



South Pender Island Local Trust Committee Special Meeting Agenda

Date: August 1, 2023
Time: 10:00 am
Location: Electronic Meeting

Pages

1. CALL TO ORDER
2. APPROVAL OF AGENDA
3. MINUTES
 - 3.1 Local Trust Committee Special Meeting Minutes of June 3, 2023 (for Adoption) 2 - 7
4. BUSINESS ITEMS
 - 4.1 SP-SUB-2021.1 – Staff Report (attached) 8 - 29
 - 4.2 SP-ALR-2023.1 (Bengert) – Staff Report (attached) 30 - 44
 - 4.3 SP-TUP-2023.1 (Bengert) - Staff Report (attached) 45 - 61
5. ADJOURNMENT

South Pender Island Local Trust Committee

Minutes of Special Meeting

Date: June 3, 2023
Location: South Pender Fire Hall
8961 Gowlland Point Road, South Pender Island, BC

Members Present: Tobi Elliott, Chair
Kristina Evans, Local Trustee
Dag Falck, Local Trustee

Staff Present: Kim Stockdill, Island Planner
Lisa Millard, Recorder

Others Present: There were approximately 20 members of the public present.

1. CALL TO ORDER

Chair Elliott called the meeting to order at 1:02 pm. She acknowledged that the meeting was held on the territory of the Coast Salish First Nations.

2. APPROVAL OF AGENDA

The following additions to the agenda were presented for consideration:

6. Add Closed Meeting
4. Change item 4.1 to the following:
Scheduling an Electronic Special Meeting for review of special items.
Re-number subsequent items on the Agenda.

By general consent, the agenda was adopted as amended.

3. MINUTES

3.1 Local Trust Committee Minutes Dated May 5, 2023 (for Adoption)

The following amendments to the minutes were presented for consideration:

On page 3 of the minutes, item 6, paragraph 6 change Dennis Henshaw to Dennis Perch.

On page 3 of the minutes, item 5, paragraph 1, second sentence remove words “and requested it be referred to the APC.”

By general consent, the South Pender Local Trust Committee meeting minutes of

May 5, 2023 were adopted as amended.

4. BUSINESS ITEMS

4.1 Scheduling an Electronic Special Meeting for review of special items.

Island Planner Stockdill noted the following:

- The Ministry of Transportation and Infrastructure (MOTI) plans to begin work on repairs to “the dip” by early September
- MOTI has requested to store materials on private property, which is located in the Agricultural Land Reserve (ALR)
- The storage of materials is not a permitted use in the ALR therefore permits will be required

SP-2023-026

It was Moved and Seconded,

that the South Pender Island Local Trust Committee request staff to schedule an electronic special meeting for the following applications: SP-TUP-2023.1 and SP-ALR-2023.1.

CARRIED

4.2 South Pender Bylaw No. 123 - Project Update

Island Planner Stockdill reviewed the Staff Report and highlighted the following:

- Proposed Bylaw 123 was sent to the Minister for approval in September, 2022
- Chair Elliott received a letter from the Minister noting that the Local Trust Committee (LTC) had sought early engagement with First Nations regarding the bylaw however there had been no reply, therefore the LTC should consider revisiting the matter with local First Nations for the purpose of engaging in meaningful discussion

Discussion ensued and Trustees noted that:

- The LTC has a standing resolution regarding engagement with First Nations
- Following a public hearing the LTC can not hear any further submissions from community members regarding a matter
- Both the reconciliation, and siting guidelines, aspects of the bylaw deserves further, and separate, discussion
- It is important to allow deep engagement and extended public process before moving bylaws through second and third readings

SP-2023-027

It was Moved and Seconded,

that the South Pender Island Local Trust Committee proceed no further with the Minor Official Community Project and Proposed Bylaw No. 123.

CARRIED

4.3 2023 – Work Program Discussion

Trustees reviewed the May 5, 2023 Staff Report which summarized comments received from community members at the March 25, 2023 Community Information meeting, which was held, in part, to generate ideas for new LTC projects.

Discussion ensued.

It was noted that a significant amount of correspondence had been received regarding Bylaw 122. It was also noted that quite a bit of correspondence was received in the seven days prior to the meeting and while that correspondence is reviewed by Trustees it is not included in the meeting package due to staff time limitations.

5. COMMUNITY INFORMATION MEETING

5.1 Future Projects Discussion

It was clarified that the purpose of the meeting is to determine, with community input, what the next minor project will be.

