following reasons:

NOTE: 109 Letters of Opposition to
 Salish Sea Farms Ltd. Applications
 were received.

*Signature _____

*Print Name _____

*Address _____

(add second page for any further opposition statements)



**WOODWARD & Co.
LAWYERS LLP**

10.2

REPLY TO: DOMINIQUE NOUVET
Victoria Office
email: dominique@woodwardandcompany.com

ASSISTANT: JAMIE ZYLA
jamie@woodwardandcompany.com

Our File: 4841

December 20, 2013

Sent by email

Ms. Linda Adams
Chief Administrative Officer
Islands Trust
200 – 1627 Fort Street
Victoria, BC V8R 1H8
ladams@islandstrust.bc.ca

Mr. Peter Luckham, Chair
Denman Island Local Trust Committee
Islands Trust
c/o 200, 1627 Fort Street
Victoria, BC V8R 1H8
pluckham@islandstrust.bc.ca

Dear Ms. Adams & Mr. Luckham:

Re: Assertion of K'ómoks First Nation Aboriginal Rights and Title at *Xelikw'* (Henry Bay)

This letter follows up on Chief Rob Everson's letter of October 11, 2013 and specifically the fact that K'ómoks First Nation asserts a solid Aboriginal title claim to **Xelikw**. Although K'ómoks has not yet developed a full record to support and advance an Aboriginal title claim in Court, the claim's *prima facie* merit is apparent from the following factors:

- The proximity of **Xelikw** (Henry Bay) to the Comox Harbour, the main traditional village site of the K'ómoks people;
- The records of traditional K'ómoks and Pentlatch¹ village sites on the west shore of **Ihaytayich** (Denman Island) including at **Xelikw**, and the extensive middens above and below **Xelikw**;
- The critical importance of shellfish harvesting to the survival and economic well-being of the K'ómoks people since before the arrival of European settlers to this area.

K'ómoks First Nation also asserts domestic and commercial Aboriginal shellfish harvesting rights to **Xelikw**.

¹ The K'ómoks and Pentlatch peoples amalgamated in the 19th century.

Included with this letter are some materials that will hopefully assist you in understanding the basis of K'ómoks' Aboriginal title, domestic and commercial shellfish harvesting rights claim to **Ihaytayich** and in particular, **Xelikw**:

1. report by anthropologist Deidre Cullon,
2. affidavit by former Chief of K'ómoks Ernest Hardy,
3. map of the archeological sites on **Ihaytayich** (mostly shell middens and village sites) (this is Exhibit "G" to the affidavit of E. Hardy),
4. archeological site forms for the following archeological sites on **Ihaytayich**: DjSf-001, DjSe-010, DjSf-004, DjSf-018.

These materials provide only an introduction to K'ómoks' rights claims and would be supplemented by additional oral history, anthropological, historical and archeological evidence if K'ómoks were ever forced to establish its s. 35 rights for **Xelikw** in court.

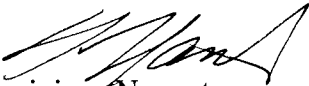
I would also urge you to consider the significant dispossession that K'ómoks First Nation has experienced over the last century due to non-Aboriginal settlement and aquaculture activities in its core Territory. Due to water contamination from human settlements as well as BC and DFO's extensive allocation of aquaculture opportunities to third parties in Baynes Sound, K'ómoks has lost access to all but a fraction of its traditional shellfish harvesting locations. Compared to all of the aquaculture licences held by other parties, the Nation holds a modest share of the total commercial tenures in Baynes Sound.

While the Islands Trust's concerns with Pentlatch's **Xelikw** tenures may be motivated by opposition to high levels of shellfish aquaculture in Baynes Sound rather than an opposition to Pentlatch specifically, surely it is not the K'ómoks First Nation that should pay the price of this opposition. It would be extremely unjust to deny K'ómoks the modest increase in access to shellfish harvesting opportunities that the **Xelikw** tenures provides while the society that has dispossessed them of most of their beaches and has deprived them of meaningful shellfish opportunities continues to enjoy extensive commercial aquaculture opportunities on **Ihaytayich**.

Please do not hesitate to call me with any questions about the issues raised in this letter, or to pursue a fuller discussion on the subject.

Yours truly,

WOODWARD & COMPANY



Dominique Nouvet

Enclosures

c.c. Richard Hardy (via email)
K'ómoks Chief and Council (via fax)
Mr. Peter Phillips (by-law enforcement) (via email)
Mark Stevenson (via email)
Heinz Dyck (via email)

A Brief History of *K'ómoks* Occupation and Use in the Comox Harbour and Denman Island Region

Preface

As an ethnohistorical researcher with what is now the Laich-Kwil-Tach Treaty Society, I have been researching and recording *K'ómoks* history and culture for more than a decade. I have spoken to many *K'ómoks* people and have done archival and archaeological research, including fish trap research, on their history, land and resource use, and territories on numerous occasions. Although the *K'ómoks* are no longer part of the Laich-Kwil-Tach Treaty Society, my relationship with them has been maintained. This is a common practice among anthropologists. It is important in our work to develop trust and relationships with the people from whom we learn and who allow us into their lives and homes. As an expert witness however, when researching and compiling reports of this kind, I remain professional and unbiased.

For this report, I was asked to provide a summary of *K'ómoks* occupation and use of the Comox Harbour and Denman Island area, with a focus on the use of marine resources. I begin with a brief history of the *K'ómoks*, how they came to be centred at Comox Harbour, and the transfer of rights and territory from the *Pentlatch* people, who once reigned in the region, to the *K'ómoks* people who are now there. I then discuss places within the study area more specifically, with a focus on marine use and the land that fronts these areas. The struggle of the *K'ómoks* people to maintain their foreshore rights began early. In 1920, Andy Frank, who was later to be Chief, was denied the right to fish with a net in the Puntledge River (Indian Agent Nov. 25, 1920). In 1931, Chief of the band, Joe Nimmim wrote the Department of Indian Affairs to complain about a booming ground at Goose Spit that interfered with their ability to access the clam beds and troll for Spring salmon.

In this discussion I include archaeological information available for the region. I discuss many different places in this report so have appended two maps which note many of these geographical locations. If the place that is discussed is not on one of these two maps, I have tried to note the location, generally, in the text.

Research, based on oral history, written records, anthropological writings, colonial records, and archaeological records of the *K'ómoks* and their territory reveals an extensive use of local resources. Oral history, which is sometimes recorded in local written history, is rich, showing the intensive use of and reliance on marine resources. However, because of the amalgamation of *K'ómoks* and *Pentlatch* people, and the severe *Pentlatch* population decline, the oral history that is available from people today is, by and large, *K'ómoks*. Written history is similar, although the history of the *K'ómoks* move to Comox and their amalgamation with the *Pentlatch* is reasonably well recorded.

Resource use within the study area by *Pentlatch* people from time immemorial to the more recent 19th century *K'ómoks* use, is reflected in the numerous archaeological sites in the region and for this reason, these sites are discussed within the terms of this report. Many

This is Exhibit "_____" referred to in the
affidavit of _____
sworn before me at _____
this _____ day of _____ 20____
A Commissioner for taking Affidavits
Within British Columbia

of these sites are designated as heritage sites as per the British Columbia *Heritage Conservation Act* and are registered with the Provincial Archaeology Branch. All archaeological sites discussed in this report are protected under this *Act*. Many of these sites stand as witness to the long and intensive resource use by the *Pentlatch* and *K'ómoks* people. Although it is impossible to say for certain what the demographics were prior to the collective memory of the *Pentlatch* and *K'ómoks* people, I am of the opinion that much of the history represented by these archaeological sites is that of the Puntledge. I can also say with certainty that in 1846, these sites were associated with both the *Pentlatch* and *K'ómoks*.

Who Are the Modern *K'ómoks*

K'ómoks people are based in Comox, on Vancouver Island, and their territory includes the lands and waters around Comox Harbour and Denman Island. In the early 19th century, the area in question was owned and occupied by *Pentlatch* people. To my knowledge, the *Pentlatch* people are the only people with an origin history in the Comox Harbour. The origin place of the *Pentlatch*, as recorded by Franz Boas in the 1880s, was centred at the mouth of the Puntledge River:

A long, long time ago two men, Koai'min and He'k'ten, descended from the sky. They became the ancestors of the PE'ntlatc. Once the sea receded far from its shore and the women went far out and filled their baskets with fish. The bottom of the sea remained dry for a long time. But He'k'ten was afraid that the water would rise that much higher later on. Therefore he made a long rope of cedar branches and tied together four canoes. At last the water really flowed back and began to flood the shore. So he tied the rope to a big rock in the mouth of the PE'ntlatc River, fastened the other end to the canoes, and the two chief families floated about on the rafts. The other people begged He'k'ten, "Oh, allow us to tie our canoes to your rope. We will give our daughters as wives." But He'k'ten didn't allow it and pushed them away with poles. When the water receded, they alone found their home again, while all the others were scattered throughout the wide world. A whale remained stranded high up on the mountain near PE'ntlatc Lake. The water up there froze and the whale was unable to get away again. The whale can still be seen there today and that is why the glacier in the PE'ntlatc Valley is called K'one'is [Comox Glacier] (Boas 2002:237-238).

It is then said that the descendants of He'k'ten and Kaio'min maintained the mouth of the Puntledge River as the centre of their territory and expanded southward so that their territory included the land and water between Comox Harbour and the mouth of the Englishman River at Craig Bay (Kennedy and Bouchard 1990:443). The story of the whale and the glacier, or Kwenis as I have been told, is regularly mentioned by *K'ómoks* people, as the Comox Glacier is a prominent feature in the Comox Valley skyline.

Due to warfare, disease, intermarriage and alliances, the *K'ómoks* amalgamated with the *Pentlatch* in the mid-19th century. This amalgamation led to the transfer of *Pentlatch* territory and rights to the *K'ómoks*. The fact that *K'ómoks* and *Pentlatch* people likely “shared many features of ceremonialism” (Everson 2000 20), facilitated the merger. The transferred territory included Comox Harbour and Denman Island, and the rights would have included rights to all resources as well as the right to be a steward of the territory. Although this right is vested in one person as the title-holder, sharing the resource with other *Pentlatch* and later *K'ómoks* families was vital to maintaining one's role as a title-holder.

The word *K'ómoks* is derived from the *Kwak'wala* term *q'wumuxws* (with the suffix *q'wum* meaning ‘rich’). *Kwak'wala* is the name commonly used for the language spoken by the *Kwakwaka'wakw* people who live to the north of *K'ómoks* territory. This term was used by *Kwak'wala* speakers to refer to Comox Harbour, likely referring to its rich resources, as it can be translated as “land of plenty”. Eventually, the word came to apply to the people who settled here in the mid-1800s. The word *Pentlatch* is from the Comox and Sechelt dialects, previously spoken by people on the mainland opposite central Vancouver Island, and by the *K'ómoks* people who moved here. It was their word used to refer to the people around Comox Harbour during the 19th century. It is not known if the *Pentlatch* people had a different name for themselves. In the literature, the term *Pentlatch* refers to the people who, in the 19th century were living between Cape Lazo and what is now Parksville, a community approximately 60km south of Comox. At this time, the *Pentlatch* people were divided into four groups: the *Pentlatch* at Comox Harbour; the *sa?aləm* (saathlam), around Qualicum; the *s?oksən*, around Union and Deep bays; and *chuachuatl*, the southernmost *Pentlatch* group, around what is now Parksville. Thus at the beginning of the 19th century, *Pentlatch* territory included the eastern shore of Vancouver Island from Cape Lazo to Parksville and it included the islands in the Strait of Georgia, including Denman and Hornby.

Throughout the 19th century, intermarriage, disease, ongoing battles with neighbouring Nations and the southward movement of the *Laich-Kwil-Tach* led to the eventual demise of the *Pentlatch* people as a distinct group. (The *Laich-Kwil-Tach* are a First Nation immediately to the north of the Comox and are often considered part of the *Kwakwakawakw*. They speak a dialect, *Lik'wala*, that is closely related to *Kwak'wala*). According to Franz Boas, there was one *Pentlatch* family remaining among the *K'ómoks* when he visited Comox in November 1886. He says that “after some fruitless questioning I discovered that they [*K'ómoks*] have combined with the Penntatish [*Pentlatch*]” (Boas 1969:59). This amalgamation was the result of pressure from the southward bound *Laich-Kwil-Tach* who were waging war against the Salish and who had pushed the *K'ómoks* out of their territories further north. The language, shared culture, and likely familial connections the *K'ómoks* already had with the *Pentlatch*, as well as the decimated population of the *Pentlatch*, allowed the *K'ómoks* to easily join the remaining *Pentlatch* people here. This occurred sometime between 1841 and 1847 (Beaver Log Dec. 21-22, 1847).

Prior to the southward movement of the *Laich-Kwil-Tach*, *K'ómoks* people occupied the area from Campbell River and Cape Mudge, north to Salmon River. Their organization around the time of contact is somewhat unclear. According to *K'ómoks* elder, George Mitchell, the *K'ómoks* people once were made up of ten tribes (Barnett 1935). The five highest ranking, the *sasitla* (*sasitl'a*), *yayaqwiLtah*, *saLALt* (*salhulhtxw*), *kAtkAdul* and *Komokwe*, were all part of the “Whale House” and wintered together at Cape Mudge on Quadra Island (Barnett 1935). These five groups would separate in the spring until late fall and travel to their territories as far north as Salmon River. Mitchell could not remember the names of the other five groups but placed another, *Eiksan*, at the mouth of the Campbell River (Barnett 1935). These five groups maintained territories between Cape Lazo, just north of the entrance to present day Comox Harbour, to Quadra Island and Campbell River (Everson 2000:14-15). In October, 1827, one of these *K'ómoks* groups attacked five crew members from the *Cadboro* on Vancouver Island while they were getting water (MacLachlan 1998:42-43). Letters from George Simpson (1827), the Captain of the *Cadboro*, said that it was the *Slacoutle*. One crewman was killed while another was wounded. It is likely that Simpson's *Slacoutle* refers to the *K'ómoks* group, *Salhulhtxw*.

Bouchard and Kennedy suggest that *K'ómoks* originally consisted of at least 5 groups: *Sasitla* who were at Salmon River in the summer and Cape Mudge in the winter; *Tatpoose* who occupied northern Quadra Island; the *Kaake* who occupied southern Quadra Island; the *Eeksen* who were at Oyster Bay and area; and the *Kakekt* who occupied the Kye Bay to Cape Lazo area and who were geographically closest to the *Pentlatch* (Kennedy and Bouchard 1990:442). It is possible that Bouchard and Kennedy's *Sasitla* was further divided as suggested by George Mitchell noted above.

Regardless of the village divisions, these people shared a common dialect and recognized themselves as being, what later became known as, *K'ómoks*, and gradually, over a period of many decades, they were pushed southward. The last stronghold was in Gowlland Harbour, on the west side of Quadra Island, in the mid-1800s. *K'ómoks* people living at Campbell River, opposite Gowlland Harbour, moved to a fortified village site near April Point (at the southern entrance to Gowlland Harbour) where they were attacked by the *Laich-Kwil-Tach*. Shortly after, the survivors permanently amalgamated with the *Pentlatch* at Comox Harbour. Much later, in 1940, Joe Nimnim, a *Pentlatch* Elder and Chief, and the last *Pentlatch* speaker, passed away. Prior to his death, his rights and privileges, including *Pentlatch* rights, territories, resources and prerogatives were transferred to his great-nephew, Andy Frank. According to Mary Everson, Andy's daughter, Joe Nimnim “owned” the territory to Deepbay (Everson 2005). This would have included the territory of Comox Harbour and Denman Island, as well as the corresponding parts of Vancouver Island. These territories, rights and prerogatives were vested in Joe Nimnim as a *Pentlatch* man, and likely would have been transferred to him through a traditional ceremony, as would have been done for generations before him. However, with the extreme decline in *Pentlatch* population, it is also possible that all *Pentlatch* rights, held from time immemorial, came to Joe Nimnim, as other title holders died. This was a common occurrence on the coast during the latter half of the 19th century. As smallpox and other diseases raged, killing huge numbers of people, title

positions became concentrated in fewer individuals. In the case of the *Pentlatch*, who suffered almost complete population loss, it is likely that *Pentlatch* rights and privileges became vested in one or very few individuals.

In 1928, Joe Nimmim was recognized as Chief of the “Pentledge and Comox reserves” by the Department of Indian Affairs. In a letter dated Dec. 12, 1928, J.D. McLean, Asst. Deputy and Secretary of the Department of Indian Affairs wrote to Joe stating that “your appointment as chief of the Pentledge and Comox reserves was confirmed by the Department in a letter addressed to the Indian Agent... The Department does not recognize hereditary chiefs but should your son be selected by the Indians to succeed you after your death, his appointment will be considered” (McLean 1928). After his death in 1940, Andy Frank was recognized as Chief, as indicated in a letter from the Department of Indian Affairs. A letter dated August 27, 1940, from the Department is addressed to “Chief Andy Frank”. Enclosed in the letter were cheques for “Indians employed on the reserve”, including “Chief Andy Frank” (Webb 1940). The letter is written in regards to “Comox I.R. No. 1”, is addressed to Chief Andy Frank, and notes that the cheques are for people employed on this reserve. It is my opinion that this letter shows that the Department of Indian Affairs recognized Andy Frank as the Chief of the Comox Indian Band. Additionally, by this time, letters that were sent to the Comox Band referenced only Comox and the term *Pentlatch* seems to have been dropped by the Department. In my opinion, this means that at this time, the Department of Indian Affairs recognized the amalgamation of the *Pentlatch* and *K’ómoks* people.

K’ómoks Connections with the *Laich-Kwil-Tach* and Other Neighbouring Nations

Oral tradition states that even during the war between the *Salish* and the *Laich-Kwil-Tach*, many *K’ómoks* families were allies of and offered assistance to the *Laich-Kwil-Tach* (Curtis 1915). This likely reflects the generations of intermarriage between these neighbouring people. “This alliance proved deadly, as the Lekwiltok-along with the Comox-journeyed far and wide, annihilating villages with their late-night merciless raids.... Several Comox and Lekwiltok septs [extended families] were decimated so badly that they simply disappeared or were subsumed by the larger [Lekwiltok] groups” (Everson 2000:19). These 18th and 19th century amalgamations, recorded via the oral history of earlier generations, occurred before the presence of the Indian Act. In fact, some occurred prior to European contact and British colonial rule. For this reason, there is no government record of these amalgamations. Some would have occurred through marriage alliances and peace agreements, some due to the southward expansion of the *Laich-Kwil-Tach*, some due to disease and population decline, and some due to all or some of these factors combined. Regardless, of the reason or the timing, these amalgamations, especially peaceful amalgamations, would have included ceremony and tradition in the passing of rights, titles and privileges, as per traditional law.

K’ómoks connections to other First Nations was noticed in the 1880s by Franz Boas, an anthropologist who spent several weeks in the *K’ómoks* village recording languages. While here he found *Lik’wala*, *Kwak’wala*, *Comox*, and *Pentlatch* all being spoken (Boas

1969). The composition of the village that Boas notes reflects a reality in which there were strong ties between the *K'ómoks* people and the *Laich-Kwil-Tach* and *Kwakwakawakw*. Because of these close ties with communities to the north, following amalgamation with the *Pentlatch*, and the transfer of *Pentlatch* territory and rights, Comox Harbour, became an interesting place. Due to the presence of an immense fish trap industry, bountiful herring runs, shellfish resources, and game, Comox Harbour was a gathering place. Although *K'ómoks* people lived and occupied the area all year, in the mid-19th century the region saw an influx of *Laich-Kwil-Tach* people in the spring and fall. This maintained the close relationship between the two Nations and furthered intermarriage and alliances.

Today, some *K'ómoks* families see themselves as closely related to the *Kwakwakawakw* and *Laich-Kwil-Tach*, while others see themselves as related to the *Pentlatch*. In fact, today the familial connections with the *Laich-Kwil-Tach* are still strong enough that the *K'ómoks* First Nation was a part of the *Laich-Kwil-Tach* treaty table from 2000 to 2008. Their connection allowed this cooperation, but during this partnership, their distinctness as *K'ómoks* was always recognized and respected. This friendship and intermarriage with *Laich-Kwil-Tach* and *Kwakwakawakw* people, along with the earlier amalgamation with the *Pentlatch*, places the *K'ómoks* people in a “border community” (Everson 2000:2), at times being defined as *Salish* and at others as *Kwakwakawakw*. Nevertheless, they define themselves as *K'ómoks*.

Traditional Social Organization and the Transfer of *Pentlatch* Rights to *K'ómoks*

K'ómoks people traditionally reckoned their kin bilaterally which means that relatives were recognized through both parents. The kin term for siblings and cousins was the same, being different only by gender and relative age to the speaker. This system remained for many years with elders referring to their cousins as “sister” or “brother”. The result is that when tracing genealogical connections, it is not always clear if the term reflects biological or social siblings. Understanding this practice is sometimes important when attempting to decipher the transfer of rights and privileges.

Traditional *K'ómoks* and *Pentlatch* society was not egalitarian. There was a status system well entrenched. This system included people of high-status, people of lower or middle status and slaves, and was not based on rank as were the systems of First Nations to the north. Additionally, high-status positions were achieved and not ascribed as in other areas of the Northwest Coast and the majority of people were considered high-status or “class” (Suttles 1960:297). Generally, “the lower class consisted of people who ‘had lost their history,’ that is, people who had no claim to the most productive resources of the area and no claim to recognized inherited privileges” (Suttles 1960:297). Additionally, status came from sharing food. A variety of subsistence techniques along with property rights and individual skill, resulted in differing abilities to share food, and therefore differing status. In short, one who produced more was honoured (Suttles 1960:299). What is also important in the *Salish* tradition, and therefore *Pentlatch* and *K'ómoks* tradition, is that “access to some of the most productive sites was restricted by property rights. Not all, but

the best camas beds, fern beds, wapato ponds, and clam beds were owned by extended families with control exercised by individuals.... Weirs and traps for salmon seem usually to have been built by a whole community, perhaps under the direction of the head of an extended family, but with no distinction in access” (Suttles 1960:300). Being a titleholder to these resources resulted in higher status. In this position, one was responsible for the care and maintenance a resource and it was important to ensure access for others. In many ways title-holders were in a position of stewardship, needing to ensure the well being of resource sites for which they were responsible.

Wealth that was obtained from access to resources was translated into status through the potlatch and through an immense giving of wealth. By giving, “a man validates a claim to noble descent and inherited privilege” and re-asserts his high-status position (Suttles 1960:301). Potlatches and the public statement of status also allowed for alliances to be made and marriages to be arranged. Potlatches were a public forum in which to transfer privileges (Suttles 1958:500), including hereditary rights, which could include resources like those mentioned above. Transferred rights and resources included the “special practical and ritual knowledge necessary for its [the resource’s] successful operation” (Suttles 1958: 500-501).

In the transfer of rights and resource ownership, primogeniture was often practiced. However, there was always an option to transfer rights and privileges to another child if he was seen as being more successful and more capable than the oldest son (Suttles 1958:502-503). An important concept in understanding the transfer of rights from *Pentlatch* to *K’ómoks* is that ownership of especially-productive resources in Salish tradition did exist, at least to the extent of managing and caring for the site. Members of the titleholder’s family had rights to the resource, but it was the titleholder who was tasked with its stewardship. Generally, the region was seen as being the domain of the extended family or group but the “exploitation of the most productive fishing and other sites was often in the hands of certain individuals who were able to use whatever surplus might be produced” (Suttles 1958:502). Access to these individually or family owned resources was granted to others by permission.

Although the information for these conclusions comes from other Coast Salish groups, Barnett’s (1935) unpublished fieldnotes contain interview notes from his meetings with George Mitchell, a *K’ómoks* man. These notes suggest that a similar pattern of ownership existed among the *K’ómoks*. For example, Mitchell stated that owners of resources were seen as holding special knowledge and powers over them and he mentioned that certain families had rights to particular resources like seagull egg sites or mountain goat hunting sites (i.e. up Toba Inlet) (Barnett 1935). He also noted that the *Pentlatch* chief (presumably Joe Nimnim) had the authority to stop the migrating salmon at the mouth of the Puntledge River (likely in the fish traps) until he had procured enough (Barnett 1935).

Although status was an important concept in traditional *K’ómoks* and *Pentlatch* society, being of high status, and even being a resource owner or from a resource owning family, did not bestow one with authority. Older men, due to age, experience, knowledge and therefore accumulated wealth, could assume a leadership position. Often this position was

eventually taken on by a son, but only if he too earned the right. However, this position was always that of influence and never true authority. His decisions were binding on no one and if disagreements went unresolved, the existence of bilateral kinship and fluid residence patterns made it easy to leave any conflict.

It is within this system, where titleholders must share wealth and resources to maintain status of self, family and group, that the rights and privileges of Joe Nimnim, the last *Pentlatch* speaker, were transferred to Andy Frank, and later, to Norman Frank. Joe Nimnim was a *Pentlatch* man. His date of birth is unknown, but some stories (Comox Argus, 1940; Capes 1964:44) suggest he was a little boy in the 1840s who witnessed an attack by the Nuu-chah-nulth, at the *Kus-kus-kum* village on the Puntledge River (Brown 1989: 112). This attack resulted in the death of many of his people (Hughes 1962:3). Joe's mother was *Pentlatch* from both her parents (Barnett 1935) and his father was born of a *Pentlatch* mother and *Laich-Kwil-Tach* father (Barnett 1935). By the 20th century, due to the amalgamation with the *K'ómoks* and a severe decline in population, Joe was the last person who could speak the *Pentlatch* language. Joe spent the later years of his life living on the reserve at the junction of the Tsolum and Puntledge rivers and died around 1940. This reserve is now a Comox Indian Reserve.

Joe's great-nephew, Andy Frank was the son of Billie Frank and Mary (Nak) Humchitt. Nak was the daughter of Harry Humchitt (*Pentlatch* and close relative, possibly brother or first cousin, of Joe Nimnim) and Waddie (possibly from Gilford Island). According to Thornton (1966), when Nak "was a young girl her uncle, *Nep-kap-um-kum* [10 fathom face—a very big name], of Fort Rupert, sang at a great potlatch that had been given to make her a dancer, and he had honored her by giving her his name." Billie Frank, Andy's father, was a *K'ómoks* man. Following Joe's death, Joe's hereditary title and rights passed to Andy Frank. According to Mary Everson (2011), the transfer had been done prior to Joe's death in secret because of the anti-potlatching law (a law within the Indian Act) and because Joe was a "Constable" for the government, and could not be caught breaking this law. Witnesses were called and Joe's "hereditary chiefdomship" including *Pentlatch* lands and resources, were transferred to Andy (Everson 2011). Andy did not "activate" his role as the hereditary title-holder until after Joe had died (Everson 2011). Andy was married to a high-ranking *Kwakwaka'wakw* woman, Maggie Wilson, likely because of Nak's position with the name *Nep-kap-um-kum*. It was "largely because of Maggie's high-born status, [that] Andy subsequently inherited the position of the old *Pentlatch* chief Joe Nimnim" (Everson 2000:8). Andy held this title until his death in a fishing accident in 1972 (Everson 2000:24). After his death, the title and name *Nimnimum* was passed to Norman Frank. This happened sometime later, after the bighouse in Comox was built. Norman was the son of Henry Frank, Andy's brother, and grandson of Mary Humchitt (Nak) and Billie Frank. In 1989, Norman received Billie Frank's name *Yak na quas* (Shopland 2011).

This brief genealogy, from Joe Nimnim to Norman Frank, reveals how the *Pentlatch* rights and title have been transferred from Joe Nimnim to Andy Frank to Norman Frank, both of whom are descendants of Mary Humchitt (*Pentlatch*) and Billie Frank (*K'ómoks*), and therefore both of whom are related to Joe Nimnim (great nephew and great great

nephew). The original transfer to Andy Frank effectively vested *Pentlatch* rights, including territory and resources, in what is now known as the *K'ómoks* First Nation.

K'ómoks Resources Within the Study Area

Shellfish

Shellfish is an important component of the *K'ómoks* traditional diet. These include butter clams, littleneck clams, horse clams and cockles. These are readily available in the beaches along the Strait of Georgia and can be harvested for much of the year. In the winter, when the low tides are at night, Coast Salish people, including the *K'ómoks*, were known to dig “clams by the light of pitchwood torches” (Kennedy and Bouchard 1990:445; Cumberland News, Feb 1907). The deep and huge middens, or shell heaps, found in *K'ómoks* territory, are a testament to the importance of this resource. Some of these middens are several metres deep and span the shoreline for hundreds of metres. Middens reveal a site of past human habitation. Some of the smaller middens might be considered seasonal campsites while the larger ones, often with house depressions, reveal a longer and more permanent settlement. The artifacts that remain can include items of material life including stone tools or their remnants, bone tools or fragments, basketry fragments, wood fragments from house structures and tools (especially in wetter sites), among many other things. Shell middens can also house the products of subsistence like bone fragments from hunted animals, fish bone and of course, shell, which gives it its name. The presence of shell acts as a preservative, working to preserve bone for a long period of time. Thus, another common finding in these shell middens is human skeletal remains from a time when funerary rights included burial. These shell middens can assist archaeologists in understanding the past cultures of their inhabitants and therefore can have great scientific significance. Because they are a connection to the past for First Nations, they are also of great cultural significance. For these reasons, shell middens, like all archaeological sites in British Columbia that pre-date 1846 are protected under the *Heritage Conservation Act*.

Within this study area, there is a large concentration of shell middens revealing previous Aboriginal use, including *Pentlatch* and *K'ómoks* use. For example, on the northwest end of Denman Island, along approximately 9km of shoreline, there are 11 registered heritage sites, all of which are shell middens, representing a long period of habitation and resource use. In this same area, between Sandy Island and just south of Denman Point, there are numerous licenses over the foreshore.

Fish Traps

Since 2004, I have been involved in research on fish traps. For the past five years, I have applied for and received funding on behalf of First Nations to conduct fieldwork on fish traps. In this time, my teams and I have documented more than 300 fish trap features, or what might be considered the remains of a fish trap. Sometimes this means the trap is still relatively intact and one can record the general shape of the feature while at other times,

all that remains is one wooden stake. If there are many stakes present, identification is simple but when only one or two stakes remain, we remove the stake to examine its distal end. We look for cutmarks which were made during the sharpening of the stake into a point to facilitate its placement in the beach. These cutmarks confirm the authenticity of the stake.



Figure 1: Example of a wooden stake from a fish trap remnant at Deepwater Bay, Quadra Island, showing cutmarks (dated to 220 +/-40 BP). Photo by Deidre Cullon, 2010

Fish traps are an Aboriginal intertidal fishing structure. These traps appear to have been capable of harvesting

large numbers of fish and possibly other marine species important in the traditional economy. Research on this technology reveals that although based on a general concept, the design, shape and layout of these structures vary according to environment and likely fish behaviour. This variation reveals the immense understanding that First Nations had of their local environment and resources.

The capacity of these structures is also interesting. Given the capacity of modern traps of similar design, it is believed that these traps had an enormous capacity to catch fish. Nevertheless, the stocks in the Courtenay River, until recently were very strong. This is evidence of the conservation that these traps allowed. It is likely that the traps were utilized only for certain times of the fish run, allowing other fish to continue up the river to maintain the health of the run.

Since 2004, my teams and I have collected more than 100 wooden stake samples for analysis and have sent 98 to a company in Florida to be carbon dated. The oldest stake from this set, retrieved from Quathiaski Cove on Quadra Island, was carbon dated to 2880 +/- 40 BP. The youngest stake thus far was 40 +/- 60 BP taken from the Apple River, located north of Comox, on the mainland at the head of Loughborough Inlet. BP means “before present” and is an established date of 1950. All carbon dates are measured from this year to ensure consistency in dating.

Although it is impossible to say what the territorial landscape was 3000 years ago, at one time, Quathiaski Cove had been part of *K’ómoks* territory. Additionally, given the sheer number of fish traps in *K’ómoks* harbour, some of which the *K’ómoks* people worked and maintained, we know that *K’ómoks* people had fish trap technology in their subsistence tool box. Further evidence of this is found at the Campbell River, north of Comox, but located in what was previously *K’ómoks* territory. At least some dates from these fish traps at Campbell River correspond to a time of known *K’ómoks* occupation.

Dozens of fish traps are found in Comox Harbour as discussed below. There was also an earlier extensive shoreline trap fishery located on what is now Saratoga Beach, north of Black Creek and Comox. These traps seem to pre-date those in Comox Harbour and are found in what was in the 19th century, *K'ómoks* territory. One trap at Black Creek has dates that suggest that it was regularly maintained for more than 700 years. Additionally, although not verified by me, I have been told that there are more traps at the mouth of the Trent River, south of present day Courtenay, and at Tribune Bay on Hornby Island. Given that we are documenting traps in similar environments elsewhere, I am of the opinion that these reports are accurate. There is also a recorded heritage site at the mouth of the Little Qualicum River, DiSc-001*, that includes the remains of fish traps (Bernick 1983:17). Excavation of this site indicates that although salmon fishing was the primary activity at the site, “[c]lams, other fish, and deer were the next most heavily exploited food resources” (Bernick 1983:vi).

*DiSc-001 is a borden number. Borden numbers are assigned, by the Provincial Archaeology Branch, to all recorded archaeological sites in British Columbia. The borden number system was developed by Charles E. Borden at the University of British Columbia in the 1950s. It is used throughout Canada to track archaeological sites and the artifacts that come from them. Simply, Canada is divided into a grid of main map units of 2° latitude by 4° longitude (represented by the upper case letters) and then divided further into a smaller grid by 10' (minute) sub-units (represented by the lower case letters), resulting in 16 km² units. Each archaeological site is then numbered numerically within the unit it is located. Once documented, archaeologists in British Columbia must complete a site form for a site. This form includes the pertinent information about the site, including the site type (i.e. midden, burial, clam garden, etc.), when the site was visited and by whom, the condition of the site and more recently, the site dimensions. It can also include information about the artifacts that have been removed and where they are housed. Two examples of site forms are attached at the end of this report as Appendix B.

COMOX HARBOUR

Comox Harbour is a unique place for resources. The estuary contains a large concentration of archaeologically significant Aboriginal intertidal fish traps, registered as sites DkSf-043 and 044. Extensive remains of more than 200 large, wooden stake, fish traps preserved in the estuary indicate an important fishing site in use for at least 1000 years prior to European contact. These traps span the estuary from one side to the other and are also found in the estuary inside Goose Spit. The traps on the main part of the estuary are large, tidal traps, possibly targeting herring or other species of fish. These traps are situated in such a way that they seemed to have functioned together and with the tide to maximize the amount of fish caught.



Figure 2: Thick concentration of fish trap stakes along the Courtenay River. Photo by Deidre Cullon (although the date says 2007, this work was conducted in 2006).

There is also a thick concentration of stakes along the Courtenay River as it flows along the east side of the estuary. Stakes here are so concentrated, it is almost impossible to discern any regular shape or design (see Figure 2). However, in some places along the river, there are also some triangular shapes that were likely used to direct fish to a basket or box trap or a spearing/gaffing platform (see Figure 3). These traps have been used by *K'ómoks* people within recent memory. Mary Humchitt Frank (Nak) told her granddaughter that the “sticks” were used to catch fish and she was concerned that when the river was dredged the fish would be confused (Everson 2005). Andy Frank said that a net was made from cedar bark and sinew. The cedar was wrapped around the sinew for strength and a net with a drawstring at the mouth of it was made. The net had holes in it that were about 2 inches in diameter to let small fish and the water out. At low tide, the drawstring was loosened and “the fish would fall out” (Everson 2005). Each family is said to have owned a trap and they were responsible for its maintenance (Everson 2005).



Figure 3: Fish trap stakes at Courtenay River. Photo by Deidre Cullon (although the date says 2007, this work was conducted in 2006).

The number of wooden stake features in Comox Harbour suggests this was an important fishery of an industrial scale. Research at other fish trap sites indicates that traps were maintained for generations, often spanning hundreds of years. I have been involved with

the radiocarbon dating of 20 wooden stakes and one basketry fragment from the estuary. These dates range from as old as 1230 +/-60 years BP to as young as 120 +/-40 years BP. Almost half of the dates (9) obtained are between 210 +/- 60 years BP and 290 +/- 60 BP. Four fall between 350 +/-40 years BP and 600 +/- 40 years BP. The remaining dates record the stakes at over 1000 years old, the oldest dating to the 8th century. The basketry fragment dates to 220 +/-40 years BP. These dates indicate that the fishery was regular and on-going and that the traps were maintained over time and generations. The younger dates fall within the timeframe of known *Pentlatch* occupation of the Comox Harbour area. The youngest date of 120 +/- 40 years BP has a calendar range of 1790 AD to 1870 AD, the latter of which falls absolutely within the time period of *K'ómoks* occupation of the region and their amalgamation with *Pentlatch*.

Oral and written history also notes Comox Harbour's importance in fishing. Countless *K'ómoks* people will talk about the abundance of the harbour and their tradition of utilizing the resources. The herring fishery in this area is extremely strong and the herring are known to spawn at the edge of the harbour, at the low tide point. The salmon run was also very strong at one point, with all 5 species of salmon utilizing the river, and the Courtenay/Puntledge rivers are two of the few on Vancouver Island to have had sturgeon (Brown 1989:114).

Comox Harbour Sites, North Shore

The main *K'ómoks* village site, located generally where the Indian Reserve is currently located, was at one time a *Pentlatch* village. Eventually, through disease, warfare, intermarriage and title transfer, this became a *K'ómoks* village. The whole area is full of midden extending several kilometers along the shoreline. These were at one time *Pentlatch* habitation sites and as *K'ómoks* people amalgamated, they became *K'ómoks* sites.

The *K'ómoks* village site is associated with heritage sites DkSf-006, 019, 024, 030, 037 and 049. Although not necessarily one continuous shell midden site, these heritage sites

cover most of the northern shoreline of the harbour. One of the largest sites is DkSf-019. This midden is 1400 m long and has great amounts of evidence of occupation. Human remains have also been removed from this site. Because this is reserve land and *K'ómoks* people must live here, much of the midden has been disturbed over the years. At the western end of the site, is a creek, referred to by some as "Coho Creek". This is also the site of the Mitchell farm, an area pre-empted by a settler who married a *K'ómoks* woman (their son George was later Homer Barnett's informant). Phillip Drucker also refers to the village in Comox.

Captain George Henry Richards of the British Navy wrote about his visit to Comox Harbour in 1860. He noted that some of the Aboriginal women did not join a Catholic service being offered by visiting priests but "pursued their ordinary avocations - as usual without in the slightest degree noticing what was going on. Launched their Canoes, dry Clams and prepared the food" (Richards April 19, 1860). This part of Richards' journal provides an eye witness account of on-going traditional use of the area and resources in the 1860s.

Only 300m to the west of DkSf-019 is another midden, DkSf-024. In between is DkSf-049, a small, 43 m midden site. DkSf-024 is much larger at 560 m long, and has evidence of occupation. Human remains have been removed on various occasions. This is not Indian Reserve land. A little further along is a smaller midden, DkSf-030. On the southeastern side of DkSf-019 is DkSf-037, another shell midden approximately 65 m long. A little further east is DkSf-006. This is a 94 m long midden site but is also a fortified site for refuge when being attacked. This was later the location of the "Fort House," a European style home built by a Comox resident who named his home after the type of archaeological site.

Next along the northern shoreline of the harbour is DkSf-45. This is a midden site on the eastern side of Robb Bluff that has been greatly disturbed by development over the years. Another 180 m away is another large midden site along the shoreline, DkSf-010 (attached in Appendix B). A carbon date acquired from material from this site yielded a date of 1120 +/- 50 years BP. The site has been examined on numerous occasions with the development of the area properties. With development, the site has been extremely disturbed. Artifacts like projectile points, obsidian scrapers, adzes, abraders, stone beads, harpoon points, etc., have been taken from the site. In 1995 another 350-400 artifacts were collected. Human remains are also prevalent in this site. In 1995, 200 human "elements" were removed from the site. Although the site form is not explicit, this likely means that the burials were previously disturbed and the remains had been scattered throughout the soil. All remains and artifacts removed in 1995 are housed at the Royal British Columbia Museum. Additionally, in 1979, three headless human skeletal remains were reported to have been disturbed by a plough. These were collected by a private citizen and their current whereabouts is not noted on the site form. Since 1995, other developments on this site have revealed further human remains. Some of these have been reburied on the property.

Fronting these midden sites, as well as those along the south shore of Comox Harbour is heritage site DkSf-043. This is a huge site containing the fish traps discussed above. These traps amount to what was likely a fishery of an industrial scale.

Further east on the Comox Harbour shoreline, beginning at the marina and extending to the base of Goose Spit is a very large heritage site, DkSf-004. This site extends for 2 km along the shoreline and is a shell midden with recorded human remains. The site has been heavily impacted by development, especially the installation of things like septic tanks, swimming pools and house foundations. Stone tool remains and faunal material have been removed from this site. Also within the bounds of DkSf-004 was a petroglyph at heritage site DkSf-014. The rock was removed from this location in the 1930s and was cemented into the fireplace at the home of the Filbergs, prominent residents at the time. Brooklyn Creek, which drains into this area, had a run of coho salmon. Some *K'ómoks* people recall their fathers spearing fish here. The entire length of DkSf-004 is fronted by DkSf-044, a large site of fish traps noted above. This site is full of wooden stakes, the remnants of fish traps that were utilized to catch huge quantities of fish. It is possible, given the presence of both salmon and herring in the Comox region, that these traps were used for multiple species.

Comox Harbour Sites, South Shore

Millard Creek is on the south side of Comox Harbour, toward the entrance to the bay. Oral history speaks of gaffing fish in the creek here and collecting grasses for weaving. The shell midden remains of this habitation site are designated as heritage site DjSf-002. This site is in at least three sections, divided by Millard Creek and now the road. Human remains, stone tools and bone tools have also been removed from this site.

Approximately 300m south of DkSf-002 is heritage site DkSf-020. This is a 200m midden site. A further 400m and at the edge of the Comox estuary, is DjSf-019. This midden is almost 1km long. The 1975 report suggests that it reveals several time periods of occupation, each separated by layers of silt. Because the original archaeological work was done in the 1970s, little is known about the site.

Overall, although the lengths of some middens have not been measured, along the shore of Comox Harbour, there is well over 5.5km of shell midden, evidence of long residence and use in the area.

Goose Spit

The Comox (or possibly *Pentlatch*) word for Goose Spit is *pə'lx'iiq'* (Andy Frank in Suttles 1961). Toward the end of Goose Spit is a shell midden site. This is registered heritage site DjSf-32. The end of the spit is also a funerary site, which has been recognized in numerous Indian Affairs documents. In 1862, Reginald Pidcock stated that

As we neared the Bay we could see what we thought were houses but which turned out afterwards to be Indian Tombs with white calico nailed onto a structure something like the frame of a small wooden house which is built over the Grave. They are on a long sandy spit (Pidcock 1862-1868).

According to Mary Everson (2005), when she was a child, boxes of ancient human remains were regularly delivered to her father, Andy Frank, because he was Chief of the Comox Band. As the band Chief, and as the hereditary title-holder, he was responsible for

the care of these remains. It is likely that the remains were removed during the construction of the Department of National Defense property.

Goose Spit was also a good place to gather clams and cockles. In addition to DjSf-032, there is another shell midden on the outside of the spit, recorded as DjSf-031. These shell middens are a testament to the importance of shellfish here. In 1931, Joe Nimnim wrote to the BC Indian Commissioner to complain about a log boom at Goose Spit that was interfering with their access to their shellfish resources. Joe wrote that “the boom is in the foreshore and it spoil [sic] the cockles, clam grounds as the boom of logs are on the way beside it” (Nimnim 1931). It is likely that the woody debris from the boom was also affecting the health of this shellfish bed. In the same letter, he complained that the boom was obstructing their ability to troll around the spit during the winter for Spring salmon.

Another reference to the use of shellfish here came from Richard Mayne, an officer onboard the HMS Plumper on April 18, 1860. He says that “since we came nearly all the Indians have shifted the village from No 5 to this spit – they change about with the seasons – when we were here last years, Oct – they were all at the entrance of the Courtenay & in another month or two will go there again for the Salmon & Berries – Now they live down here for the clams” (Mayne 1857-1860:196-197). This correlates with Richards’ 1860 report in which he says that “[t]he Indians from the Various Villages are collecting at this point – and bringing the moveable parts of the Villages with them. We have had an accession of about 40 today and now number about 80 here” (Richards April 17, 1860). Within a week, he notes that there were more than 300 people, 61 large canoes and the “point covered with their houses” (Richards April 19, 1860). Given the known history of the area, it is likely that Richards’ reference to “Various Villages” means that the *Laich-Kwil-Tach* were joining their *K’ómoks* kin here. This assessment is supported by the fact that on April 20, Gowlland, Richards’ Second Master, writes that the *Laich-Kwil-Tach* village at Cape Mudge “appears like at stockade at present uninhabited” (Gowlland 1860). The *Laich-Kwil-Tach* people moved seasonally to Comox Harbour every year for many generations, joining their *K’ómoks* kin to gather resources.