Members of the public made the following comments:

- Bylaw 122 should be rescinded or altered. It has had the effect of making many properties legal non-conforming which has the potential to affect property insurance, restrict enjoyment of property, and the bylaw assumes community members will not be environmentally responsible
- Reconciliation activities should be the next minor project. The Ministry has provided funding to move forward with First Nations engagement and relationship building and there are resources available and a framework which allows the LTC to do so.
- Bylaw 122 should be re-visited as the resulting building setbacks caused significant community contention
- Bylaw 122 should be rescinded and Bylaw 114 reinstated. It took two LTC terms, engagement with focus groups, and multiple hearings to reach an accord on Bylaw 114 and then incoming Trustees opened it up and changed it. The speaker would also like to see further engagement with First Nations
- Bylaw 122 should be rescinded. The bylaw attempted to address housing shortages by restricting short term vacation rentals (STVRs), but the bylaw has not had an impact on housing. Accommodations options are in demand and the LTC should not regulate how people use their home. There are also issues with the bylaw in relation to water storage and waterfront setbacks
- Bylaw 122 should be rescinded. House size maximums and building footprints should be re-discussed
- Bylaw 122 should be rescinded. It resulted in many homes becoming legally non-conforming
- Bylaw 122 should not be rescinded. There have not been issues with people getting variances since it has passed and re-opening it will create further divisiveness. The LTC should focus on forest management and water

- Bylaw 122 should be rescinded. It has resulted in community members feeling that their homes are legal non-conforming which can affect home values and resale prices. The entire Islands Trust policy needs to look at First Nations reconciliation, and not just within the policies of South Pender Island
- First Nations reconciliation and engagement needs to be driven by Islands Trust policy, but there are also local issues that the community needs to be involved with
 - Trustee Falck noted that a Trust Policy statement is presently being worked on and will be available for public review in approximately six months
- Bylaw 122 should not be rescinded. There are misperceptions and division within the community. There were specific steps taken to ensure that existing housing would not be considered legal non-conforming. Efforts were made to safeguard land coverage during a population surge, and new larger homes that are too close to property lines can negatively impact neighbors. Instead of rescinding the bylaw during a housing crisis, consideration should be given to finding a mechanism to look at housing sizes tied to options such as secondary suites
- Bylaw 122 needs to be rescinded or discussed at length. The bylaw could affect inheritances as well as a community member's ability to rebuild their home if it were destroyed by fire. Freedom of choice is being affected
- Bylaw 122 should be revisited. The specific one size fits all setback, and water, regulations do not make sense for every property. Decisions should be made on an objective, science based, view and a case-by-case basis for what is appropriate for a particular lot
- Bylaw 122 should be rescinded. The community discussion regarding the bylaw was incomplete and rushed, in part due to COVID gathering restrictions. Bylaw 122 makes existing houses legal non-conforming. Each insurance underwriter is going to evaluate and look at it differently
 - The Chair requested the Planner clarify the conforming versus non-conforming issue. The Planner stated that if a Bylaw is amended then use and siting are protected under the Local Government Act. The previous LTC took a step further by including a clause that a house can be rebuilt in the exact location, at the same size as previous, even if this is not conforming to current land use bylaw
- Bylaw 122 needs to be revisited. Bylaw 114 went through a six-year period of discussion and focus groups which resulted in stringent building restrictions. Bylaw 114 should not have been re-opened
- There needs to be consideration of how Bylaw 122 affects community members that bought property when the previous bylaw was in place but who have not built yet
- Bylaw 122 should not be rescinded. There are many people who believe that the bylaw has merit, but they are disengaged with the discussion. There is a mechanism in place for community members to get approval for non-compliant plans and there needs to be a process put in place to better communicate and explain the bylaw
 - Trustee Falck noted that the meeting is being held to discuss work projects, and if community members are indicating that rescinding Bylaw 122 is a priority then they are giving voice to what they want the next work project to be. Everyone had the opportunity to attend and state what they want the priority to be

- Bylaw 122 should not be rescinded. There should be further engagement to help community members understand the bylaw. There is pressure to build larger homes and new buyers often want to build larger homes. Discussion should focus on guidelines to encourage water conservation and use of solar power
- We are living on unceded First Nations territory where there are historic and treaty rights, and the community needs to be welcoming to the presence of First Nations peoples. The community has responsibility to protect the health of the shoreline and focus should be on increasing awareness of First Nations historic presence and improving relationships. The Trustees need to bring the community together, in a safe environment, to clarify the issues and work together to find solutions
- Bylaw 122 should not be rescinded. Further discussion is needed and if the community is not involved then there is not opportunity to change. If there is opportunity for discussion, and effort made within a group to talk about the issues, then it will be easier for everyone to relate to other's concerns
- Bylaw 122 needs to be the minor project. It was designed for a one size fits all process that is not working. The development variance permit process takes time and costs money, and one should be allowed to build a larger house. It is not a solution to say a community member can be allowed to build a larger house only if part of the house is a solution to the housing crisis. This forces the homeowner to become a landlord
- The community needs to understand what protections are already in place and how to respect the land for themselves and for others
- Since Bylaw 122 was put in place there have only been two applications made for a development variance permit. This does not mean that the bylaw has not caused any problems but rather there have not been any problems yet
- Bylaw 122 should be rescinded and Bylaw 114 reinstated. We were not presented with data or technical reasons for the changes in Bylaw 122
- Bylaw 122 should be discussed. Bylaw 114 was not ideal, and Bylaw 122 is not the path forward either. Further discussion and workshops would be welcome, and Trustees need to find a community consensus
- Bylaw 122 should be revisited but not rescinded. A lot of work was done with compromises made, and further analysis and dialogue is needed to identify the problems and create solutions to fix them

The Trustees thanked everyone for providing their input and discussion ensued.