DENMAN ISLAND

The waters around Denman Island are a rich marine resource. Each spring, the waters teem with herring and it is likely that this huge fishery in part explains the name *K’ómoks*, or “land of plenty”. Today, the commercial industry targets herring here and in a good year, the waters are milky white from the enormous spawn. Along with herring come seals, which could be hunted or trapped, and seagulls, who later nest on Mitlenatch Island, a place for easy egg gathering. The name for Mitlenatch Island, *numas*, is from *Lik’wala*, and means “old man”.

Denman Island was also a rich resource area for berry picking, root gathering, hunting and large cedars grew here which were used as canoe logs (Mauze 1992:64; Assu and Inglis 1989:12; Hughes 1962:13; Pidcock 1862).

The richness of Denman Island resources is reflected in the archaeological record. The shoreline of Denman Island reveals dozens of registered heritage sites which are a testament to the extensive traditional use of the island, including *Pentlatch* and *K'ómoks* use. Although there are sites all around the island, the majority of these sites are located along the western side of the north half of the island, with another concentration of sites at the south end of the island. Below is a summary of the traditional use and archaeological record for the west side of Denman Island.

Henry Bay, Denman Island

Henry Bay is on the northwest side of Denman Island. This *Pentlatch* and later *K'ómoks* village and resource gathering site is rich in shellfish resources and is located on an island that teems with wildlife and traditional foods. Many *K'ómoks* families today speak of Henry Bay and its importance to the *K'ómoks* and their use of the area for shellfish harvesting (Mitchell 2011). Many people also recall staying at Henry Bay or Sandy Island while harvesting shellfish.

In April 1860, while anchored at Henry Bay on Denman Island, Captain G.H. Richards of the Royal Navy noted the “natives from Port Augusta Village [Comox Harbour] Visited us immediately - friends of last year... Fish and dried clams their food. The latter esteemed a delicacy by some of our officers – they scower them on a stick and dry them in the sun – it is to procure this delicacy that they visit this point and if one may judge by the quantities of shells of which this end of the I^d is almost composed to the depth of several feet, their ancestors must have resorted to the same spot for generations past for the same purpose” (Richards April 13-14, 1860). Richards also notes that because there was so much clam shell here that he ordered his men to make lime to use in their white wash markings employed in surveying.

In the early 20th century, Henry Bay was used as a clam resource in commercial endeavors. A 1907 report in the *Cumberland News*, a local newspaper, complained that *K'ómoks* people dug clams for Puget Sound Canneries, an American cannery that had sent its boat to buy clams in Baynes Sound. The article says

Clam Poachers Here Again. For some days the American Steamer *Electric* has been lying in Baynes Sound engaged in loading up clams for Puget Sound canneries. The method pursued is to contract with the [*K'ómoks*] Indians for delivery on the steamer at a set price per pail. Every night last week the Denman spit was illuminated by strings of pitch torches carried by the [*K'ómoks*] Indian diggers of the bivalves (*Cumberland News*, Feb 1907).

According to Mary Clifton, the American buyers paid ninety cents a sack, which was considered a good price at the time (Reimer 1993:11). Local citizens did not support this commercial effort and were concerned the practice would “rob us of everything” (Glover-Geidt 1990:57). By the 1910s, BC canneries moved into the business and employed teams of horses to plough the beach to expose the clams so that Aboriginal harvesters could collect them (Glover-Geidt 1990:57).

The Henry Bay shell midden is recorded heritage site DjSf-001. It is a large site, approximately 1km long. In the past, human skeletal remains were removed during property development and the site is known for its many artifacts. Very close and just to the north of Henry Bay, at the northern tip of Denman Island is another shell midden, and heritage site DjSe-010. Just to the south of Henry Bay is another shell midden, DjSf-004. This site is separated from DjSf-001 by a sandstone bluff. Another 500m south is DjSf-018. This too is a shell midden site. Each of these sites is fronted by a large intertidal area, ideal for clam resources.

These are the middens recorded by Richards and they bear witness to the extensive and important shellfish resource used by *Pentlatch* and *K'ómoks* people. Currently, a review of a map showing government tenures reveals that this stretch of shoreline, and the former *Pentlatch* and *K'ómoks* habitation sites, are now fronted by government licensed tenures.

Sandy (Tree) Island and Seal Islets

Sandy Island, locally known as Tree Island, is located at the north end of Denman Island. During very low tides, it can be accessed by an isthmus of sand. Off the northern end of this small island are the Seal Islets or *Kw'ulh*. Sandy Island, or *Jaji?em*, is well known by the *K'ómoks* people as an ideal place to dig clams, gather cockles, and later, collect oysters. There was a camp here and later, some families had small shacks that stood year round. Andy Frank, the former title-holder of both the *Pentlatch* and *K'ómoks*, was born here while his mother, Nak, was harvesting shellfish (Shopland 2011). This story is recorded in Mildred Thornton's book, "Indian Lives and Legends: Grand Old Man of the Kwakiutl" (1966). She writes of this story, which is often recalled by many people in the community:

She [Nak] had five children by her first husband, Billy Frank, and her son, Andy Frank, is present chief of the reserve. He was born on nearby Tree Island, in a tent during a fearful storm when wind and rain lashed the frail shelter mercilessly. His mother and father had been gathering clams when the storm overtook them.

This story, along with other oral history accounts suggests that people lived, even if only temporarily on Tree Island. Although there is not currently a registered heritage site, the evidence suggested the likelihood of a midden site here. According to Mary Clifton, who was born in 1900, when she was a girl, she, her mother and her brother, Andy Frank, would

drift in their canoe down the Kwatum (now the Courtenay) River to the sea and let the out-going tide carry them over to Tree Island, where they filled their canoe with clams. Soon the in-going tide would carry them back up the river to the village. Her father would have a big fire going on the beach and they would steam the clams on the hot rocks covered in sacks or seaweed. (Reimer 1993:11; see also Neel 1992:42)

Sea mammals were another important part of the diet. In 1935, George Mitchell, a *K'ómoks* man, told Homer Barnett, an anthropologist, about a seal trap on Seal Island at the north end of Denman Island. This trap was made of a lattice work fence that surrounded rocks on which seals regularly sunned. The fence was connected to shore by a rope so that when seals were on the rocks, the fence could be raised and the seals trapped. Mitchell thought that this trap dated to *Pentlatch* times (Barnett 1935).

Denman Point

Denman Point, on the west side of Denman Island, has archaeological evidence of a long history of Aboriginal use and occupation. It is a large midden and burial site. Given the long history of *Pentlatch* occupation in the area, it is a reasonable assessment that this is a former *Pentlatch* village site. It is also part of the territory and rights that were transferred from Joe Nimnim to Andy Frank.

Robert Brown in the Vancouver Island Exploring Expedition writes that his crew “camped on village point of Denman Island on the deserted Village of the Coumoucs. It still retained traces of its former grandeur – pickets, carved images, &c, & massive hewn cedar frames” (Brown 1989:108). Brown goes on to say that the

Village where we camped (No. 33) must once have been very extensive but is now quite deserted & nothing but the frames stand.... Once upon a time... the Eucletaws threatened the total annihilation of the Comoucs, who then lived nearly wholly at this Village. An old Seer foretold this. So the Comoucs fortified their Village... (1989:110).

The next morning, on Aug. 20, 1864, when Brown awoke, he noted that “on the right [north of Denman Point toward Henry Bay] the little sound dotted with canoes & the shore all along merry with smoking fish [and] ‘clamming’ camps of Comoucs” (Brown 1989:110).

Denman Point is also noted as a battle site where a *Pentlatch* group was exterminated by a Salish war party who mistook them as *Laich-Kwil-Tach*. The Salish war party was on a retaliatory raid against the *Laich-Kwil-Tach*. According to Curtis, this was pre-1850 (Curtis 1913:20-21). It was also this village that Pidcock referred to when he spoke of the 1862 smallpox epidemic causing the village to be abandoned. Pidcock called this a *Pentlatch* village (1862).

This is registered heritage site DjSf-003. It is a large shell midden site with a recorded petroglyph and a record of human skeletal remains, some of which were removed by the land owners throughout the 1950s and 60s. Oral history records this as a clam gathering and processing site. The clams were smoked or dried. Drying clams was an effective preservation method as dried clams last a very long time. Clams were first steamed and then dried on skewers by the fire (Neel 1992:42). The clams were then pressed between 2

boards to remove the remaining juice. They were eaten again later by adding water to re-hydrate (Reimer 1983:11).

Just to the south, and less than 250m along the shoreline is heritage site DjSf-015. This too is a shell midden site. A further 500 m southward and the shell midden, heritage site DjSe-009, is recorded.

To the north of Denman Point, approximately 700m from DjSf-003, is a shell midden registered as DjSf-016 and just north of this is also DjSf-034, 002 and 017, all of which are shell midden sites.

Each of the ten recorded heritage sites and the traditional resource gathering and habitation sites along this part of Denman Island are fronted by government licensed tenures.

Summary

Warfare, intermarriage, and disease all played a part in the establishment of the *K'ómoks* in the Comox Harbour region and their amalgamation with the *Pentlatch* people in the mid-19th century. Through intermarriage and potlatch tradition, the rights of the two Nations became intertwined and connected, with *Pentlatch* rights and territories transferring from Joe Nimmim to Andy Frank and then to Norman Frank, and thus, from *Pentlatch* to *K'ómoks*. Joe Nimmim, who was Chief by tradition and who was the Department of Indian Affairs recognized Chief, held, according to custom, the *Pentlatch* rights, privileges and territory. Before his death in 1940, he passed his chieftomship and all its corresponding rights and responsibilities to Andy Frank, his nephew, and a man of both *K'ómoks* and *Pentlatch* descent. The *K'ómoks* First Nation is the result of the early amalgamation of the *Pentlatch* and *K'ómoks*, along with the transfer of *Pentlatch* rights.

A focus of this report was the use of marine resources in *K'ómoks* territory. Elders and citizens from the *K'ómoks* First Nation, both presently and in the past, speak about these resources that have always been available to them. Marine resources are always prominent in their stories, which are also reflected in the written history of the area, from ship and survey journals to early newspapers. The long history of marine resource use is also recorded in the extensive and deep shell middens in the region. These large, deep shell middens, heaps of shell, soil and remnants of human occupation, are a testament to this history. Dozens of these sites span many kilometres of shoreline in the region and are protected under provincial law as they are recognized for the cultural and scientific significance.

Fish traps are also a significant archaeological and cultural feature in the region. These structures represent a fishery of an industrial scale and the dates from some of these traps suggest that they were maintained generation after generation for hundreds of years. Their capacity to catch fish was huge and their use would have contributed significantly to

Pentlatch and *K'ómoks* subsistence. Radiocarbon dates from these features reveal that they were a part of both the *Pentlatch* and *K'ómoks* subsistence tool box.

From the oral, written and archaeological record, we can infer, with a high degree of confidence, that the study area falls within traditional *K'ómoks* territory. In fact, what this record reveals is a long and healthy *K'ómoks* use of the marine resources around Comox Harbour and Denman Island. The connection to these resources today is still very strong. *K'ómoks* people still utilize and depend on these resources and still use it to feed their families. It is not uncommon to hear that someone is going “digging tonight” to get clams to make a big pot of clam chowder and clam fritters (Mitchell 2011).

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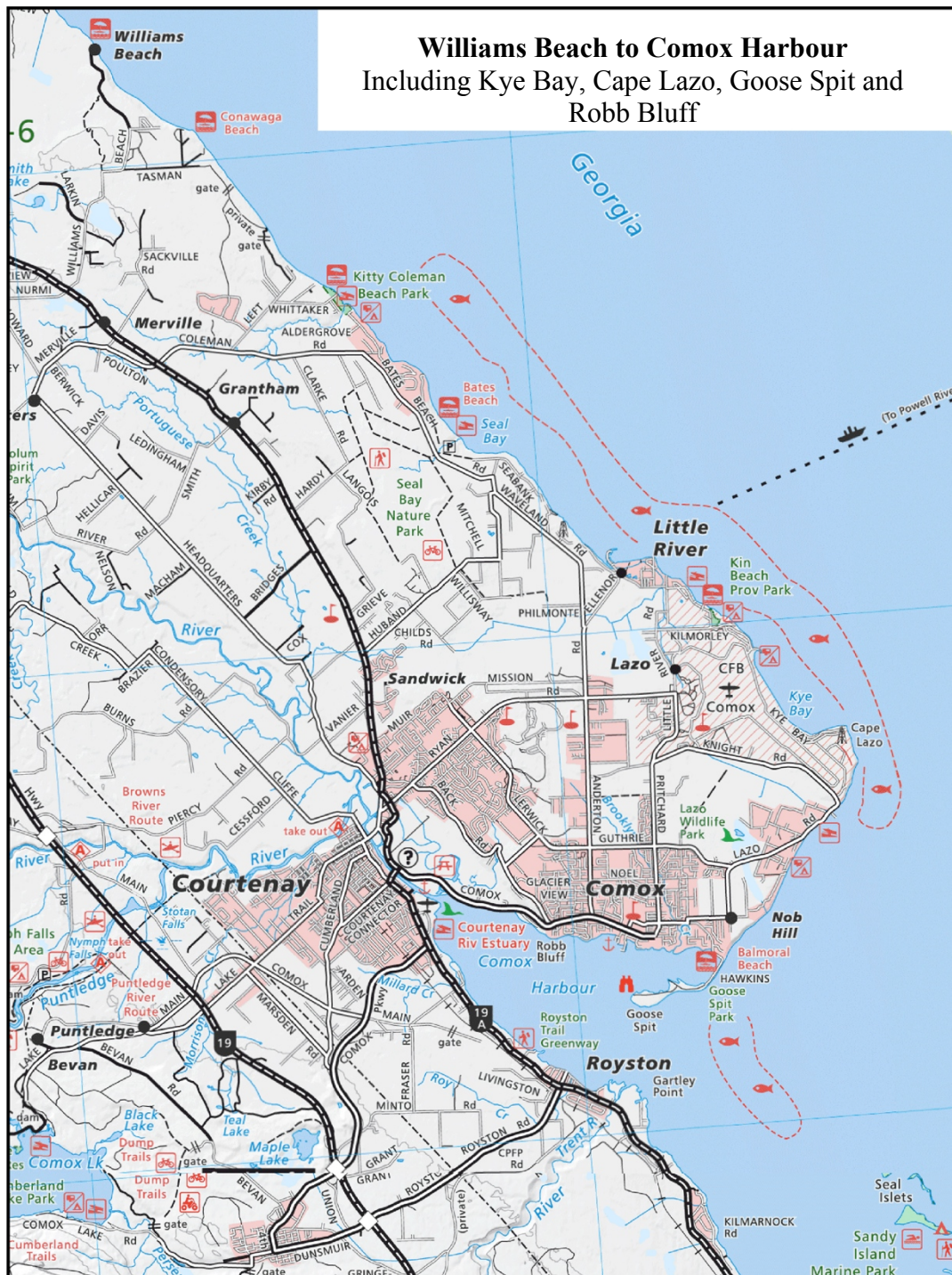
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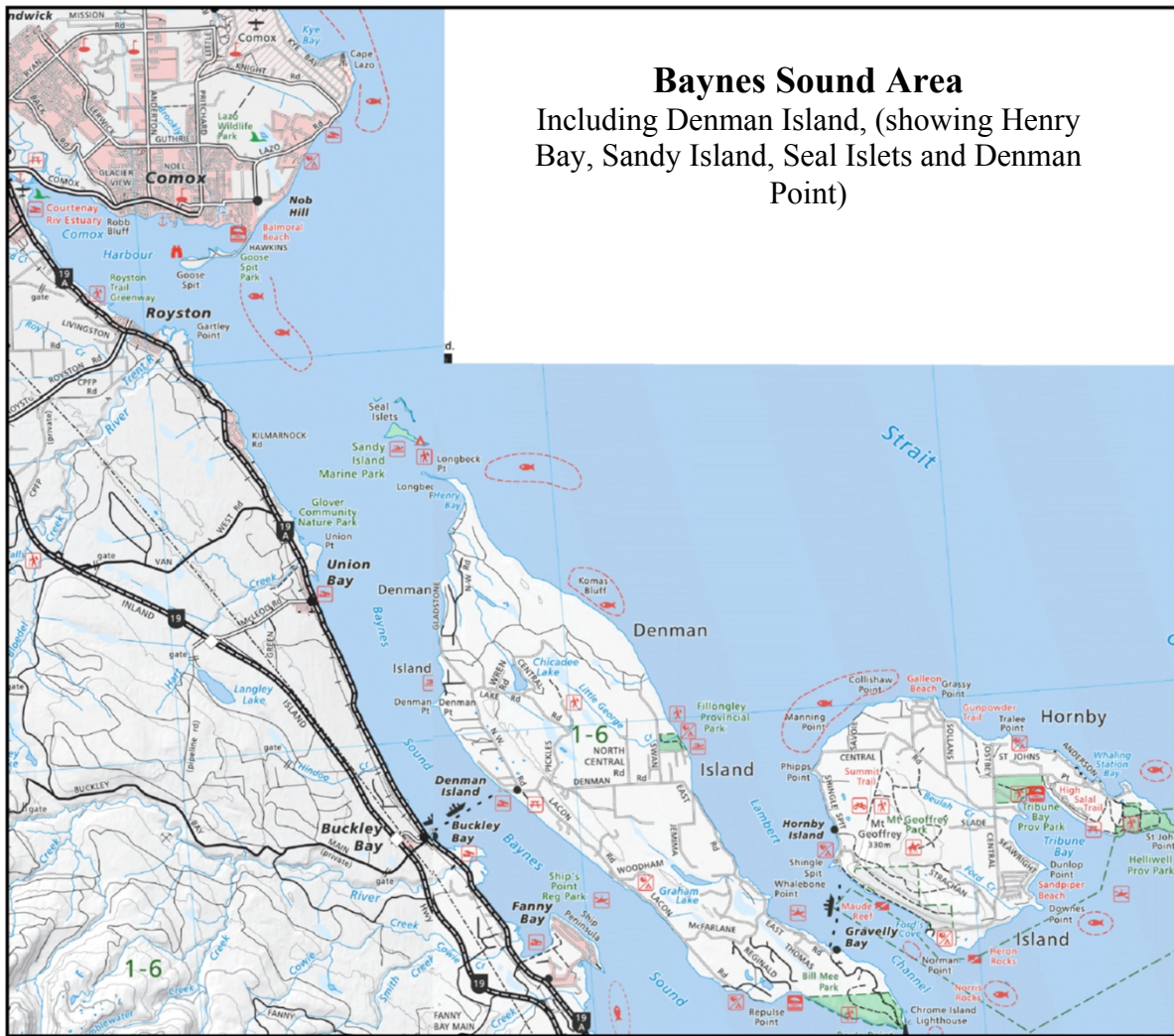
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Appendix A: Maps of Comox Region





Appendix C: Curriculum Vitae of Deidre Cullon

Curriculum Vitae
DEIDRE CULLON

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250-714-0308

deecullon@shaw.ca

QUALIFICATIONS

I have a Master of Arts degree in Anthropology, followed by 16 years of post-graduate, field experience, working directly with Northwest Coast First Nations in ethnographic and ethnohistoric research.

EDUCATION

University of Victoria, Graduated with honours, M.A. in Anthropology, July 1995. My research areas were Northwest Coast cultures, past and present land/resource issues, and kinship studies.

Masters Thesis: “What Was Really Said?: A Consideration of the Nuuchahnulth and Kwakwaka’wakw Testimonies Before the Royal Commission on Indian Affairs for the Province of British Columbia (1913-1916)”. Content analysis of the Kwakwaka’wakw and Nuuchahnulth testimonies to the 1913-1916 Royal Commission on Indian Affairs.

University of Victoria, Bachelor of Arts, graduated with distinction in May 1993, with a major in Anthropology.

PROFESSIONAL EXPERIENCE

Independent Contractor

1997 to Present

Laich-Kwil-Tach Treaty Society (LTS)

Campbell River, BC

- My primary focus is ethnographic and ethnohistorical research and archaeology. I focus on cultural heritage issues, but I also conduct research into rights and title, review of development proposals, repatriation, heritage site protection and foreshore rights. Projects include: research to support Aboriginal Title and Rights claims; the development and completion of a comprehensive TUS; research to support treaty negotiations and treaty chapter development; archaeological research on fish traps within Laich-Kwil-Tach territories; repatriation of ancestral remains; and colonial history research. All research work with the LTS requires interviews and extensive consultation with Elders and knowledgeable community members and I am actively involved in their government referral process. Finally, I direct the on-going fish trap and clam garden research spearheaded by the LTS, which includes extensive study of these maricultural complexes.

Independent Contractor**Summer 2008/2010 (ongoing)*****Snuneymuxw First Nation (SFN) Nanaimo River and Estuary Archaeological Survey,
Co-director***

Nanaimo, BC

- A survey to identify and record fish traps and other archaeological features in the Nanaimo River estuary. During this study, numerous complexes of fish trap stakes have been recorded. Numerous wooden stake samples and some basketry samples have been collected and prepared for carbon dating. Fish traps, how they were made and how they operated is the subject of this research as there is still much to learn about these features. They are important for First Nations who are fighting to have their foreshore rights recognized.

Independent Contractor**2008*****Takla First Nation (TFN)***

Prince George, BC

- Bear Lake Traditional and Contemporary Use Study. Ethnographic and ethnohistorical research to support the Takla Nation's ongoing efforts to protect their traditional territories from unsustainable development.

Vancouver Island University**Sept. 2004 to present*****Sessional Instructor***

Nanaimo, B.C.

- Instruct in a Sessional position, Anthropology 211, Social Anthropology, Anthropology 112, Introductory Anthropology (cultural) and Anthropology 141, Culturally Responsive Resource Management.

Independent Contractor**Fall 2006 to Spring 2007*****Tse Keh Nay Nation***

Prince George, BC

Research, including interviews with Elders, to record the traditional and contemporary Aboriginal use of the Amazay (Duncan Lake) area in northwestern British Columbia. The lake was a proposed tailings pond for Northgate's Kemess copper and gold mine. The proposal was opposed by the Tse Keh Nay (Sekani) people. Our research resulted in a report submitted to the Tse Keh Nay Nations and to the Kemess North Joint Environmental Assessment Review Panel. My role included co-authoring the report and testifying in front of the Joint Review Panel on behalf of the Tse Keh Nay. The panel "concluded that development of the Kemess North Copper/Gold Project... would not be in the public interest. In the Panel's view, the economic and social benefits provided by the Project, on balance, are outweighed by the risks of significant adverse environmental, social and cultural effects.... The Panel recommends to the federal and provincial Ministers of the Environment that the Project not be approved as proposed (Joint Review Panel Report Summary, Sept. 2007). In March, 2008, the government accepted the Panel's recommendation.

Independent Contractor
Traditions Consulting Inc.
Victoria, BC

Spring 1997 to Fall 2001

- Sub-contract to assist with various Traditional Use studies (TUS) including the Huu-ay-aht First Nation (HFN) TUS and Tseshaht First Nation TUS. This project involved weekly travel to Bamfield and Port Alberni to work with the TUS teams to: review work done by the teams to assure project quality; ensure the project remained on schedule; assist with the final report; research difficult sources for traditional use information; assist with TUS team training in interviewing procedures; and train the TUS teams in various research methods.

Independent Contractor
Tsawwassen First Nation (TFN)
Tsawwassen, BC

**Sept. 1, 1997 to Nov. 30, 1997
& May, 1998**

- Conducted the interview phase of the TFN's Traditional Use Study. This included training the TFN Researcher on interviewing, conducting interviews with many Elders and community members, completing a final analysis of the interview data and working in an advisory capacity regarding the overall TUS project.

Genealogical Researcher
U'mista Cultural Centre
Alert Bay, BC

Aug. 1, 1995 to May 31, 1996

- Research for the Kwakwaka'wakw and Laich-Kwil-Tach people to establish genealogical relationships. This required developing and managing the project, extensive interviews with Elders and families, compiling the information into a database, researching archival data, church records, written materials, and government documents, circulating the information to families and working with them for verification. The long term goal of this research is to have a family history for all Kwakwaka'wakw and Laich-Kwil-Tach people. In February 2004, I worked with the U'mista Cultural Centre to update the database in order to make it available to the people once again. It is again being updated with my assistance through cooperation between the U'mista and the Laich-Kwil-Tach Treaty Society.

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- Cullon, Deidre 2009 Report on the Nanaimo River Estuary Archaeological Survey and Fish Trap Project. Presentation given to the Western Division of the Association of Canadian Geographers, Nanaimo, BC, March 5-7, 2009.
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- Cullon, Deidre and Heather Pratt 2010 Changing Tides: From Food Foragers to Food Producers: An Examination of Fish Trap Knowledge. Presentation to the Coast and Estuarine Research Federation 2010.
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This is Affidavit #1
of Ernest Hardy in this matter
February 24, 2011

Court File No.: T-74-11

FEDERAL COURT

BETWEEN:

K'ómoks First Nation

Applicant

AND:

**Attorney General of Canada, Minister of Fisheries and Oceans,
Raincoast Sea Farms Ltd., Joe Tarnowski, and Doug Wright**

Respondents

AFFIDAVIT #1 of Ernest Hardy

I, Chief Ernest Hardy, elected Chief of the K'ómoks First Nation, of 3320 Comox Avenue, in the city of Courtenay, in the Province of British Columbia, MAKE OATH AND SAY THAT:

1. I am the elected Chief of the K'ómoks First Nation ("KFN"). I have personal knowledge of the facts and matters herein deposed, except where they are stated to be based on information and belief, in which case I verily believe them to be true.
2. I was born on the Comox Indian Reserve No. 1 in 1937, and I have lived here all of my life. My parents were Ernest Hardy, a K'ómoks member, and Henrietta Daniels, a member of the Cowichan Tribes.
3. I have been the elected Chief of KFN since taking office in January 1997.
4. KFN is an Indian "band" within the meaning of the federal *Indian Act*, and it has about 277 registered band members. KFN has the following Indian reserves under the *Indian Act*: Comox I.R. No. 1 (58.9 ha on the north shore of Comox Harbour), Pentledge I.R. No. 2 (83 ha on the left bank of the Puntledge River, just up from Comox Harbour), Goose Spit I.R. No. 3 (5.7 ha on Goose Spit in Comox Harbour), and Salmon River I.R. No. 1 (133.1 ha at the mouth of Salmon River on Johnstone Strait). Attached to this Affidavit as **Exhibit "A"** is a map showing the location of Comox I.R. No. 1, Pentledge I.R. No. 2 and Goose Spit I.R. No. 3.

K'ómoks First Nation and our Asserted Rights and Title

5. Attached hereto as **Exhibit “B”** is a true copy of the current map of our Statement of Intent area. This is the map that KFN is using in the British Columbia Treaty Process and it includes KFN's traditional territory (“K'ómoks Territory”).
6. KFN asserts aboriginal title to the K'ómoks Territory, including the marine waters within that territory, and has done so publicly for many years, including through the British Columbia Treaty Process and in various letters to, and discussions with, officials of the governments of Canada and British Columbia.
7. KFN also asserts a number of aboriginal harvesting rights within the K'ómoks Territory, including the right to harvest marine resources generally, and shellfish in particular.
8. Comox I.R. No. 1 is located at the mouth of the Courtenay River. This is where most of our members live. The Courtenay River spills into the Comox Estuary (“Estuary”) and the Comox Harbour (“Harbour”), and so both the Estuary and Harbour are at our doorstep, and lie in the heart of the K'ómoks Territory.
9. The marine waters of K'ómoks Territory have been integral to our survival, culture and economy for generations. For generations, KFN members have harvested a wide range of species in the marine waters within the K'ómoks Territory including various types of shellfish (like littlenecks, pacific oysters, butter clams, geoducks, manila clams), salmon, halibut, cod, herring, herring eggs, bird eggs, sea asparagus, eel grass, kelp and sea weed.
10. I know how important our marine resources have traditionally been to KFN because it was told to me often by my father and KFN elders Irene Wilson and Mary Clifton, who told me much of our history. I also spent a lot of time with KFN elder Moses Moon, fishing and harvesting shellfish on all of our beaches, and I learned a lot from him about KFN's history and traditional harvesting practices.
11. I began harvesting shellfish as a child, with my parents, when I was about 8 or 9 years old. We would collect shellfish in many different places, including around the Harbour, at Union Bay, around Seal Islets and Sandy Island, off of Denman Island (which we call *lháytayich* in our language) from Henry Bay down to Village (Denman) Point, and also along the coast of Hornby Island. We also harvested shellfish along beaches from Parksville all the way up to Sayward. We would travel to these islands and to other beaches along the coast of Vancouver Island by skiff or in my dad's dugout canoes.
12. As a child and growing up, my family and I harvested all kinds of shellfish, including butter clams, cockles, mussels, littlenecks, oysters, horse clams and geoducks. Geoducks are harder to find above water. We would harvest them off of Seal Islets, when the tide was very low.

13. My family harvested shellfish a lot, year round, usually during daytime low tides but sometimes also during the night low tides. They were one of our main foods. We processed a lot of the shellfish that we harvested. We would dry and smoke some. We also canned shellfish by putting them in jars with lemon juice and salt water, and then boiling the jars.
14. I still harvest all kinds of shellfish regularly all over the K'ómoks Territory. For example, last month, in January, I went out with my son-in-law and we harvested about 300 lbs of butter clams and 60 lbs of littlenecks. We did this off of Sandy Island and Seal Islets, in a place near Pentlatch's aquaculture tenure. I gave some of the shellfish to my relatives, and froze most of mine. I plan to can a lot of them. Shellfish are still an important part of my diet.
15. When I harvest shellfish, I usually share some with KFN elders who cannot harvest their own anymore, and I give some to other relatives.
16. Many members of KFN harvest shellfish to this day and all of the KFN members that I can think of still eat shellfish. I know this because I go harvesting with other KFN members and I lend my boat out to other members who need one to go shellfish harvesting. I also know that most members who harvest shellfish share their harvest with their relatives, so that even those who do not harvest themselves get to eat shellfish.
17. KFN members harvest shellfish, and the other resources that I mention in paragraph 9, for a few purposes. First, we harvest them to sustain ourselves. Traditionally, we obtained most of our food from marine waters, and shellfish were one of the staples of our diet. Marine resources and shellfish specifically remain an important part of our diet today.
18. Second, we harvest marine resources, including shellfish, for social and ceremonial uses. We harvest shellfish for potlatches and feasts, which are our traditional gatherings to mark or celebrate important events. For example, when we re-opened our Bighouse on the Comox I.R. No. 1, we celebrated with two feasts, and we ate manila clams and oysters harvested by KFN members and by our commercial shellfish company, Pentlatch Seafoods Inc. We also serve shellfish at community events such as Band meetings and signing ceremonies with local governments or developers.
19. Third, KFN traditionally harvested marine resources, including shellfish, to trade with other aboriginal communities, in exchange for other products, like oolichan grease. The practice of trading harvested marine resources with neighbouring Nations, such as Cape Mudge and Campbell River, continues into the present day. We either provide them with shellfish or, more often, we let them harvest shellfish in our Territory, and in exchange they allow us to harvest other marine resources, such as halibut and cod, in their territory.
20. KFN members have been engaged in the commercial shellfish industry for a long time now. In the early 1900s, before I was born, KFN members used to sell shellfish to canneries in the region.

21. When I was young, there were no shellfish tenures the way there are now. The Department of Fisheries and Oceans used to announce commercial harvesting openings. I have always thought we had our own inherent rights to harvest shellfish, so often I would harvest without any licence, but sometimes I applied for licenses from DFO to avoid hassles.
22. In the 1950s, I used to harvest shellfish with my brother, Stewart Hardy, and we would sell them to Charlie Wilson, a local businessman. Sometimes about 200 people, mostly from KFN, would be harvesting for Charlie Wilson at the same time. We would load up our shellfish on Charlie's barges, and he would sell them to the BC Packers. I remember one night when Stewart and I harvested 1800 lbs. of shellfish, which we sold to Charlie Wilson.
23. Since 2004, KFN has been operating commercial shellfish aquaculture licences through Pentlatch Seafoods Ltd., our company. This company holds seven aquaculture licences from DFO. KFN considers commercial shellfish harvesting – harvesting by KFN individuals and harvesting by Pentlatch - to be part of our traditional shellfish harvesting activities, and another way in which shellfish harvesting sustains us, and connects us to the marine waters in our Territory and to our traditional way of life.
24. Harvesting shellfish is an integral part of our culture, our way of life, and our survival. In all of these ways, harvesting shellfish continues to be an important economic and also cultural activity for KFN.

Maps

25. I have reviewed the map that Johnny Nelson prepared for KFN and that shows the licence areas for the aquaculture shellfish operations in Baynes Sound, at the heart of K'ómoks Territory, and it is attached to my affidavit as **Exhibit "C"** ("Licence Map").
26. As is shown on the Licence Map, Licence 1402723 is located in the Harbour, close to Comox I.R. No. 1.
27. As is shown on the Licence Map, Licence 314161 is located on near the top of Denman Island, on the west side. It is located just below a bay called Henry Bay. Licences 0238111 and 0026053 are located a bit further south, also on the west side of Denman Island, at and just below Denman Point.
28. Denman Island and the shores of the Comox Harbour contain many recorded archeological sites. The Borden site numbers for these sites are shown on the map prepared for KFN by Johnny Nelson, and attached to this affidavit as **Exhibit "D"** ("Archeological Map").

29. Attached to my affidavit as **Exhibit “E”** is a third map prepared by Johnny Nelson for KFN, which shows the licence areas from the Licence Map together with the location of the recorded archeological sites from the Archeological Map (“Archeology/Licence Area Map”).
30. The aquaculture licence areas and recorded archeological sites around the Comox Harbour are also shown in an enlargement of the Comox Harbour portion of the Archeology/Licence Area Map, which is attached to this affidavit as **Exhibit “F”**.
31. The aquaculture licence areas and recorded archeological sites along Denman Island are shown in an enlargement of a portion of the Archeology/Licence Area Map, which is attached to this affidavit as **Exhibit “G”**.

The Effect of the Licences

32. Shellfish harvesting remains an important activity for many KFN members and an important source of food for most KFN members. We like to harvest shellfish in many different parts of our Territory, depending on what is convenient, which shellfish are available where and, nowadays, where we can harvest non-contaminated shellfish. Contamination is a serious issue today: contaminated shellfish must be “depurated” in a special facility and it costs money. For food and social or ceremonial purposes, we of course want shellfish that do not require depuration. Shellfish harvested from the Harbour and down along a fairly long stretch of Vancouver Island need to be depurated.
33. As can be seen from the Licence Map (Exhibit “C”), there are approximately 140 shellfish aquaculture licences held by non KFN individuals or companies in the Baynes Sound area of K’ómoks Territory. KFN has serious concerns about the extent of shellfish aquaculture in K’ómoks Territory.
34. Only the licence holder can harvest marine resources in the area covered by an aquaculture licence. This means that all of the shellfish aquaculture operations in the K’ómoks Territory that are not owned by KFN individuals or companies restrict our options for marine harvesting by making those areas off-limits to us.
35. The extensive licensing of commercial shellfish aquaculture in our Territory compounds the problem of contamination that exists in many of the waters close to our community. Contamination already limits our ability to harvest shellfish in many of our preferred locations, and then aquaculture operations make many additional areas off limits to us, including all along the west coast Denman Island, which is one of our favourite traditional places to harvest and which still contains shellfish that do not need to be depurated.
36. Cumulatively, the existing shellfish aquaculture licences restrict the ability of KFN members to harvest shellfish and other marine resources in our preferred locations in the

K'ómoks Territory. They prevent us from accessing areas where we traditionally harvested in where we would like to harvest today.

37. The authorization of shellfish aquaculture operations by the Crown also denies KFN the opportunity to manage this resource within our own Territory, as we traditionally did. We have no control over who is harvesting shellfish in our Territory, which species, where, and in what quantities. The ability to manage a resource, and act as the stewards for a resource within our own Territory, is part of our asserted shellfish harvesting right. It is also a component of our asserted aboriginal title to the marine waters within K'ómoks Territory.
38. KFN, like other coastal First Nations in British Columbia, has very small reserves under the *Indian Act*. This is because when the Crown established our reserves, the government assumed that we would continue to sustain ourselves from the ocean, rather than take up land-based activities like farming. But now our access to marine resources is very limited and we do not have the opportunity to sustain ourselves from the ocean.
39. KFN is not absolutely opposed to shellfish aquaculture by non-K'ómoks companies and individuals in K'ómoks Territory, but we do object to the current extent of these operations.

Lack of Meaningful Consultation about the Licences

40. DFO refused to talk with KFN about particular shellfish aquaculture licences in K'ómoks Territory before it issued the new licences in December 2010.
41. To my knowledge, British Columbia never consulted with KFN about the shellfish aquaculture operations that are authorized by Licences 1402723, 314161, 023811 and 0026053. It never did so before issuing the original licences for these operations: they were all issued several years ago, at a time when British Columbia did not consult with us, or even notify us, before authorizing aquaculture operations in our Territory. To my knowledge, British Columbia never consulted with us about these Licences at any later time either. As the Chief of KFN I would be aware of any consultations that took place about aquaculture licences since 1997.
42. Indeed, most of the aquaculture operations in our Territory were originally licensed decades ago, when British Columbia had no practice of consulting with KFN about such authorizations. Thus, a significant portion of the good shellfish harvesting grounds in the K'ómoks Territory has been taken up, piece by piece, through shellfish aquaculture operations, without any input by KFN. By issuing the new licences in December 2010, DFO has just given all of these operations a green light to continue operating in our Territory for a further period of time, without giving us the chance to provide any input.
43. I believe that KFN should be compensated for all of the aquaculture licences that have been issued in K'ómoks Territory.

44. KFN has been participating in treaty negotiations with the federal and provincial governments since 1991. Canada and British Columbia have accepted the Area of Intent shown in Exhibit "A" for the purposes of these negotiations.
45. We are currently in Stage 4, or the Agreement in Principle stage of negotiations. We expect to finalize the Agreement in Principle sometime in the next year.
46. During our years of participation in the Treaty Process, we have informed Canada, and DFO specifically, of the nature of our aboriginal rights and title claims, including our claims to aboriginal title to marine waters, marine harvesting rights generally, and shellfish harvesting rights specifically.

[illegible]

Melinda C. Karp

TELEPHONE: (250) 339-4545

Association for Denman Island Marine Stewards
P.O. Box #7, Denman Island, B.C. V0R 1T0
e-mail; shelleymckeachie@gmail.com or, edijohnston@gmail.com

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e-mail; shelleymckeachie@gmail.com or, edijohnston@gmail.com

Jan 1, 2014

Denman Island Local Trust Committee

Dear Trustees: Re Proposed bylaw 207 to stop motor vehicles driving on beaches, predator netting and beach modification.

ADIMS is extremely disappointed with the decision made at the November 26, 2013 LTC meeting where the DILTC decided not to give bylaw 207 a first reading.

It was clear from the onset that "staff" was not in favour of this endeavour and ADIMS was encouraged that a Trustee chose to proceed with the thought that if nothing else, this bylaw would start a dialogue with DFO and or MFLNRO. Even if the LTC feels a bylaw cannot withstand a legal challenge, it could be used as a strong tool to advance the argument with provincial and federal government to negotiate with them to respect our zoning.

Re. banning vehicles on the beach- the Golder report addressed the control issue of vehicles on beaches stating that "... local governments can control public access points to the beach.....use of gates and other structuresare commonly used in many areas.....". The Local Government Act also addresses this issue under s.903 Land Use Bylaws. ADIMS would also like to draw your attention to the wording of proposed bylaw 207 that was changed during the process to prohibit vehicles from W3 zones instead of the original W1 areas. This change was significant and was mentioned at the November LTC meeting by ADIMS in hopes that it would be corrected but wasn't. Why was the wording changed?

Re: beach modification and prohibiting the use of predator netting, the DILTC has chosen to ignore the fact that the LTC has already successfully restricted structures in a W3 zone. This was done for the Pentlatch tenures at Sandy Island and the Seal Islets. ADIMS also brought this to your attention during the November LTC meeting but you chose not to explore this avenue.

The early referral responses that were posted in the November LTC agenda package appeared to be benign in regards to comments/concerns that were received from agencies etc. about bylaw 207. These were also used as a reason to defeat this bylaw and ADIMS wonders why? If there were serious concerns, often a simple mitigation measure will suffice in order to continue the process to first reading. ADIMS would like to know which referral responses halted this bylaw creation process?

It appears that even though the DILTC is the local government and has the authority to create this bylaw, you have chosen, once again, to abdicate your authority and not take any concrete action to exercise your mandate to preserve and protect the marine environment.

Thank you for your time and I eagerly await your response to the questions above,

Edina Johnston, Co-Chair ADIMS

cc Sheila Malcolmson

Trust Council chair

From: Duncan Stewart [dunc2aatrading@gmail.com]

Sent: January 6, 2014 8:35 AM

To: Laura Busheikin; David Graham; Kathy.Evans@gov.bc.ca; Albrecht, Kenneth FLNR:EX;
don.mcrae.mla@leg.bc.ca; Shelley McKeachie

Subject: Re:recent Trustee Notebook

Its good to see that you have finally written up something on what is going on near Henry Bay by Pentlatch Seafoods. FLNRO requiring local zoning compliance before granting tenures sounds like a better way to go. I have a feeling this group, Pentlatch pulling the aboriginal card, and having constructed and anchored a sizeable operation already, will get their way. I'm a proud Canadian because for the most part we come from hard-working, law-abiding, tax-paying, community minded people, who have respect for their neighbours When I see this kind of blatant disregard for local gov't and upland owners, I feel disgusted and helpless.

You might want to read a book by Christie Blatchford called HELPLESS to see how this can get out of hand. So Laura if your deeper understanding of being Canadian is breaking the law and getting away with it, then I'm sure you'll justify it by" coming to terms with the consequences of our colonial history".

Duncan Stewart, Denman Island

From: Klaver, March [<mailto:March.Klaver@dfo-mpo.gc.ca>]
Sent: December-04-13 8:30 AM
To: northinfo
Cc: Mollins, Jennifer; Wouters, Sean
Subject: Aquaculture within the Denman Island Local Trust Area

Dear Mr. Luckham,

Please find attached a response to your letter of Oct 28, 2013.

Regards,

March Klaver

Regional Manager, Aquaculture Resource Management | Gestionnaire régionale des ressources -
 Aquaculture Fisheries Management | Direction des peches Fisheries and Oceans Canada | Pêches et
 Océans Canada

1965 Island Diesel Way

Nanaimo, BC | Nanaimo, CB

V9S 5W8

Email | Courriel: march.klaver@dfo-mpo.gc.ca Telephone | Téléphone: 250-754-0334 Fax | Télécopieur:
 250-754-0134 Cell | Cellulaire: 250-720-5488 Government of Canada | Gouvernement du Canada



Pacific Region

Région du Pacifique

Your file Votre référence

Our file Notre référence

December 4, 2013

Mr. Peter Luckham, Chair
Islands Trust
700 North Road, Gabriola Island, B.C. V0X 1X3

Sent via email:

Dear Mr. Luckham:

Re: Aquaculture within the Denman Island Local Trust Area

Thank you for your letter of October 28, 2013, outlining concerns being raised by local residents with respect to aquaculture. I appreciate your interest in these important issues, and can assure you that Fisheries and Oceans Canada (DFO) is committed to ensuring a sustainable and well managed aquaculture industry in British Columbia.

I would first like to address your concern regarding the DFO's efforts to ensure compliance with the terms and conditions set out in DFO aquaculture licences. A number of program staff both within our Conservation and Protection Program and within our Aquaculture Environmental Operations Program assess and address compliance with aquaculture regulations. If you observe a fisheries violation, you are encouraged to report it to the DFO Observe, Record and Report Line at 1-800-465-4336.

In your letter, you raise concerns related to the density of geoduck aquaculture in the Denman Island Local Trust Area, and request that a moratorium on new geoduck aquaculture sites be put in place. You also point to the need for a research study on the potential impacts of geoduck aquaculture in the area.

As you may be aware, DFO began a review of the key challenges facing geoduck management in 2012, which included extensive consultations with First Nations, industry representatives and the Province of BC to get feedback on how to improve geoduck management in BC. Based on feedback received, the Department is now in the process of developing an Integrated Geoduck Management Framework (the Framework).

The proposed Framework is designed to support sustainable new opportunities for geoduck aquaculture, while minimizing impacts to the wild geoduck fishery. A new Geoduck Siting Protocol is proposed to help achieve this objective, and will guide decisions on where new aquaculture sites are located depending on specific criteria, including the extend an area is being used by commercial geoduck harvesters.

In addition, all geoduck applications accepted for review are subject to regulatory review by a number of agencies including DFO, Transport Canada, Environment Canada, and

the Province of BC. These review processes consider aquaculture applications in the context of adjacent land uses, impacts to all fisheries and habitat (including proximity to eelgrass, SARA species, intertidal stream channels, and fish spawning areas), navigation, and sanitary closures issues.

Regarding your request for a moratorium on geoduck aquaculture and an independent research study, please be advised that DFO has not been processing applications for new geoduck sites for over a year to allow time for the Framework to be completed. Furthermore, no new geoduck aquaculture sites have been approved since 2006, when DFO and Province of BC collaborated to identify areas suitable for new applications, which led to four new sites being approved. As a result, we do not believe a moratorium on new applications is warranted.

At the same time, DFO is confident that the proposed new Framework and review processes carried out by federal and provincial agencies provide sufficient opportunity to consider all potential impacts related to geoduck aquaculture expansion. For this reason, we do not support undertaking an independent research study on the impacts of geoduck aquaculture.

With respect to the siting of aquaculture operations, I should note that the Province of BC is responsible for authorizing the occupation of provincial Crown land associated with aquaculture operations. I understand this process includes an opportunity for public comment on proposed land tenure applications for aquaculture purposes. More information regarding the issuance of land tenures in British Columbia can be found on the Province of British Columbia website at:

http://www.for.gov.bc.ca/land_tenures/tenure_programs/programs/aquaculture.

As a next step, we intend to circulate a draft copy of the Framework for comment in early 2014. If you would like to be included on the distribution list to receive a draft copy of the Framework, please contact Sean Wouters at Sean.Wouters@DFO-MPO.GC.CA. As well, I have been in discussions with Island's Trust representatives regarding zoning and local bylaws being considered and have a meeting scheduled for December 10th to discuss these matters.

Thank you for taking the time to write and provide your views on behalf of the Islands Trust.

Regards,

March Klaver
Regional Manager, Aquaculture Resource Management
March.Klaver@dfo-mpo.gc.ca

From: Allan Danks <acdanks@telus.net>

Date: November 29, 2013 at 12:43:16 PM PST

To: David Graham <dgraham@islandstrust.bc.ca>, Frank Frketich <fdfrketich@hotmail.com>

Subject: Fw: update on village section of Denman cross island trail

Hi David and Frank:

The Trails Committee hopes that letters from your organisations will support the CVRD in addressing the issue of the 2 – hills on Denman Island where the Cross Island Trail needs some serious work to be done. Karin did mention to me that the CVRD hopes to apply for substantial grants that can be applied to structural improvements to the 2 – hills, where these letters of support will be of great value.

Any question, please call me.

Cheers.

Allan.

From: [Karin Albert](#)

Sent: Tuesday, October 01, 2013 3:33 PM

To: 'Allan Danks'

Subject: RE: update on village section of Denman cross island trail

Hi Allan,

Yes, I am glad too that the first section of trail is getting built soon! In answer to your questions,

The tender was posted on the CVRD bid page and on BC bid. Most contractors receive automatic notifications when a project is posted on those sites. We also informed local contractors that the project was out for tender. We had a site meeting with interested contractors to walk the project and answer questions and had a good representation of contractors including from Denman Island.

The section of trail being tendered starts on the other side of the Denman Arts Centre and goes to the bottom of the big hill.

In 2014, we hope to construct the section from the top of the hill toward Central Park (length will depend on what amount the bids come in at).

The CVRD board passed a resolution in April of this year to ask the Ministry of Transportation and Infrastructure to repair both the ferry hill and the big hill. A letter went to the manager of the local area office in mid-April. The response was that they have a number of capital projects on the go right now and “initiating a geotechnical review and undertaking improvements at these sites is not considered a priority for the Ministry at this time as the road is functioning safely.” The letter also states: “Projects such as these must be prioritized with all other worthy projects in the District, competing for the funds available. The type and extent of work required for widening to accommodate the trail may be different than for stabilizing the road. The widening and slope work can be done by others under our permit process. The work would be done by the applicant.”

The problem is of course that we cannot add a trail to a collapsing road base.

Local Ministry staff hope the ferry hill may get fixed as part of BC Ferries' reconstruction of the Denman ferry terminal.

I believe we talked a while ago about encouraging the Islands Trust also to send a letter to the Ministry of Transportation and Infrastructure to improve those the two hill sections and add a shoulder for bikes and pedestrians. If you want to ask your local trustee, the letter could go to the local area office, the office in Nanaimo and could also be cc'd to the Minister.

Here is the contact info for the local office:

Bob O'Brien, Operations Manager
Ministry of Transportation and
Infrastructure
550 Comox Road
Courtenay, BC V9N 3P6

The Vancouver Island District contact info is:

[Renee Mounteney](#)
District Manager
VANCOUVER ISLAND DISTRICT
3rd Floor - 2100 Labieux Rd
Nanaimo BC, V9T 6E9
Office: (250) 751-3246
District Manager: (250) 751-3282

The elected representative (the Minister) and Deputy Minister are at:

Minister's Office
Honourable Todd Stone
PO BOX 9055 STN PROV GOVT
VICTORIA BC V8W 9E2
[Send an e-mail to the Minister](#)
Telephone: 250 387-1978
Fax: 250 356-2290

Deputy Minister's Office
Grant Main
Deputy Minister
[Send an e-mail to the Deputy Minister](#)
Telephone: 250 387-3280
Fax: 250 387-6431

I'll let you know when the construction contract for the village section has been awarded.
Talk to you soon.

Karin Albert
Parks Planner
Comox Valley Regional District
600 Comox Road, Courtenay, BC V9N 3P6
Tel: 250-334-6067 (direct) or 1-800-331-6007

From: scahoutec@gmail.com [mailto:scahoutec@gmail.com]
Sent: December-07-13 8:06 PM
To: deltcwebmail
Subject: Contact Form Submission

Contact: Denman Island Local Trust Committee

Name: Scotty

Email: scahoutec@gmail.com

If you would like to be contacted using a different method than E-mail, please enter the details: Why is this a required field?

Write your message: The LTC has received draft secondary dwelling bylaws from on high (Denman-Hornby Grapevine, December 5, 2013. It appears planners intend to restrict secondary dwellings to certain land use zones. This is a mistake because it would simply perpetuate the status quo which, let us recall, is the unsatisfactory situation that got us to this juncture in the first place. The proper response is to reject completely any bylaws that favour some zonings and exclude others. The perception of fairness is important in encouraging respect for the housing bylaw. It's more than a matter of principle: recall how few islanders attended housing policy meetings in the past (dwelling on principle), but that many turned out to protest the draft municipal ticketing bylaw, even at risk of officially admitting they lived in illegal dwellings themselves, when their very homes were threatened by the proposal. Some of the LTC seemed to recognize the level of distrust implied by the hitherto reluctant crowd and the many heartfelt speeches against the proposal. The LTC simply hadn't heard them before because most illegal dwellers (FLOABW) normally don't want to attract official attention to their situation. Both the Trust and the LTC admitted surprise at the height and heat of the ticketing bylaw protest; they were plainly out of touch with ordinary islanders on housing. But whereas the LTC did the right thing by quashing the proposal (a move that probably gained more respect for the LTC than anything it has done for a long time), Trust planners appear bureaucracy-blinded by drafting bylaws that essentially perpetuate the status quo, that is, bylaws so unfair as to be disrespected out of hand. One wonders if the Trust (the off-islanders at head office) really intends to stall by going around in circles or whether it intends to resume the push for ticketing bylaws once this bit of business is out of the way. The public brain-storming session was certainly hackneyed enough: a morass of opinions, many uninformed, which I found too manipulative to participate in. It hardly surprises, therefore, that the planners have so completely missed the most fundamental issue and concept involved here: fairness. They do often seem hyde-bound to hammer ideological round pegs into real square holes. Yet Without fairness, we simply continue with what we all agree is a bad situation. A disturbing new feature is the growing number of seniors who find themselves living in substandard housing, which can be hazardous and restrict home-care worker access. For those who have seen the romance of a rustic cabin wane with the infirmities of age, the status quo is not a stasis: it is a road that leads to spectral termini---ill health, fear of eviction if the Enforcement Officer is called, fear of having to move away from their community. In colloquy, they needed better housing "yesterday". Why do otherwise law-abiding people allow illegal dwellings on their properties? Ever since the first European settlers came here, islanders had been sharing their properties, often to help those less fortunate. This country generosity became bred in the bone, so much a part of our "social fabric" that when the Islands Trust was created to prohibit and restrict residential development in 1974, the tradition continued even though many of these shared situations were now "illegal". The side effect, however, has been structural neglect of these illegal dwellings because few property owners risk

investing much in them as long they're illegal. The condition is exacerbated by the fact that the Trust has not invigilated the BC Building Code (or any building code) for the last four decades. Many buildings built since 1974 are the worse for it, but illegal dwellings must be particularly so. That's why policy has to address illegal dwellings that exist now, not just legal secondary dwellings from some point onward. I think a rule of thumb should be that bringing existing illegal dwellings into conformity is an improvement itself, and one that incites more improvement. To do this humane act requires including all properties as eligible for secondary dwellings.

From: scahoutec@gmail.com [mailto:scahoutec@gmail.com]

Sent: December-07-13 11:12 PM

To: deltcwebmail

Subject: Contact Form Submission

Contact: Denman Island Local Trust Committee

Name: Scotty

Email: scahoutec@gmail.com

If you would like to be contacted using a different method than E-mail, please enter the details: email or 335 1145

Write your message: To continue: I hope I've been able to make the case that allowing secondary dwellings in some zones and not others is unsatisfactory in many ways, that compliance is better where there is fairness, that policy must address existing illegal dwellings, and so on. I expect there will be some lots ineligible for secondary dwellings but let it be upon reasonable grounds found on that particular lot, not upon its zoning. Again, making it as fair as possible is key. It's reasonable to limit various parameters for secondary dwellings: set backs, for example, can be increased on a general privacy principle; if that happens to disqualify a particular lot, it will be due to some peculiarity of size or shape, rather than its zoning. Again: a lot may be too small or narrow to qualify for a detached secondary dwelling---but would it be eligible for an attached suite? The principle of fairness may, at first glance, may say yes in general but, on a closer look, no in this particular case because of a peculiarity of attached suites: they are usually an additional burden on the septic system, and thus may be disqualified under this type of permit. There are many more circumstances where one or neither types of secondary dwelling could be permitted for reasons other than the lot's zoning. Look at it this way: an individual property owner might cry foul upon disqualification but if the ground for it is reasonable, the neighbours will probably extend no more than sympathy; disqualify all property owners in a certain zone and you have movement righteous in their conviction that they've been unfairly discriminated against because no particular disqualifier has been identified for any of them---other than their zoning. Again, the perception of fairness is key. There is often a variety of lot sizes and shapes within any given zone. The focus should be on those particulars to avoid uniting motivated opposition to an unfair policy.

From: scahoutec@gmail.com [mailto:scahoutec@gmail.com]

Sent: December-07-13 11:36 PM

To: deltcwebmail

Subject: Contact Form Submission

Contact: Denman Island Local Trust Committee

Name: Scotty

Email: scahoutec@gmail.com

If you would like to be contacted using a different method than E-mail, please enter the details: email, phone 335 1145 or hand-painted carrier pigeon.

Write your message: To continue: I hope I've been able to show that allowing secondary dwellings in general has a number of grounds to recommend it, especially the ground of fairness, and that it doesn't mean every lot will necessarily be eligible for any type of secondary dwelling. We have, however, heard broad and promising policy proposals in the past concerning secondary dwellings only to be disappointed after planners have whittled it down to the kind of unworkability they seem to prefer. Look, we can either do this, or not; Trust planners can be serious about this or not. Remember, without fairness, equality, it's business as usual for younger illegal dwellers and curtains for senior ones. I urge the Denman LTC to reject bylaw proposals that are ineffectual band-aids to a chronic and increasingly dire problem.

From: scahoutec@gmail.com [mailto:scahoutec@gmail.com]

Sent: December-08-13 12:27 AM

To: deltcwebmail

Subject: Contact Form Submission

Contact: Denman Island Local Trust Committee

Name: Scotty

Email: scahoutec@gmail.com

If you would like to be contacted using a different method than E-mail, please enter the details: email, phone 335 1145, hand-painted carrier pigeon or telegraph.

Write your message: Finally, I wanted to avoid too many details---that's properly the planners' job---except to say that in my view a detached secondary dwelling limited to 400 sq. ft. is too small for a young family, whereas 600 sq. ft. will do. The LTC should reject proposals that are too complicated, too restrictive or plain unfair. My advice is to reject anything that 90 percent of islanders can't avail themselves of. We've been living a kind of detente on Denman: there are so many illegal dwelling situations, rich and poor, that almost everyone is, or knows someone who lives in or has an illegal secondary dwelling, meaning that few would dare report an infraction for fear it would incriminate themselves or a friend. Recall that one of the many reasons to shit-can the ticketing bylaw proposal was the fear that biting money fines might foment a firestorm of tit-for-tat retaliatory complaining and accusation. Take your pick: fear and suspicion on one side, helping and sharing on the other. I sure hope you get this right. We're going to keep doing what we've always done anyway. But that's no reason to keep the status quo. Remember: there's an increasing number of seniors among the illegal dwelling community. We need to bring as many of those into conformity as possible and to create incentive for property owners to invest in proper rental stock. Lastly a word on that damnable concept of "affordability". If someone can afford to build a house, it's affordable. If someone can afford to rent a house, it's affordable. Don't forget, though, for the last 140 years most property sharing on Denman has been out of human kindness, not for profit. That's affordable, too.



Islands Trust

Top Priorities

Denman Island

No.	Description	Activity	Received/Initiated	Responsibility	Target Date	Status
1	Review of OCP section C3 with a view to addressing the impacts of shellfish farming on the natural marine environment and residential properties, and review of associated LUB regulations.	Specifically to address: 1. Removal of predator netting from beach 2. Banning driving on the foreshore 3. Banning beach modification. Bylaw No. 207 out for referral comments	Oct-25-2011	Rob Milne	Oct-31-2014	On Going
2	Denman Housing Needs consultation. Review of housing policies with respect to secondary cottages and suites in residential designations.	Consider potential use of secondary dwelling units to meet a range of evolving housing needs. Summary report on the October 22 LTC meeting agenda. Draft bylaws being prepared pursuant to the direction of the LTC.	Nov-06-2012	Rob Milne	Sep-01-2014	On Going
3	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-01-2014	On Going

Projects

Denman Island

No.	Description	Activity	Received/Initiated	Status
1	Bylaw amendments to address food security	Consider amendments based on "Exploring Food Security in the Islands Trust Area" final report dated November 16, 2010.	Mar-15-2011	On Going
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	Affordable Housing Strategy		Oct-25-2011	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.		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
2	Review of visitor accommodations regulations.	Focus of the review is to be on allowing the provision of cooking facilities for guests.	Nov-26-2013	On Going



Applications w/ Status - Denman Island Status: Open

Applications

Agricultural Land Reserve

File Number	Applicant Name	Date Received	Purpose
DE-ALR-2013.2	Dean Ellis Planner: Linda Prowse	Apr-17-2013	Subdivision in ALR

Planning Status

Status Date: Aug-27-2013

Agricultural Land Commission wrote to applicant asking for further information from applicant and the Islands Trust. Copy of minutes with Denman LTC resolution sent to ALC.

Status Date: Aug-12-2013

Staff report and application sent to Agricultural Land Commission

Status Date: Jul-30-2013

Requested ALC review cheque from Fin. Clerk

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 Komasa 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-2011.1	Denman Community Land Trust Association (Brons) Planner: Courtney Simpson	Mar-15-2011	2016 Northwest Road, Construction of affordable housing dwelling and associated land alteration in DP 2 Steep Slopes. Joint with SUP application DE-SUP-2011.10.

Planning Status

Status Date: May-26-2011

On hold until outcome of forthcoming rezoning application is known.

Status Date: Apr-04-2011

Planner Reviewing

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-2011.1	Denman Community Land Trust Association Planner: Courtney Simpson	Aug-10-2011	Density transfer from density bank or density increase for one unit of affordable housing.

Planning Status

Status Date: Apr-24-2013

Agency / First Nation referrals sent in relation to bylaws

Status Date: Mar-12-2013

Legal review of housng agreement complete

Status Date: Nov-29-2012

Reviewing results of legal review of housing agreement

Subdivision

File Number	Applicant Name	Date Received	Purpose
DE-SUB-2011.5	Steven Carballeira (Graeb/Charles King Medical Inc. (1691 Lacon Rd) Planner: Linda Prowse	Mar-28-2011	to create 2 lots

Planning Status

Status Date: Mar-21-2013

Water quality and quantity tests received as well as final subdivision plan. E-mail sent to MOTI signing off on subdivision

Status Date: Nov-24-2011

Preliminary Layout Approval received

Status Date: May-05-2011

Referral Response sent to MOTI, LTC and applicant

File Number	Applicant Name	Date Received	Purpose
DE-SUB-2013.1	David Critchley	Feb-19-2013	2 lot subdivision 2016 Northwest Road (I. Brons/Denman Community Land Trust)

Planner: Courtney Simpson

Planning Status

Status Date: Jun-13-2013

PLA received

File Number	Applicant Name	Date Received	Purpose
DE-SUB-2013.2	Henning Nielsen	Dec-12-2013	

Planner: Linda Prowse

Planning Status

Status Date: Dec-23-2013

Subdivision referral report sent to DILTC, MOTI and applicant.

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-2011.10	Denman Community Land Trust Association (Brons)	Mar-15-2011	2016 NORTHWEST RD one Residence, garage/workshop, wood shed, pump shed. Joint DP application DE-DP-2011.1

Planner: Rob Milne

Planning Status

Status Date: May-26-2011

On hold until outcome of rezoning application is known.

Status Date: Mar-21-2011

Planner Reviewing File

Islands Trust

LTC EXP SUMMARY REPORT F2014

Invoices posted to Month ending December 2013

615 Denman	Invoices posted to Month ending December 2013	Budget	Spent	Balance
65000-615	LTC "Trustee Expenses"	1,100.00	374.07	725.93
LTC Local				
65200-615	LTC - Local Exp - LTC Meeting Expenses	2,500.00	2,798.72	-298.72
65210-615	LTC - Local Exp - APC Meeting Expenses	1,000.00	0.00	1,000.00
65220-615	LTC - Local Exp - Communications	500.00	21.32	478.68
65230-615	LTC - Local Exp - Special Projects	2,000.00	1,511.61	488.39
65240-615	LTC - Local Exp - Miscellaneous	500.00	0.00	500.00
TOTAL LTC Local Expense		<u>6,500.00</u>	<u>4,331.65</u>	<u>2,168.35</u>
Projects				
73001-615-3001	Denman RAR	42,000.00	14,692.37	27,307.63
TOTAL Project Expenses		<u>42,000.00</u>	<u>14,692.37</u>	<u>27,307.63</u>

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 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.



STAFF REPORT

Date: December 16, 2013

File No.: 6500-20 (Denman
Housing Needs)

To: Denman Island Local Trust Committee
For meeting of January 21, 2014

From: Rob Milne, M.C.I.P.
Island Planner
Local Planning Services

Re: Draft Amending Bylaws to Enable Secondary Suites and Secondary Dwelling Units

Problem/Issue:

At their November 26, 2013 meeting the Local Trust Committee (LTC) gave consideration to a November 7, 2013, staff report which contained preliminary drafts of bylaws which are intended to allow for a targeted implementation of secondary suites and secondary dwelling units for the consideration of the LTC. At that meeting comments and suggestions for changes were provided by both the LTC and members of the public. This report summarizes the response to that discussion.

BACKGROUND:

At the November meeting the LTC passed the following resolution:

DE-076-2013 *It was **MOVED** and **SECONDED**, that the Denman Island Local Trust Committee request staff to bring a revised "Denman Housing needs Consultation Report" and "Draft Bylaws" reflecting changes proposed and discussed at the November 26, 2013 meeting.*

This report responds to that direction from the LTC. The revised draft bylaws are attached as Attachment '1' (Land Use Bylaw) and Attachment '2' (Official Community Plan).

ISSUES SUMMARY:

As noted in the November 7, 2013 staff report the direction provided to staff identified very specific housing types, consisting of only secondary suites and secondary dwelling units, and only those lands designated as "Rural" or "Sustainable Resource" by the Official Community Plan, as part of this particular initiative to create housing opportunities on Denman Island. The intent is to generally permit secondary suites on those two land designations, under specific conditions, and to permit secondary dwelling units through a Temporary Use Permit (TUP) where deemed appropriate to do so within those designations. Implementation of this approach

will require the amendment of both the Land Use Bylaw (LUB) and the Official Community Plan (OCP).

The November 7th report included a detailed review of the various changes, deletions and amendments which were proposed by the draft bylaws to implement the direction to staff with respect to creating housing opportunities based upon secondary suites and secondary dwelling units. In broad terms these include new and revised definitions, the addition of a new section in Part 2, "General Regulations which provides a suite of regulations which would have the effect of setting conditions for the implementation of secondary suites and secondary dwelling units as well as recommendations for amendments to the appropriate zoning tables in the draft LUB. For the Official Community Plan proposed amendments include a number of policy changes to allow secondary suites and secondary dwelling units in the "Rural" and "Sustainable Resource" designations as well as an update to the Temporary Use Permit language for similar reasons. The proposed changes to the OCP also include an amendment to address the density cap restrictions of Policy 11, Part E.1 "Housing".

STAFF COMMENTS:

At their November 26, 2013 meeting the LTC gave consideration to the two draft bylaws. At that meeting the LTC members provided some feedback to staff with respect to those draft bylaws that included a request for additional clarity with respect to the OCP density cap, the identification of a maximum distance between a principal residence and a secondary dwelling unit, and the matter of secondary dwelling units on properties zoned R2 which are smaller than 4.0ha. Additional comments were also submitted in writing by members of the public.

LTC discussion at the meeting, as well the public submissions received have been reviewed and that input considered in the revised draft bylaws which are attached to this report. Changes to the draft bylaws address and provide clarity to the issues identified by the LTC. As well suggested changes which dealt more with grammatical matters were also included. At such time as the LTC is satisfied with the content of the draft amending bylaws consideration needs to be given to the next steps in the housing needs initiative.

To aid in the discussion regarding this matter staff have included a map which illustrates the lands which are affected by the draft bylaws. It can be seen that approximately half of the affected lands are located within the Agricultural Land Reserve. However, it should be noted that any proposed secondary suite or secondary dwelling unit proposed within the ALR would also be required to comply with the *Agricultural Land Commission Act* as well as be in compliance with the draft bylaws should they be adopted. Specifically, pursuant to Section 18(a)(ii) of the *Agricultural Land Commission Act*, no local government may, "approve more than one residence on a parcel of land unless the additional residences are necessary for farm use". This policy is in turn moderated by items 3(b)(i) and (i) of Part 2, "Permitted uses" of the *Agricultural Land Reserve Use, Subdivision and Procedure Regulation* which allow for:

- (i) One secondary suite within a single family dwelling; and
- (ii) One manufactured home, up to 9 m in width, for use by a member of the owner's immediate family.

This means that secondary suites would be generally permitted on ALR lands, as is the case with those lands zoned R2 "Rural Residential", but secondary dwelling units would require approval of the Agricultural Land Commission in addition to a TUP approved by the LTC.

The original project charter proposed two “public consultation meetings” held prior to a Community Information Meeting (CIM) for any amending bylaws. Given the very specific direction provided to staff within two resolutions adopted at the October 22nd meeting to draft amending bylaws to facilitate the implementation of secondary suites and secondary dwelling units, staff understands now that the LTC would like to hold the CIM and forego the second public consultation meeting. Once the LTC is satisfied that the bylaw wordings will produce their desired outcomes they can be presented to the community for their review and comment at a CIM.

Based on direction from the LTC over the past several months, and an email communication from Trustee Busheikin with five suggested amendments to the project charter, a revised project charter is attached to this report as Attachment ‘5’ for discussion and endorsement.

RECOMMENDATIONS:

It is the recommendation of staff THAT the Local Trust Committee:

1. Consider the attached draft bylaws and provide direction to staff on any further amendments.
2. Refer the draft bylaws to the Advisory Planning Commission.
3. Direct staff to schedule an community information meeting regarding on a date to be determined.
4. Endorse version 1.3 of the Project Charter for Denman Island Consultation on Housing Policy Review.

Prepared and Submitted by:

Rob Milne

December 10, 2013

Date

Concurred in by:

Courtney Simpson

January 7, 2014

RPP, MCIP
Regional Planning Manager

Date

Attachments:

1. Draft OCP amending bylaw
2. Draft LUB amending bylaw
3. Project Charter (V 1.2)
4. Affected Areas Map
5. Revised Project Charter (V 1.3)

Attachment 1

PROPOSED

DENMAN ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. XXX

A BYLAW TO AMEND DENMAN ISLAND OFFICIAL COMMUNITY PLAN, 2008

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

1. That Denman Island Local Trust Committee Bylaw No. 185 cited as "Denman Island Official Community Plan, 2008" is altered as shown on Schedule "A" of this amending bylaw.
2. This Bylaw may be cited as "Denman Island Official Community Plan, 2008, Amendment No. 1, 2013".

READ A FIRST TIME THIS DAY OF , 2014

PUBLIC HEARING HELD THIS DAY OF , 2014

READ A SECOND TIME THIS DAY OF , 2014

READ A THIRD TIME THIS DAY OF , 2014

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS
DAY OF , 2014

APPROVED BY THE MINISTER OF COMMUNITY, SPORT AND CULTURAL DEVELOPMENT

THIS DAY OF , 2014

ADOPTED THIS DAY OF , 2014

SECRETARY

CHAIRPERSON

DENMAN ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. XXX

Schedule A

Denman Island Local Trust Committee Bylaw No. 185, cited as “Denman Island Official Community Plan, 2008” is amended as follows:

1. Section H.2, “Temporary Use Permits” of Part H, “Other Permits” of Schedule B, is amended by the deletion of the paragraph after the text “Information Note” and the insertion of the following text:

“Section 921 of the Local Government Act provides that temporary uses may be permitted in areas designated in the Official Community Plan. Upon application by a property owner the Local Trust Committee can issue a Temporary Use Permit through resolution. The permit can allow a use not permitted by the land use bylaw, the conditions of use and the time period. Temporary Use Permits can be issued for a term up to three years and may be renewed one time only after which applicants may apply for a new Temporary Use Permit for the same use.

Areas and uses designated for the consideration of Temporary Use Permits may be found in the Denman Island Land Use Bylaw.”

2. Policy 10, under “Use and Density” of Part E.1 “Housing” is amended by replacing the existing text with the following:

“In the Rural designation zoning regulations should generally permit one dwelling unit per 4.0 hectares of lot area including a secondary suite provided that the land owner provides the Local Trust Committee with proof of adequate water supply for each dwelling unit without endangering the water supply of adjacent land owners. One dwelling unit should be permitted on lots that are less than 4.0 hectares in area.”

3. Deleting existing Policy 11 and replacing it with a new Policy 11 which reads as follows:

“The overall residential density on Denman Island should generally not increase beyond that permitted by existing zoning on the date this Plan was adopted except that an increase of approximately 5 percent may be permitted to accommodate zoning amendments for special needs and affordable housing and site-specific zoning amendment applications under Policy 29 of this Section.

Notwithstanding the foregoing, secondary suites contained within the footprint of existing, conforming dwelling units, and secondary dwelling units approved by the Denman Island Local Trust Committee under a Temporary Use Permit, are not deemed to contribute to density calculations for the purposes of this policy.”

4. Policy 13, under “Use and Density” of Part E.1 “Housing” is amended by replacing the existing text with the following:

“In the Sustainable Resource designation, zoning regulations should permit one dwelling including a secondary suite per parcel.”

5. Inserting a new Policy 15 which reads as follows below and renumbering existing Policy 15 to Policy 16, and deleting existing Policy 16 under “Special Needs and Affordable Housing” of Part E.1, “Housing”.

“The Local Trust Committee may approve secondary dwelling units on lands within the “Rural” and “Sustainable Resources” designations through a Temporary Use Permit.”

Draft

Attachment 2

DENMAN ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. XXX

A bylaw to amend the Land Use Bylaw to allow secondary suites and secondary housing units on lands zones "R2" (Rural Residential), "A" (Agriculture), "F" (Forestry) and "RE" (Resource).

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, 2008", is amended as detailed on attached Schedule 'A' of this amending bylaw.
- 2 This Bylaw may be cited as "Denman Island Land Use Bylaw, 2008, Amendment No 1, 2013"

READ A FIRST TIME this _____ day of _____, 2014

PUBLIC HEARING this day of , 2014

READ A SECOND TIME this _____ day of _____, 2014

READ A THIRD TIME this _____ day of _____, 2014

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST
this _____ day of _____, 2014

ADOPTED this _____ day of _____, 2014

Chairperson

Secretary

DENMAN ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. XXX

Schedule 'A'

1. Part 1, "Administration", is amended by:

- a. Deleting the existing definitions of "secondary dwelling unit" and "secondary suite" and adding the following definitions in Section 1.1, "Definitions", in alphabetical order:

"Moveable housing unit means a dwelling unit capable of being moved from location to location which does not require a permanent foundation.

Secondary suite means an accessory, self-contained dwelling unit, located within a building that is a single real estate entity which otherwise contains a single family dwelling, and having a lesser floor area than the principal dwelling unit.

Secondary dwelling unit means a dwelling unit, which may be a moveable housing unit, that is accessory to a permitted principal dwelling unit and which is limited in floor area."; and

2. Section 2.1, "Uses, Buildings and Structures" of Part 2, "General Regulations" is amended by inserting the text, "or as a secondary dwelling unit approved by a Temporary Use Permit" in point 6 after the word "unit" and the deletion of bullet three.

3. Section 2.1, "Uses, Buildings and Structures" of Part 2, "General Regulations" is amended by the addition of a new section entitled "Secondary Suites and Dwelling Units" as shown below, following regulation 3 of "Principal Dwelling Units" and renumbering the subsequent points.

- "4 Secondary dwelling units may be permitted, subject to conditions, by Temporary Use Permit on lands zoned as "R2" (Rural Residential), "A" (Agriculture), "F" (Forestry) and "RE" (Resource). Secondary suites are generally permitted within these zoning designations without the need for a Temporary Use Permit.

5 A secondary suite is permitted within a dwelling unit provided that:

- a) Either the dwelling unit or secondary suite is occupied by the owner of the dwelling unit;
- b) There is a maximum of one secondary suite permitted per lot;
- c) The secondary suite is contained within the walls of a permitted dwelling unit;
- d) The entrance to a secondary suite from the exterior of the building is separate from the entrance to the principal dwelling unit;
- e) The floor area permitted for a secondary suite is no more than 40% of the floor area of the dwelling unit to a maximum of 90 square metres;
- f) One off-street parking space is provided for the exclusive use of the secondary suite; and
- g) The secondary suite is not subdivided from the principal dwelling unit under the *Land Title Act* or the *Strata Property Act*.

**DENMAN ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. XXX**

Schedule 'A'

- 6 Where permitted by a Temporary Use Permit for a secondary dwelling unit shall:
 - a) Not have a floor area in excess of 90 square metres;
 - b) Shall not be located more than 100 metre from the principal residence; and
 - c) Be connected to an approved sewerage system.
 - 7 Where the water supplied to a secondary dwelling unit, or a building containing a secondary suite, is to be taken from the groundwater supply the potable water supply must be provided in compliance with regulations 9 and 12 of Section 2.8, "Subdivision Regulations".
 - 8 Where water is to be supplied to a secondary dwelling unit or a secondary suite from rainwater collection, the rainwater system must comply with regulation 16 of Section 2.8, "Subdivision Regulations".
 - 9 Where water is to be supplied to a secondary suite or a secondary dwelling unit by a combination of sources, a written plan for the supply of water is to be provided that demonstrates an adequate supply of potable water prior to the issuance of any permits to allow the use.
 - 10 Where water is supplied to a secondary suite or a secondary dwelling unit by a community water system, the operator of the community water system must provide written confirmation that it has sufficient capacity prior to the issuance of any permits to allow the use.
 - 11 Where water is to be supplied from a surface water body, a water license, issued by the Province, must permit the withdrawal of the required amount of water" prior to the issuance of any permits to allow a secondary suite or secondary dwelling unit.
4. Table 1 of Section 3.3, "Residential Zoning Tables" of Part 3, "Zoning Regulations" is amended by the addition of a new item 9 under "Accessory Uses" as follow:

"9 Secondary suites and secondary dwelling units";

and adding a check mark in the R2 column to be accompanied by an asterisked note stating, "Secondary dwelling units must be approved through a Temporary Use Permit".
 5. Table 1 of Section 3.4, "Resource Zoning Tables" of Part 3, "Zoning Regulation" is amended by the addition of a new item 12 under "Accessory Uses" as follow:

"12 Secondary suites and secondary dwelling units";

and adding a check mark in the in the "A", "F" and "RE" columns, each to be accompanied by an asterisked note advising that, "Secondary dwelling units must be approved through a Temporary Use Permit".
 6. Part 5, "Temporary Use Permits" is amended by numbering the existing area as "Area 1" and the insertion of the following text after that section:

**DENMAN ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. XXX**

Schedule 'A'

"Area 2

The Local Trust Committee may issue Temporary Use Permits for secondary dwelling units on lands zoned as "R2" (Rural Residential), "A" (Agriculture), "F" (Forestry) and "RE" (Resource).

Objective

To permit secondary dwelling units where considered appropriate to address housing needs as defined in the Official Community Plan.

Guidelines

- Guideline 1 Upon application, Temporary Use Permits may be considered for all parcels of land zoned as "R2" (Rural Residential), "A" (Agriculture), "F" (Forestry) and "RE" (Resource) by the Denman Island Land Use Bylaw.
- Guideline 2 Compliance with the requirements of the "Secondary Suites and Accessory Dwellings" regulations of Part 2, "General Regulations" is a condition of approval.
- Guideline 3 Applications for Temporary Use Permits may be referred to the Advisory Planning Commission, which may be requested to provide an opportunity for public input to be received and considered in preparing its recommendations.
- Guideline 4 Where approvals are required from other agencies, these should be obtained prior to the issuing of a Temporary Use Permit.
- Guideline 5 The general conditions for issuing a Temporary Use Permit are as follows:
- a) Home occupations shall not be permitted in secondary dwelling units;
 - b) Adequate off-road parking should be provided;
 - c) There should be adequate provision for approved waste disposal before consideration is given by the Local Trust Committee;
 - c) Water supply should be addressed so as to not create negative impacts upon existing common water sources;
 - e) The owner of the property may be required to provide a security to guarantee the conversion of any building or structure where temporary housing is provided and such housing is no longer used for the temporary purposes; and
 - f) Other requirements that the Local Trust Committee may consider appropriate."

Attachment 3



Denman Island Consultation on Affordable Housing Strategies

Project Charter

Creation Date: May 10, 2013

Last Updated: Friday, January 10, 2014

Version: 1.2

	Name	Endorsement Date
Project Sponsors	Courtney Simpson	10/01/2014
Project Manager	Rob Milne (Island Planner)	10/01/2014
Local Trust Committee	Denman Island	

Purpose

This project will, through a public consultation process, seek community input on acceptable options for affordable housing for inclusion in a review of Denman Island's housing policies as they impact the supply of affordable housing. This review is intended to inform bylaw amendments that enable a greater supply of affordable housing in advance of the November 2014 trustee elections.

Background

The Islands Trust Policy Statement (2003) submits that "Most [island residents] feel strongly that people of differing age groups and income levels should continue to have the opportunity to reside in island communities" and that "local trust committees and island municipalities shall...address their community's current and projected housing requirements..."

This project has been initiated by the Denman Island Local Trust Committee (LTC) pursuant to the Islands Trust Council 2008-2011 Strategic Plan objective 4.3 "Use land use planning tools and decisions to improve the availability of affordable/accessible/ appropriate housing".

A 2008 '*Housing needs on Hornby and Denman Island*' report identified "at least 26 renter households and about 42 elder households on Denman Island are living in housing which is unacceptable according to nationally established standards." The report also highlights that 13.5 percent of households are in housing need with affordability of owning/renting a home as the main barrier. A narrowing age demographic towards older residents, a lack of rental options, and a deficiency of housing models able to accommodate a growing senior population also arose as common themes.

The Denman Local Trust Committee identified affordable housing need as the primary impetus for this review, but emphasized that concerns around increased density on the island might create concern by some community members.

Objectives

- Develop a communications plan that engages all stakeholders in contributing to the development of affordable housing policies

- Communicate both the process and outcomes to the Denman Island community and solicit feedback during development of the deliverables.
- With the aid of the community identify actionable ideas which are supported by the community that can be used to facilitate the creation of affordable housing.
- Amend the Land Use Bylaw to better facilitate the provision of affordable housing within the framework established by the existing community as informed through the consultative process.

Scope

In Scope	Out of Scope
▪ Two public consultation meetings ▪ One CIM ▪ Secondary suites and/or cottages ▪ Relevant density and population growth concerns ▪ Desirable demographic diversity ▪ Long-term economic sustainability ▪ Reviewing definition of a dwelling unit ▪ LUB amendments	▪ Density bank ▪ Density transfer ▪ Short-term vacation rentals ▪ Bed and Breakfast accommodations ▪ OCP amendments ▪ More than two public consultation meetings ▪ Multi-unit projects (i.e. co-housing or senior housing)

Deliverables and Milestones

Deliverable / Milestone	Target Completion Date
Public Consultation Meeting 1 (“Needs and Fears”)	August 25, 2013
Staff Report on Meeting 1	October, 2013
Public Consultation Meeting 2	November, 2013
Draft amendments to relevant Land Use Bylaw	January, 2014
Local Trust Committee review of staff recommendations	January, 2014
Open House for public review of proposed bylaw amendments	February, 2014
Public hearing on proposed bylaw amendments	March 2014
Further readings of bylaws and referral to Executive Committee	April, 2014
Adopted bylaw amendments	May, 2014

Stakeholders

Stakeholder	Represented by	Interests, expectations, concerns
<i>Homeowners</i>	<i>All</i>	• New housing permissions do not threaten rural character • New regulations are clearly understood and accessible • Fair and reasonable regulation • Expect clear, proactive communication
<i>Renters</i>	<i>All</i>	• Greater availability of rental housing to meet housing need • Solutions that incentivize additional housing rather than penalize users of substandard housing

Project Team Resources

Name	Project Role	Area	Duration	Time
Rob Milne	Project Manager	LPS – Northern	All	20 days
Additional Planner resources	Planning support	LPS – Northern	2-3 days	
Penny Hawley	Meeting notices & bookings	LPS – Northern	All	1-2 days
Seth Wright	Planning support-meeting, materials preparation	LPS – Northern	Initiation of project to first CIM	10 days

Project Governance

Role	Responsibility
Project Champion - David Marlor	Strategic matters at Executive Committee level
Project Sponsor - Courtney Simpson	Ensures project aligns with Trust Council Strategy, provide adequate project resources
Local Trust Committee	Provides support through maintaining the project as a work program priority
Project Manager - Rob Milne	All project management of the project, lead/ direct all project work
Project Team Members	Carry out assigned project tasks

Project Budget

Item	Details	Fiscal 13/14	Fiscal 14/15
Communications	- reproduction - Mail outs - Newspaper advertising	\$200	\$510
Open House & Public Hearing	- Statutory advertising - Venue rentals - Refreshments - Transportation - Display materials preparation	\$250	\$1,500
Totals		\$200	\$2060

Critical Success Factors

- Ongoing support from Sponsors and LTC
- Project is adequately resourced – budget request for further mapping is filled in 2013-14 fiscal
- Project completes on time

Links and Dependencies

- Any new project added to the top priorities list does not move ahead of this project.

Risk Assessment

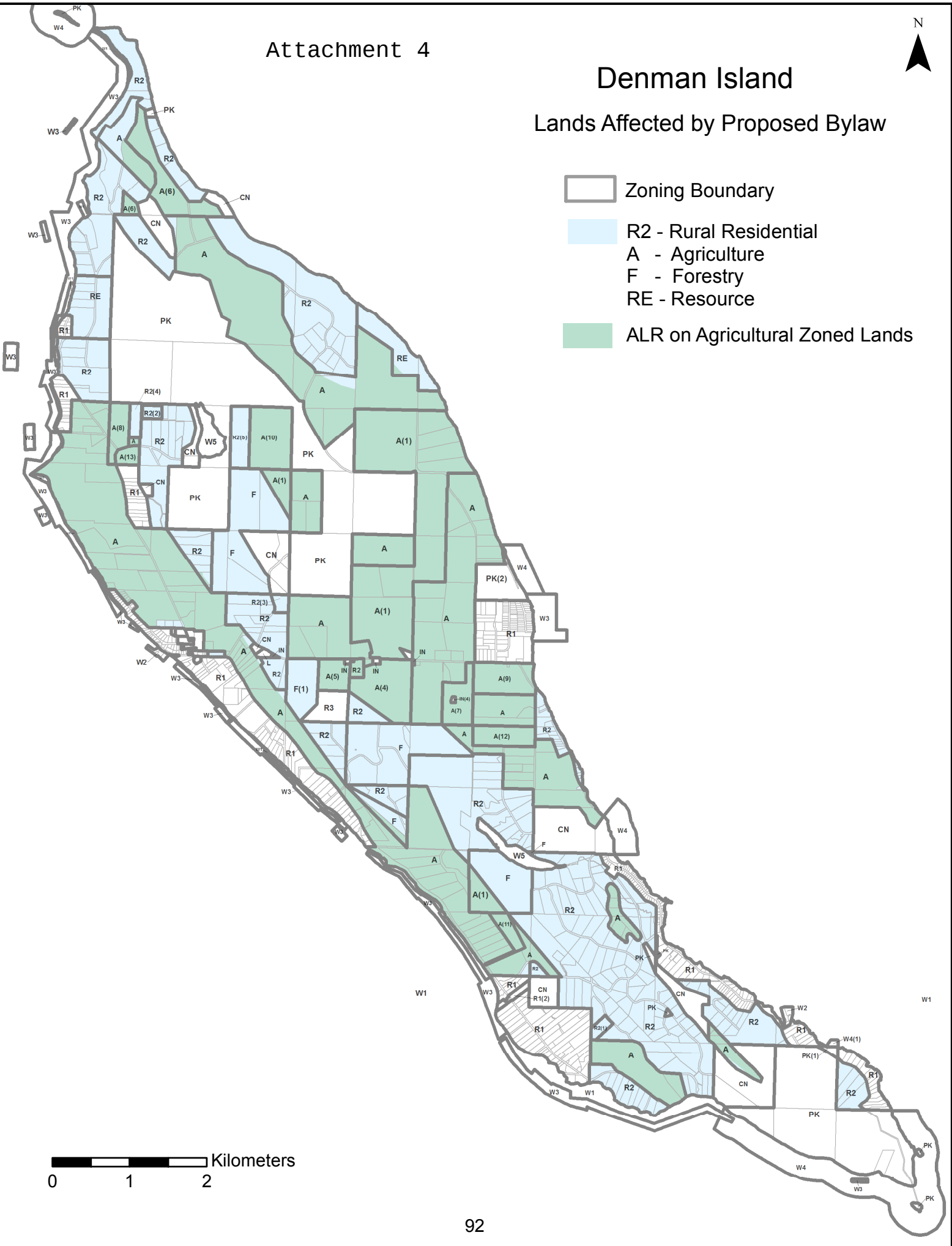
Risk Description	Prob-ability	Impact	Risk Response Strategy
<i>Budget is not allocated for 2014 consultation meetings</i>	L	H	Prepare thorough budget request through RPM, in order to provide LPS director with adequate information for preparing budget information to FPC.
<i>Public consultation process is not completed on time</i>	L	L-M	Prioritized work load to ensure resources are available for timely project completion.
<i>Significant public opposition</i>	M	M-H	Ensure communications are early and ongoing. Acknowledge and respect public wishes and concerns with appropriate bylaw amendment recommendations..

▲

 Zoning Boundary

 R2 - Rural Residential
A - Agriculture
F - Forestry
RE - Resource

 ALR on Agricultural Zoned Lands





Attachment 5

Denman Island Consultation on ~~Affordable Housing~~ Strategies Housing Policy Review

Project Charter

Creation Date: May 10, 2013

Last Updated: Friday, January 10, 2014

Version: 1.32

	Name	Endorsement Date
Project Sponsors	Courtney Simpson	10/01/2014
Project Manager	Rob Milne (Island Planner)	10/01/2014
Local Trust Committee	Denman Island	

Purpose

This project will, through a public consultation process, seek community input on acceptable options for affordable housing for inclusion in a review of Denman Island's housing policies as they impact the supply of affordable housing. This review is intended to inform bylaw amendments that enable a greater supply of affordable housing in advance of the November 2014 trustee election the potential use of secondary dwelling units to meet a range of evolving housing needs.

Background

The Islands Trust Policy Statement (2003) submits that "Most [island residents] feel strongly that people of differing age groups and income levels should continue to have the opportunity to reside in island communities" and that "local trust committees and island municipalities shall...address their community's current and projected housing requirements..."

This project has been initiated by the Denman Island Local Trust Committee (LTC) pursuant to the Islands Trust Council 2008-2011 Strategic Plan objective 4.3 "Use land use planning tools and decisions to improve the availability of affordable/accessible/ appropriate housing".

A 2008 '*Housing needs on Hornby and Denman Island*' report identified "at least 26 renter households and about 42 elder households on Denman Island are living in housing which is unacceptable according to nationally established standards." The report also highlights that 13.5 percent of households are in housing need with affordability of owning/renting a home as the main barrier. A narrowing age demographic towards older residents, a lack of rental options, and a deficiency of housing models able to accommodate a growing senior population also arose as common themes.

The 2010 Islands Trust *Senior's Housing Strategy* report examined options available to increase the supply of year-round affordable homes for older adults and proposed a three point strategy based upon the maintenance, modification and renovation of existing homes, new housing that meets the needs of older adults and seniors and the provision of affordable and diverse housing to meet the needs of low and moderate income seniors.

[Another report relevant to the review is the 2011 Age Friendly Communities Report Denman and Hornby Islands, prepared by the Denman and Hornby Community Health Care Society which explores the ingredients required to build an age-friendly community which allows seniors and elders to continue to live in their community.](#)

The Denman Local Trust Committee [has](#) identified ~~affordable housing~~ [the development of secondary housing options](#) ~~need~~ as the primary impetus for this review, but emphasized that concerns around increased density on the island might create concern by some community members.

Objectives

- Develop a communications plan that engages all stakeholders in contributing to the development of [affordable housing policies](#) ~~amending bylaws which allow for the appropriate development of secondary suites and secondary dwelling units to meet the range of housing needs on Denman Island.~~
- Communicate both the process and outcomes to the Denman Island community and solicit feedback during development of the deliverables.
- ~~With the aid of the community identify actionable ideas which are supported by the community that can be used to facilitate the creation of affordable housing.~~
- Amend the Land Use Bylaw [and Official Community Plan as required](#) to better facilitate the ~~provision of affordable housing within~~ [development of secondary housing options within](#) the framework established by the existing community as informed through the consultative process.

Scope

In Scope	Out of Scope
▪ Two public consultation meetings ▪ One CIM ▪ Secondary suites and/or cottages ▪ Relevant density and population growth concerns ▪ Desirable demographic diversity ▪ Long-term economic sustainability ▪ Reviewing definition of a dwelling unit ▪ LUB amendments ▪ OCP amendments (including review of TUP and density cap provisions) ▪	▪ Density bank ▪ Density transfer ▪ Short-term vacation rentals ▪ Bed and Breakfast accommodations ▪ OCP amendments ▪ More than two public consultation meetings ▪ Multi-unit projects (i.e. co-housing or senior housing)

Deliverables and Milestones

Deliverable / Milestone	Target Completion Date
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Deliverable / Milestone	Target Completion Date
Adopted bylaw amendments	May, 2014

Stakeholders

Stakeholder	Represented by	Interests, expectations, concerns
<i>Homeowners</i>	<i>All</i>	• New housing permissions do not threaten rural character • New regulations are clearly understood and accessible • Fair and reasonable regulation • Expect clear, proactive communication
<i>Renters</i>	<i>All</i>	• Greater availability of rental housing to meet housing need • Solutions that incentivize additional housing rather than penalize users of substandard housing

Project Team Resources

Name	Project Role	Area	Duration	Time
<i>Rob Milne</i>	<i>Project Manager</i>	<i>LPS – Northern</i>	<i>All</i>	<i>20 days</i>
<i>Additional Planner resources</i>	<i>Planning support</i>	<i>LPS – Northern</i>	<i>2-3 days</i>	
<i>Penny Hawley</i>	<i>Meeting notices & bookings</i>	<i>LPS – Northern</i>	<i>All</i>	<i>1-2 days</i>
<i>Seth Wright</i>	<i>Planning support-meeting, materials preparation</i>	<i>LPS – Northern</i>	<i>Initiation of project to first CIM</i>	<i>10 days</i>

Project Governance

Role	Responsibility
Project Champion - David Marlor	Strategic matters at Executive Committee level
Project Sponsor - Courtney Simpson	Ensures project aligns with Trust Council Strategy, provide adequate project resources
Local Trust Committee	Provides support through maintaining the project as a work program priority
Project Manager - Rob Milne	All project management of the project, lead/ direct all project work
Project Team Members	Carry out assigned project tasks

Project Budget

Item	Details	Fiscal 13/14	Fiscal 14/15
Communications	• reproduction • Mail outs • Newspaper advertising	\$200	\$510
Open House & Public Hearing	• Statutory advertising • Venue rentals • Refreshments • Transportation • Display materials preparation	\$250	\$1,500
Totals		\$200	\$2060

Critical Success Factors

- Ongoing support from Sponsors and LTC
- Project is adequately resourced – budget request for further mapping is filled in 2013-14 fiscal
- Project completes on time

Links and Dependencies

- Any new project added to the top priorities list does not move ahead of this project.

Risk Assessment

Risk Description	Prob-ability	Impact	Risk Response Strategy
<i>Budget is not allocated for 2014 consultation meetings</i>	L	H	Prepare thorough budget request through RPM, in order to provide LPS director with adequate information for preparing budget information to FPC.
<i>Public consultation process is not completed on time</i>	L	L-M	Prioritized work load to ensure resources are available for timely project completion.
<i>Significant public opposition</i>	M	M-H	Ensure communications are early and ongoing. Acknowledge and respect public wishes and concerns with appropriate bylaw amendment recommendations..

From: Klaver, March [<mailto:March.Klaver@dfo-mpo.gc.ca>]
Sent: November-27-13 12:05 PM
To: Rob Milne
Cc: Trager, Diana; Gilbert, Eric
Subject: Bylaw Referral Form Response Summary

Hi Rob,

Aquaculture Management has taken the opportunity to review the proposed Bylaw No. 207 and have attached the response to this email. I have also been in contact with Linda Adams and would be interested in meeting with representatives of Islands Trust to more fully discuss the management regime in place for the activity of shellfish aquaculture.

Regards,

March Klaver

Regional Manager, Aquaculture Resource Management | Gestionnaire régionale des ressources -
Aquaculture Fisheries Management | Direction des peches Fisheries and Oceans Canada | Pêches et
Océans Canada
1965 Island Diesel Way
Nanaimo, BC | Nanaimo, CB
V9S 5W8

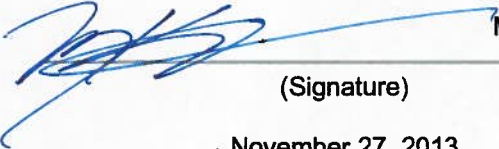
Email | Courriel: march.klaver@dfo-mpo.gc.ca Telephone | Téléphone: 250-754-0334 Fax | Télécopieur:
250-754-0134 Cell | Cellulaire: 250-720-5488 Government of Canada | Gouvernement du Canada

- ☐ Approval Recommended for Reasons Outlined Below
- ☐ Approval Recommended Subject to Conditions Outlined Below
- ☐ Interests Unaffected by Bylaw
- ☒ Approval Not Recommended Due to Reason Outlined Below

Thank you for the opportunity to consider your proposed Bylaw No 207. Fisheries and Oceans Canada recommends that the bylaw not be approved. The proposed bylaw, by prohibiting activities associated with aquaculture within the W-3 zone designation, appears to be regulating within federal jurisdiction.

The Department manages aquaculture in British Columbia under the authority of the *Fisheries Act*, and the regulations made thereunder, particularly the *Pacific Aquaculture Regulations*. The Department has a comprehensive aquaculture management program in place, including regulatory measures for a number of the specific activities that your proposed bylaw intends to limit. In addition, the Department has a number of program staff both within our Conservation and Protection Program, and within our Aquaculture Environmental Operations Program, assessing and addressing compliance with those regulatory measures.

We understand from reading a number of reports developed or commissioned by the Islands Trust in relation to this proposed Bylaw, that some community members believe that the management of these activities needs further improvement. The Department is interested in continued dialogue with the Islands Trust on these issues to ensure concerns are being considered in the refinement of our management measures and approaches.

Denman Island Trust Area	207
(Island)	(Bylaw Number)
 March Klaver	Regional Manager, Aquaculture Resource Management
(Signature)	(Title)
November 27, 2013	Fisheries and Oceans Canada
(Date)	(Agency)



Memorandum

700 North Road Gabriola Island BC V0R 1X3

Telephone **250. 247-2063** FAX: 250. 247-7514

Toll Free via Enquiry BC in Vancouver 660-2421. Elsewhere in BC **1.800.663.7867**

northinfo@islandstrust.bc.ca www.islandstrust.bc.ca

Date December 18, 2013 File Number 3030-01

To Denman Island Local Trust Committee
For meeting of January 21, 2013

From Rob Milne
Island Planner
Northern Office

Re **On-Island planner office hours**

On-Island planner office hours are a service staff provides to the Denman Island community at the request of the Local Trust Committee. In 2013, planner office hours were scheduled for February, May, July and November timed on the same days as the monthly Local Trust Committee (LTC) meeting. The LTC directed that advertisements were to be placed in the Grapevine and added to the monthly calendar and back page under "This Week's Coming Events".

A review of this service indicates that there is no significant utilization by island residents of these on-island office hours. There was only one appointment and one drop-in for the four half days of office hours that were provided in 2013. The planner who dealt with those two inquires has advised that the inquiries could have been addressed by telephone. Although the planner may schedule necessary site visits on those days and can work, in a more limited capacity, on some files while waiting for drop-in inquiries there are other costs associated with this under utilized service that should be recognized. These costs include travel expenses, meal allowance, overtime, and time taken from the overall planner resources allocated to the Denman LTC.

Office hours for 2013 were scheduled for a 3.5 hour period from 10:30am to 2:00pm for each staff visit to the Island. The staff overtime required to provide that service; which is above and beyond the regular daily hours for the position; varies between 4 to 5 hours and involves ferry travel to and from Denman and Gabriola Islands. Based upon the Collective Agreement this overtime is equivalent to 7 to 9 hours of hourly wages, an additional day's wages for each on-island visit. To this the average travel expense of approximately \$160, which includes mileage and two ferry fares, must be added. The Local Trust Committee may wish to give consideration to the cost effectiveness of this service given its limited use. A review of available data indicates that usage has been dropping consistently every year since office hours began being held, originally on a monthly basis. This drop is consistent with a drop in the number of applications received. Staff expects that if the number of land use applications were to increase significantly in future years, on-island office hours may become a more practical use of planner time.

If it is the wish of the DELTC to continue with on-island planner office hours for 2014 consideration must be given to scheduling for that service. Continuation of the approach of tying that meeting schedule to LTC meetings is recommended in order to address the safety requirements for working alone.

Staff would appreciate direction from the Local Trust Committee on this matter.

cc Courtney Simpson, Regional Planning Manager
Marnie Eggen, Planner I
Linda Prowse, Planner II

BRIEFING (preliminary)

To: Executive Committee

For the Meeting of: January 14, 2014

From: Linda Adams
Chief Administrative Officer

Date prepared: January 9, 2014

File No.: EC Agendas-2014

**SUBJECT: JURISDICTIONAL CONSIDERATIONS REGARDING FISHERY AQUACULTURE
ON CROWN MARINE LANDS IN THE ISLANDS TRUST AREA**

DESCRIPTION OF ISSUE: A preliminary review of government jurisdiction as it applies to fishery aquaculture on Crown marine areas in the Islands Trust Area.

BACKGROUND:

In November 2013, the Executive Committee considered a number of items related to the regulation of fishery aquaculture on Crown marine areas in the Islands Trust Area, including a request from the Denman Island Local Trust Committee to seek a meeting with the Minister of Forests Lands and Natural Resource Operations to discuss the issuance of Licenses of Occupation in the Trust area. The Executive Committee added the following item to its Work Program, as a top priority under the CAO's area:

Clarify jurisdictional issues related to aquaculture operations, including seek minister meeting related to the Denman area.

Staff have now met with federal and provincial staff to confirm understandings and seek clarity regarding jurisdictional issues that affect aquaculture in the Islands Trust Area. This briefing is a preliminary report that outlines staff's current understanding regarding these matters. Further discussions and requests for advice are also planned or underway. They are expected to provide additional information which will be relayed at a later date through written or verbal briefings.

DISCUSSION

Shellfish aquaculture is a significant industry in BC, with much of it located in the Islands Trust Area in Baynes Sound, the most active shellfish aquaculture region in BC. Shellfish aquaculture tenures in BC (as of 2011) are indicated [on this map](#). Several levels of government have a role in managing the industry, as summarized below.

Important Note: While this discussion refers to 'ownership' and 'jurisdiction', it is also important to note that the entire BC coast, including the Islands Trust Area, is subject to aboriginal claims based on traditional use by First Nations. First Nations within the Islands Trust Area are actively negotiating treaty rights. Until those negotiations are concluded, jurisdictional issues related to some First Nations' activities will remain uncertain. Conclusion of treaty negotiations is expected to change current understandings of jurisdiction and ownership.

ROLES and JURISDICTION

Federal Government Role

- Prior to 2010, aquaculture in BC was primarily managed by the provincial government through various ministries with responsibilities for agriculture and the allocation of Crown land. In 2009, the BC Supreme Court ruled that only the federal government had the authority to regulate the 'fishery' aspects of aquaculture ([Morton v. BC \(Agriculture and Lands\) 2010 BCSC 100](#))
- As a result of this court decision, the Department of Fisheries and Oceans (DFO) received a mandate to develop a new regulatory regime, now called the 'BC Aquaculture Regulatory Program' (BCARP). This regime applies only in British Columbia.
- In December 2010, the [Pacific Aquaculture Regulations](#) came into effect (under the federal *Fisheries Act*), giving DFO the primary responsibility to manage and regulate fishery aquaculture in BC. These responsibilities are integrated with DFO's broader responsibilities to manage wild fisheries in Canadian waters.
- The *Pacific Fishery Management Area Regulations* divide the entire BC coast into management areas, five of which (Areas 14, 17, 18, 28 and 29) apply to the Islands Trust Area, as indicated on [this map](#).
- Through the BCARP, DFO now regulates four types of 'fishery' aquaculture in BC – marine finfish, shellfish, freshwater finfish and enhancement facilities (e.g. raising of Pacific salmon to rebuild wild stocks and provide fishing opportunities). DFO does not regulate 'non-fishery' aquaculture, such as the cultivation of marine plants.
- DFO has more than 60 full-time employees who manage and regulate the aquaculture industry in BC, organized into three departments with various responsibilities such as those indicated below:
 - o Aquaculture Programs
 - Governance, policy development
 - Science coordination
 - Industry development
 - o Aquaculture Resource Management
 - Long-term aquaculture management plans
 - Licenses aquaculture operations and develops license conditions
 - Consults and engages with the public and other levels of government, including First Nations
 - o Aquaculture Environmental Operations
 - Fish health, environmental monitoring
 - License compliance and enforcement
 - Data management for analysis and public reporting
- With enactment of the [Pacific Aquaculture Regulations](#), DFO now has sole authority to license and place conditions on the 'operational' aspects of fishery aquaculture in BC. DFO licenses address many aspects of aquaculture operation, such as:
 - o The species and quantities of fish that may be cultivated
 - o The waters where aquaculture may be permitted
 - o Types of fish feed
 - o Harvesting methods
 - o Measures to control pathogens, pests, nuisance fish and fish escape
 - o Measures to minimize impacts on fish and fish habitat
 - o Equipment that may be used
 - o Records that must be kept
- Those matters that may be regulated by DFO under the *Pacific Aquaculture Regulations* may not also be regulated by provincial or local governments.
- Further information about DFO's role in BC aquaculture management is outlined in Attachment 1 – a PowerPoint presentation provided to Islands Trust staff by March Klaver, Regional Manager of DFO's Aquaculture Resource Management group on December 12, 2013. A summary of DFO's role is also available online in a [pamphlet](#) and a brief [video](#).
- In addition to DFO, which is the lead federal agency for BC aquaculture management, two other federal agencies play lesser roles:

- o Transport Canada is responsible for administration of the *Navigable Waters Protection Act*, ensuring safe navigation in marine waters.
- o The Canadian Food Inspection Agency has jurisdiction regarding animal health risks and plays a role in protecting aquatic species from diseases and other threats to the resource base.

Provincial Government Role

- Because the provincial government owns BC's foreshore areas and the beds of inland seas (such as the Salish Sea) where aquaculture is primarily located, it continues to play a role in fishery aquaculture, despite the changes that arose from the *Morton v. BC* court decision. It also continues to regulate the operations of 'non-fishery' aquaculture, such as marine plant aquaculture.
- Since December 2010, the provincial role in fishery aquaculture is primarily related to the issuance of tenures (e.g. licenses of occupation under the *BC Land Act*) to operators who wish to occupy 'Crown' lands owned by the province. This work is administered by the Integrated Land Management Bureau of the Ministry of Forests, Lands and Natural Resource Operations (FLNRO).
- The provincial government also regulates the business aspects of aquaculture, (such as workplace health and safety) and reports on seafood exports.

Local Government Role

- In BC, the provincial government has delegated a land use planning role to local governments (including local trust committees) through the *Local Government Act*. Part 26 of the *Local Government Act* enables local governments to adopt Official Community Plans (a statement of objectives and policies to guide decisions on planning and land use management) and a variety of land use regulations, including zoning.
- While the power to adopt local land use regulations is considerable, it is finite. For example, zoning regulations may only regulate specific factors of land use, as provided in Section 903 of the *Local Government Act*. Section 919.1 of the *Local Government Act* enables local governments to designate development permit areas, for defined purposes. Development permit areas can require land owners to apply for permits, which may contain conditions that guide development when land is subdivided or altered, or when buildings are constructed.
- Local governments in BC are understood to have the authority to apply zoning regulations to the surface of water within their area of jurisdiction. Within the Islands Trust Area, this is understood to mean that local trust committees have the authority to zone the water areas that lie within Local Trust Areas as indicated on the Islands Trust Area map. While this is the current understanding of jurisdiction and has been readily applied throughout the Islands Trust Area, it has not been tested in court.
- Local government land use regulations do not apply in all cases. For example, they may not apply (or may only partially apply) to:
 - o Land uses that were legally in place before the land use bylaw was adopted
 - o The removal of resources from land (i.e. mining, forestry, fishing)
 - o The land use activities of senior governments
 - o Some federally-regulated land uses, such as airports and communications towers
 - o Land uses that are permitted through other provincial acts, such as farming within the provincial Agricultural Land Reserve.
 - o First Nations land uses, where aboriginal rights and title are recognized.
- Within the Islands Trust Area, the *Islands Trust Act* gives local trust committees the land use planning and regulatory authority that would otherwise rest with regional districts. The provincial government also indicates that these powers are given for a specific purpose – '*to preserve and protect the trust area and its unique amenities and environment...*'. While this mandate seems considerable, local trust committees have the same tools (and the same limits on those tools) as do all BC local governments when regulating land use.
- The *Islands Trust Act* also requires the Islands Trust Council to adopt a Policy Statement to guide the way that local trust committees (and island municipalities) exercise their land use planning and regulatory powers.

- The [Islands Trust Policy Statement](#) was originally adopted in 1993 and has been amended occasionally since.
- Policies in the *Islands Trust Policy Statement* (Section 4.5) recognize aquaculture (with the exception of finfish aquaculture) as a 'valuable activity in the Trust Area if compatible with maintenance of ecosystems and community character'. The *Policy Statement* further identifies the characteristics of areas where aquaculture should not be located (e.g. areas of recreational significance, areas where aquaculture would conflict with established or designated upland land uses, areas where aquaculture would conflict with established or designated anchorage or moorage) and takes the position that 'site alteration'¹ should not result from aquaculture operations.
- While the *Islands Trust Policy Statement* guides the development of land use bylaws within the Islands Trust Area, it is only advisory in regards to permits issued by senior government. Nevertheless, it can and does form the basis for advocacy when senior governments refer aquaculture applications for comment (see below).

First Nations

- The Islands Trust Area overlaps with the claims of over 30 different First Nations.
- First Nations in most parts of BC, including those in the Islands Trust Area, have never entered into treaties or ceded their rights and title. They therefore have 'unextinguished' rights and title to lands and resources in their traditional areas, including the lands and waters of the BC coast. Aboriginal rights and title are protected by the federal *Constitution Act*, whether or not there is a treaty.
- Because of the uncertainty that exists around poorly defined aboriginal rights and title, the [BC Treaty Process](#) is underway to create agreements that will provide more certainty about jurisdiction by resolving conflicting land ownership between the Crown and aboriginal peoples.
- The BC Treaty Process is a six-stage process. Several First Nations with interests in the Islands Trust Area are actively participating in this process. Those with interests in the Islands Trust Area that have reached the latter two stages of the process include²:
 - o Stage 6 (Treaty Implemented)
 - Tsawwassen First Nation
 - o Stage 5 (Negotiations to Finalize a Treaty)
 - K'ómoks First Nation
 - Sliammon Indian Band
 - o Stage 4 (Agreement in Principle Negotiations)
 - Hul'qumi'num Treaty Group
 - Musqueam
 - Sechelt
 - Snuneymuxw
 - Sto:Lo
- A map illustrating the general location of First Nations in the Vancouver Island area is available [here](#).
- Until treaty processes are complete, the relevance of local government regulations as they apply to some First Nations activities will remain uncertain, particularly where a First Nation is asserting aboriginal rights and title, based on traditional activities and resource uses³. In the absence of a treaty process, resolution of jurisdiction could also potentially take place through a court process.
- In some instances, local government jurisdiction as it relates to First Nations is more clearly-defined. For example:

¹ The Policy Statement indicates that 'site alteration includes, but is not limited to substrate modification or the use of metal plates or pipes'

² May not be a complete list. Further information is available from the [BC Treaty Commission](#)

³ The K'ómoks First Nation has recently asserted that its existing and planned aquaculture operations near Denman Island are an expression of its aboriginal rights and title in this area

- o Reserve lands (as defined in the federal *Indian Act*) are owned by the federal government and are excluded from the Islands Trust Area as it is defined by the *Islands Trust Act*. Policies and regulations of Islands Trust bodies therefore do not apply to such lands. Reserve lands within the boundaries of the Islands Trust Area are listed on Attachment 2.
- o Treaty settlement lands are generally not subject to local government regulations, unless specifically defined by the relevant treaty. There are currently no treaty settlement lands in the Islands Trust Area. However, some treaty processes are underway that could result in the creation of treaty settlement lands within the Islands Trust Area. In such circumstances, treaty language may include clauses that encourage or require First Nations to engage in collaborative land use planning processes with local trust committees.

AQUACULTURE LICENSING AND APPROVAL PROCESSES

Because of the multiple roles and areas of jurisdiction that now affect fishery aquaculture in BC marine areas, some attention has been given in recent years to the process by which aquaculture operations receive licenses and other approvals. The relevant processes are summarized below.

Federal and Provincial Processes

DFO, Transport Canada (TC) and FLNRO have developed a harmonized process for applicants wishing to propose fishery aquaculture operations on BC Crown land. While each agency makes its own decision, the process is harmonized and coordinated through:

- Use of a harmonized application form which identifies the information requirements of all agencies.
- A 'one-window' approach, where applications are submitted to Front Counter BC, a provincial agency which then distributes applications to a Project Review Team.
- A Project Review Team that screens and forwards acceptable applications to each agency for individual consideration.
- Harmonized consultation and information sharing.
- Coordination of referrals to other agencies and First Nations.
- Simultaneous approvals, if all agency processes support approval.

DFO Process

Under the harmonized process, DFO considers the following factors in its review of a fishery aquaculture application:

- Policy consistency
- Impacts on wild stocks
- First Nations – impacts on rights or asserted title and treaty considerations
- Impacts on existing fisheries
- Impacts on fish habitat and health
- Special considerations

Shellfish aquaculture applicants must indicate how their proposal will avoid impacts to important or sensitive habitats that support fisheries. These include:

- Intertidal stream channels
- Eelgrass beds
- Fish spawning areas (including forage fish areas)
- Areas with species listed in the *Species at Risk Act* (SARA)
- Salt marshes
- Rocky reefs
- Kelp beds
- Glass sponge and coral complexes

Public input into individual license applications is invited through public notices during the application period.

When DFO issues a license, it includes both general and specific conditions that are designed to ensure the operation is sustainable and that potential negative environmental effects are mitigated. Some standard Conditions of License include:

- That equipment must be able to withstand adverse weather
- Predator control conditions
- Prohibition against dredging, infilling or redistribution of native beach materials
- No harvesting or handling of equipment during herring spawn
- No activities in sand lance spawning substrates during spawning windows
- Conditions related to protection of eelgrass, squid spawn, etc.
- Conditions related to mooring of equipment, containment of Styrofoam and handling of debris.

DFO staff indicate that their practice is to not issue an aquaculture license until FLNRO has confirmed that it has approved the related tenure. DFO relies on FLNRO in regards to the relevance of local government zoning.

DFO also develops broad guidelines that in turn, guide the issuance of aquaculture licenses. For example, guidelines for geoduck and sea cucumber aquaculture are currently in development (through a public consultation process) and individual licenses for such operations will be limited until the guidelines are in place. Similarly, there is a moratorium of new finfish farm applications in some areas of the northern BC coast.

More detailed information about the DFO licensing process and typical Conditions of License is contained in Attachment 1.

Once a license is issued, DFO compliance staff visit aquaculture operations routinely to ensure the Conditions of License are being followed. As this program is relatively new, not all operations are yet up to the new standards that came with DFO's assumption of jurisdiction over aquaculture operations.

Other Federal Review Processes

Transport Canada reviews aquaculture applications in relation to requirements of the *Navigable Waters Protection Act*.

Provincial Process

Under the harmonized application process, FLNRO is responsible for reviewing applications for tenure under the *BC Land Act*. Such review is guided by the *Provincial Aquaculture Policy*, available [here](#).

The *Provincial Aquaculture Policy* places limits on the types of applicants that may apply (e.g. Canadian citizens or permanent residents of legal age, registered corporations, First Nations), establishes various forms of tenure and guides various administrative matters such as review processes and rents. The standard form of Crown land tenure for shellfish aquaculture operations is a 'license of occupation', which conveys non-exclusive use for the purpose described. A license does not allow the tenure holder to curtail public access except where it would impact the licensed purpose. Normally, such a license would exist for 20 years, unless it is a 5-year license issued for a developmental operation.

In considering new applications for tenure related to shellfish, FLNRO considers factors such as:

- Riparian rights
- Navigational requirements
- First Nations' potential aboriginal interests and rights
- Environmental concerns

- Separation from other tenures
- Characteristics of the proposed management plan

Additional considerations apply in evaluating tenure expansions.

Under the *Provincial Aquaculture Policy*, FLNRO makes a number of referrals when it is considering tenure applications related to aquaculture. In addition to federal and provincial agencies, referrals for shellfish aquaculture are normally made to local governments, First Nations, and neighbouring tenure holders and upland or adjacent owners. The process also includes public notification.

The [Provincial Aquaculture Policy](#) provides more details of the FLNRO process and the factors considered, as well as compliance procedures after issuance of tenure.

Local Government Review Processes

As part of FLNRO's application review process, applications for aquaculture operations are referred to the relevant local government for comment. Local governments can then advise FLNRO of their views regarding the application, including whether the application is consistent with the relevant zoning regulations.

If a proposed tenure application is already appropriately zoned for the intended purpose, local government comments would typically confirm this. Local governments may also advise FLNRO about other areas of concern or support. Within the Islands Trust Area, local trust committees or planning staff may also provide advice about items such as available mapping data, or policies in the relevant Official Community Plan or Islands Trust Policy Statement.

If the proposed tenure application is not appropriately zoned for the intended purpose, FLNRO and the applicant would be advised. Lack of appropriate zoning is not necessarily an impediment to the issuance of a license of occupation, on the understanding that the applicant must successfully apply for appropriate zoning from the relevant local government if it does not already exist. Local planning staff are available to provide applicants with information about rezoning process and any policies that may affect the review of their application.

The process that local governments go through to zone land (or amend zoning) is determined by the *Local Government Act*. Zoning regulations must be contained within a bylaw, which must be adopted in accordance with a public process that is also defined by the *Act*. If an Official Community Plan applies, then the zoning regulations must be consistent with it. Within the Islands Trust Area, zoning regulations must also be consistent with the *Islands Trust Policy Statement*.

A provincial license of occupation typically includes a clause that indicates that the license holder must '*observe, abide by and comply with all applicable laws, bylaws, orders, directions, ordinances and regulations of any government authority having jurisdiction in any way affecting your use or occupation of the Land or the Improvements...*'. While this clause advises the license holder of its legal obligations regarding other government authorities, FLNRO does not appear to view it as an enforceable clause of the license. Instead, the other government authorities mentioned are responsible for enforcing their own regulations, where they have jurisdiction to do so. This applies to local governments in regards to zoning regulations.

Local governments have raised concerns in the past regarding the issuance of provincial tenures on Crown land, where appropriate zoning is not in place. In some instances, issuance of tenure has led tenure holders to proceed with their proposed operations, despite inconsistent zoning. In recent years, the province has amended its process to some degree to ensure applicants are aware of zoning regulations at the time of tenure applications. While provincial staff indicate that they would be unable to withhold a provincial license solely on the basis that zoning is not in place, they note that applicants normally seek to comply with local government zoning, or may even discontinue an application where a zoning change seems unlikely.

Note: While the provincial process for considering Crown land tenures has been of some concern, it has some similarities to the process that a local trust committee goes through when approving zoning or permits. For example, Development Variance Permits often contain an informational clause indicating the holder must comply with the regulations of other jurisdictions, but a local trust committee does not enforce compliance with such clauses.

AREAS FOR FURTHER INVESTIGATION AND DISCUSSION

While this briefing outlines staff's current understanding of jurisdictional issues regarding fishery aquaculture in marine areas, recent experience indicates that there is continued uncertainty in one area specifically, that being where an aquaculture operation is undertaken by a First Nation that asserts aboriginal rights and title to such an operation and therefore may not recognize local government regulatory authority.

As a result of this and other areas of uncertainty, the following topics are still under investigation and could be the subject of future written or verbal briefings, if requested by the Executive Committee:

- The current status of treaty negotiations within the Islands Trust Area, particularly in regards to First Nations at Stage 5.
- The plans of First Nations regarding aquaculture in the Islands Trust Area and the basis for assertions of aboriginal rights and title.
- The implications of attempting bylaw enforcement in regards to aquaculture operations of First Nations, where those operations are an expression of aboriginal rights and title, but not recognized in the relevant zoning regulations.
- The degree to which local government regulations apply to federally-regulated aquaculture operations.
- Opportunities to amend FLNRO's process for consideration of aquaculture applications, where local government zoning is not consistent with a proposed license of occupation.

ATTACHMENT(S):

1. PowerPoint presentation from Regional Manager March Klaver, with DFO's Aquaculture Resource Management Team – December 2013.
2. Reserve lands (under the *Indian Act*) within the boundaries of the Islands Trust Area.

AVAILABLE OPTIONS:

1. Identify additional information needs, after further advice (as noted above) has been provided.
2. In consultation with the Denman Island Local Trust Committee and TAS advocacy staff, clarify the purpose and need for meetings with senior government representatives at the political level.

FOLLOW-UP: To be determined by Executive Committee

Prepared By:	Linda Adams Chief Administrative Officer
Reviewed By/Date:	Lisa Gordon, Director of Trust Area Services Courtney Simpson, Regional Planning Manager, Northern Office
CC:	Denman Island Local Trust Committee



Islands Trust

December 2013

Aquaculture Resource Management
March Klaver



Presentation Overview

- Background
 - Transition of regulatory authority from BC to DFO 2010
- Aquaculture Program Overview
 - BCARP Branches & Areas of Responsibility
 - Office Locations & Staff Structure
- BCARP Policy Framework
 - Aquaculture Policy Framework
 - Sustainable Aquaculture Fisheries Framework
 - Integrated Aquaculture Management Plans and Aquaculture Management Advisory Processes
- Aquaculture Licensing Process
 - Flow Chart & Decision-Making Framework
 - Opportunities for Public/Industry input
- Environmental Protection



Background

- In 2009, B.C. Supreme Court rules that only the federal government has the authority to regulate the fisheries aspects of aquaculture in the province.
- As a result, DFO receives a Cabinet mandate to move forward with new regulatory regime – **BC Aquaculture Regulatory Program.**
- On December 19, 2010 the *Pacific Aquaculture Regulations* came into effect giving DFO the authority to regulate all fishery aspects of aquaculture in BC including finfish, shellfish, freshwater and enhancement facilities.
- Currently, there are 121 Marine Finfish, 440 Shellfish and 114 Freshwater/Land-based Licences issued under PAR.

More information on the *Pacific Aquaculture Regulations* can be found at:

<http://laws-lois.justice.gc.ca/PDF/SOR-2010-270.pdf>



Program Overview

Communications

Licensing

Fisheries Management

Aquaculture
Conservation &
Protection

Aquaculture Management Division

Aquaculture
Resource
Management

Aquaculture
Environmental
Operations

Aquaculture
Programs



AMD Pacific Teams, Key Roles and Responsibilities

Aquaculture Environmental Operations

- Fish health, environmental monitoring and compliance, sea lice management, benthic monitoring and reporting, marine mammal interactions, escapes, information for public reporting, analysis of compliance data, vessel operations

Aquaculture Resource Management

- IMAPs and advisory process, aquaculture licensing (harmonized approach, referrals), Conditions of Licence, bilateral consultation and engagement (First Nations, industry, local government), data management, analysis and reporting

Aquaculture Programs

- Aquaculture governance (internal/external), overall consultation approach, litigation management/coordination, Introductions and Transfers (I&T), science coordination and liaison, industry development, DFO integration, operational policy development (e.g. geoduck, sea cucumber)



BCARP Offices

- **Vancouver**
 - Regional DFO Headquarters
- **Nanaimo**
 - Aquaculture Resource Management, Licensing & C&P
- **Courtenay**
 - Aquaculture Environmental Operations (Shellfish, Freshwater/Land-based & Fish Health)
- **Campbell River**
 - Aquaculture Environmental Operations (Marine Finfish) and C&P
- **Port Hardy**
 - Aquaculture Resource Management.





BCARP Policy Framework

Aquaculture Policy Framework

- Lead federal agency for aquaculture development
- Sets out policy principles such as:
 - Integrated Management
 - Ecosystem approach
 - Transparency
 - Respect constitutionally protected Aboriginal and treaty rights
 - Aquaculture is a legitimate use of land, water and aquatic resources
 - Work with other federal departments and with provincial and territorial governments to coordinate policy development, integrate regulatory frameworks, and improve service delivery



BCARP Policy Framework

Sustainable Aquaculture Fisheries Framework (SAFF)

- SAFF ensures consistency with other fisheries and with overall DFO directions and policies
- Largely parallels the Sustainable Fisheries Framework (SFF), adapting SFF approaches to reflect aquaculture specificities (i.e. IMAP vs IFMP)
- Integrated Management of Aquaculture Plans (IMAPs) for Marine Finfish, Shellfish and Freshwater sectors & associated advisory processes (Aquaculture Management Advisory Committees AMACs) form one element of the SAFF.



IMAPs and AMACs

- Integrated Management of Aquaculture Plans (IMAPs) will follow a similar structure and process to Integrated Fisheries Management Plans (IFMPs)
- IMAPs will be developed on a coast wide basis with individual plans for marine finfish, shellfish, and freshwater/land-based aquaculture
- IMAPs will outline management direction and objectives, with input from Aquaculture Management Advisory Committees (AMACs)
- Aquaculture Management Advisory Committees (AMACs) are established for SF and MF and will follow a similar model to other fisheries advisory processes
- There will be three coast-wide committees: marine finfish, shellfish, and freshwater/land-based
- Committees will provide advice to DFO on development of Integrated Management of Aquaculture Plans
- Draft AMAC Structure: 7 industry licence holders, 7 First Nations, 2 Industry association representatives , 2 local government representatives, 3 ENGO seats not yet confirmed.



Aquaculture Licensing Process

- Aquaculture licence is required to “engage in aquaculture or prescribed activities”.
- Amendments to licences are required for:
 - Changes to cultured species
 - Changes to Infrastructure
 - Changes to Tenure/Culture area
 - Changes to Production
- New harmonized application and decision-making process developed between DFO, BC & TC for applications requiring 2 or more permits (i.e. BC Land Tenure, Aquaculture Licence and/or Navigable Waters Permit).



Harmonized Application Process

- DFO, TC and MFLNRO has developed a harmonized application form encompassing information necessary to apply for federal licensing under the *Pacific Aquaculture Regulations*, approval under the *Navigable Waters Protection Act* (NWPA), and Crown land tenure under the *BC Land Act*.
- In addition DFO, TC and MFLNRO have developed “harmonized” processes for receiving and processing applications, and for a coordinated, but independent, approach to decision-making.
- As applicable, the federal and provincial agencies will coordinate the review and assessment of applications, including government agency referral responses, First Nation consultation and corresponding records, and public comments.
- At the completion of the review process, each agency will make its own, independent decision under the relevant legislation.



Roles & Responsibilities

Fisheries and Oceans Canada	• Issues licences for marine and freshwater aquaculture, including hatcheries • Assesses modifications to existing aquaculture sites • Establishes conditions of licence to conserve and protect fish and fish habitat • Enforces new aquaculture regulations • Conducts aquaculture research programs • Reports publicly on environmental and regulatory performance of industry
Transport Canada	Transport Canada's Navigable Waters Protection Program (NWPP) is responsible for the administration of the <i>Navigable Waters Protection Act</i> and the Receiver of Wrecks Program
Canadian Food Inspection Agency	Agency has jurisdiction over animal health risks and plays an important role in minimizing and managing risk by protecting Canada's animals (including livestock, aquatic species and wildlife) from regulated diseases and from deliberate threats to the resource base. (e.g. NAAHP, etc.)
Provincial Government	Issuance of tenures for marine or freshwater environment • Regulates business aspects of aquaculture (e.g., workplace health and safety) • Reports on seafood exports



Harmonized Application Process





Aquaculture Licensing Process (Cont'd)

FrontCounter BC (FCBC)

Project Review Team (PRT)

DFO, BC, TC

Harmonized Licence/Permit Issuance

- ❖ FCBC receives applications for New Sites and Amendments.
- ❖ Complete applications forwarded to PRT

- ❖ PRT members from BC, TC and DFO.
- ❖ Reviews and forwards acceptable applications to each Gov. Dept. for review.
- ❖ Harmonized consultation & information sharing under development

- ❖ Each Organization completes review under *BC Land Act*, *Pacific Aquaculture Regulations* and/or *Navigable Waters Protection Act* as appropriate.

- ❖ If all decisions support licensing, then BC Tenure, DFO Aquaculture Licence and Nav. Water Permits are issued simultaneously



Aquaculture Licensing Process (DFO Review)

Aquaculture Licensing Decision Framework

Aquaculture Resource
Management (ARM) Review

Aquaculture
Environmental
Operations
(AEO) Review

Policy
Considerations

First Nation
Consultations

Fisheries Resource
Management
Considerations
(Commercial,
Aboriginal,
Recreational)

Other
Considerations
(CSSP)

Fish Health and
Environmental
Considerations



Aquaculture Licensing Process (DFO Review)

What are the file review considerations for amendments and new applications?

- Policy environment – is the application supported by approved policy or approaches?
- Stocks and conservation limits– are impacts to wild stock conservation likely?
- First Nations – are impacts on rights or asserted title likely? Are there any Treaty considerations?
- Other fishery users – are significant impacts to existing fisheries likely?
- Fish Habitat & Fish Health – are there environmental/fish health risks to mitigate (to ensure protection of fisheries)?
- Other special considerations – i.e. CSSP, Science, etc



Mechanisms for Public Input

(1) New Licence or Amendment Applications

- Input can be received through BC and/or TC public notices (information sharing protocols with DFO under development).

(2) IMAPS and AMACs

- The Integrated Management of Aquaculture Plans are currently being drafted
- New advisory structure confirmed, nominations complete and appointments made to the Aquaculture Management Advisory Committee
- First AMAC meeting for Marine Finfish and Shellfish have occurred
- AMAC meetings are public, and information about all meetings is available on the DFO consultations webpage:

<http://www.pac.dfo-mpo.gc.ca/consultation/aquaculture/index-eng.html>



Commitment to Reporting to the Public

- A key component of the British Columbia Aquaculture Regulatory Program (BCARP) is the provision of timely information and data on the environmental and operational performance of the aquaculture industry in B.C.
- Regular public reports on such things as fish health, sea lice levels, marine mammal interactions (seals, sea lions, etc.), incidental catch, benthic monitoring are posted to the DFO website. Information is provided by aquaculture facility operators as a requirement of conditions of licence.
- Public reporting allows British Columbians to have confidence in how the aquaculture industry operates and is regulated, and access to data allows for more informed decision-making for consumers.



Environmental Protection – Harmonized Application

- The Pacific Shellfish Aquaculture Application has a Fisheries Protection section, consisting of four questions aimed at encouraging the applicants to relocate/redesign their aquaculture facilities to avoid impacts to important or sensitive habitats that support fisheries.
- These include:
 - intertidal stream channels
 - eelgrass beds
 - fish spawning areas
 - SARA listed species (Endangered, Threatened, Species of Special Concern), residences or critical habitats
 - salt marsh
 - rocky reefs
 - kelp beds
 - Glass sponge (*Hexactinellidae*) and coral complexes
- Indicating an inability to avoid these habitats will trigger a comprehensive review of the application by Aquaculture Environmental Operations (AEO).



Environmental Protection – General Conditions of Licence

- General conditions of licence (COLs) apply to all Shellfish facilities licensed under PAR.
- These conditions can be found online on the DFO Pacific Region Webpage:
<http://www.pac.dfo-mpo.gc.ca/aquaculture/licence-permis/shell-coq-eng.html>
- The aquaculture licence and conditions of licence are designed to ensure the sustainable operation and development of shellfish aquaculture.
- A number of COLs specifically mitigate against potential negative environmental effects.



Environmental Protection – General COLs Continued

Section 3 : Facility Installation and Inspection

- Required at new sites or where alterations are authorized
- The licence holder shall ensure that site improvements, grow-out equipment and structures are capable of withstanding adverse weather conditions.
- The licence holder shall have the facility (other than intertidal growing area) inspected by a qualified individual who can confirm and attest that the facility design, equipment and anchoring systems are designed and installed in such a way and using such equipment as to be able to withstand the prevailing oceanographic and meteorological conditions of the licensed location.



Environmental Protection – General COLs Continued

Section 7: Escapes or Releases

- Precautions must be taken while transporting cultured fish, to prevent their escape or release.

Section 9: Predator Control

- All marine mammal accidental deaths or cases of entanglement must be reported
- Acoustical deterrents for marine mammals must not be used.
- Predator exclusion devices are to be constructed and installed to prevent entrapment and avoid potential injury to fish species or wildlife.
- Predator exclusion devices are to be maintained, inspected and repaired on a regular basis.



Environmental Protection – General COLs Continued

Section 10: Protection of Fish Habitat

- Contains COLs that mitigate against adverse impacts to fish habitat.:
 - Dredging, infilling or redistribution of native beach materials is prohibited, unless expressly approved by DFO as part of an application review process
 - The licence holder must not conduct harvest activities, or handle equipment that is covered with herring spawn through to the hatch of herring eggs.
 - The licence holder must not conduct activities in specific sand lance spawning substrates (sand) in upper intertidal (above 2.6 m) during spawning windows.



Environmental Protection – General COLs Continued

Section 10: Protection of Fish Habitat Continued

- The licence holder must not disturb squid spawn if present on equipment or structures.
- The licence holder must not conduct aquaculture activities in eelgrass beds and must avoid shading eelgrass beds, as well as other important fish habitats.
- The licence holder must operate machinery in a manner that is clean, leak-free and minimizes disturbance to the intertidal areas and other fish habitat.
- The licence holder must avoid locating moorings in important fish habitat, use clean materials, and shall minimize disturbance to submerged aquatic vegetation when securing mooring structures to the seabed. Mooring anchors must also be adequately sized to secure culture apparatus, floats and equipment and prevent the anchor from shifting or dragging along the seabed.



Environmental Protection – General COLs Continued

Section 10: Protection of Fish Habitat Continued

- The licence holder must not use native beach material (i.e. logs, sand, gravel, boulders) as mooring structures unless approved in application review process.
- “Styrofoam” used for floatation must be securely wrapped in an acceptable containment material. Any flotation material that is degrading or is otherwise no longer in use must be removed from the marine environment and disposed of at land-based facilities.
- The licence holder must ensure biofouling, fish mortalities and shell debris are disposed of within the licensed area in such a way that build-up on the seabed does not occur, or at an approved composting facility. Other refuse must be taken to a landfill or off-site for disposal as appropriate.



Environmental Protection – General COLs Continued

Section 10: Protection of Fish Habitat Continued

- The licence holder must prevent culture equipment from smothering or damaging marine life and/or habitat.
- The licence holder must not store any aquaculture gear, materials, equipment or debris in any intertidal zone or riparian vegetation, unless the gear is utilized in that location as part of the regular aquaculture activity that is approved for the licensed area.



Questions?

Attachment 2

Reserve lands (under the *Indian Act*) within the boundaries of the Islands Trust Area

Gabriola Island

Ma-Guala #6

Gabriola Island #5

Valdes Island

Lyackson #3

Shingle Point #4

Porlier Pass #5

Penelakut Island

Penelakut Island #7

Tent Island #8

Galiano Island

Galiano #9

Halalt Island

Halalt Island #1

Mayne Island

Mayne Island #5

Salt Spring

Fulford Harbour #5

Pender Island

Pender Island #8

Saturna Island

Saturna Island #7

Bare Island

Bare Island #9