SP-2023-028

It was Moved and Seconded,

that the South Pender Local Trust Committee repeal Bylaw 122.

CARRIED

SP-2023-029

It was Moved and Seconded,

that the minor project for the South Pender Local Trust Committee is to conduct further community engagement on the 2021 Land Use Bylaw Amendments Project and the staff be requested to prepare a report with options for the next Local Trust Committee meeting in September 2023.

CARRIED

6. CLOSED MEETING

6.1 Motion to Close the Meeting

SP-2023-030

It was Moved and Seconded,

That the meeting be closed to the public in accordance with the Community Charter, Part 4, Division 3 s. 90(1) (m) for the purpose of considering a matter that, under another enactment, is such that the public may be excluded from the meeting."

CARRIED

Chair Elliott recessed the regular meeting at 4:35 pm.

6.2 Recall to Order

Chair Elliott reconvened the regular meeting at 5:13pm

6.3 Rise and Report

Nothing to rise and report, discussion only.

7. ADJOURNMENT

By general consent the meeting was adjourned at 5:14 pm.

Tobi Elliott, Chair

Certified Correct:

Lisa Millard, Recorder

DATE OF MEETING: August 1, 2023

TO: South Pender Island Local Trust Committee

FROM: Kim Stockdill, Island Planner
Southern Team

COPY: Robert Kojima, Regional Planning Manager

SUBJECT: Resolution to sign Section 219 covenants
Applicant: Airey Group
Location: 8790 Gowlland Road

RECOMMENDATION

1. That the South Pender Island Local Trust Committee accept the covenants under Section 219 of the *Land Title Act* from the registered owners of 8970 Gowlland Point Road and designate the Chair of the South Pender Island Local Trust Committee to sign the covenants for SP-SUB-2021.1.

REPORT SUMMARY

The purpose of the report is to provide the South Pender Island Local Trust Committee (LTC) with the two Section 219 covenants required as a condition of the subdivision application. A resolution is required to authorize the Chair of the South Pender LTC to sign the two covenants.

BACKGROUND

The subject property is 8.04 hectare (19.8 acres) in area and is split zoned Rural Residential 2 (RR2) and Agriculture (A). The property owners brought forward a subdivision application that would create:

- Strata Lot 1 - 2.02 hectares, zoned RR2, very small northern area located in Agricultural Land Reserve (ALR).
- Strata Lot 2 – 2.06 hectares, zoned RR2, very small northern area located in ALR.
- Remainder Common Property – 3.8 ha, zoned A, and primarily located in the ALR. The existing driveway bisecting the ALR land will become a strata access way to access Strata Lot 1 and Strata Lot 2.

An application for subdivision was received by the Islands Trust and staff have provided comments and conditions to the Ministry of Transportation and Infrastructure (SP-SUB-2021.1). As a portion of the property is located within the ALR, the applicant applied to the Agricultural Land Commission (ALC) for subdivision and non-farm use (strata road). The LTC passed the following resolution on May 6, 2022 in support of sending the applications to the ALC:

“SP-2022-024

that the South Pender Island Local Trust Committee supports applications

SP-ALR-2021.1 and SP-ALR-2022.1 (Airey Group) for subdivision and non-farm use within the Agricultural Land Reserve and directs staff to forward the application to the Agricultural Land Commission for further

Z:\09 Current Planning\11 SP\3435 SUB\20 Referrals (P)\2021\SP-SUB-2021.1 (Airey Homes Inc)\06 Staff Reports\SP-LTC-2023-08-01_SP-SUB-2021.1_Covenant-Signature-Request.docx

consideration and to include the following comments: that the Local Trust Committee supports the application because it reduces overall density and protects the agricultural lands and capability for agriculture.

CARRIED

The ALC replied to the applicant granting the subdivision and non-farm use applications with conditions, one of those requesting a restrictive covenant to be registered to title.

Islands Trust Covenant

One of the conditions of the subdivision is for the applicant to grant registration of a Section 219 covenant complying with Section 2.6 and 8.3 of the South Pender Island Land Use Bylaw (LUB). A Section 219 covenant is a charge secured against a property title in favour of the land use authority (the LTC) to impose a positive or negative obligation on the property owner, as per the provisions of Section 219 of the *Land Title Act*.

Subsection 8.3(3) of the LUB requires the registration of a covenant to prohibit the further subdivision of the common property, the construction of any dwelling or cottage on the common property, and the disposition of the common property separately from the strata lots.

The Islands Trust's Section 219 covenant template was provided to the applicant's legal council – Attachment No. 1. Staff reviewed the covenant and the next step is for the Chair to sign the document. The Chair of the LTC can only be authorized to sign a covenant by resolution from the LTC.

ALC Covenant

As a condition of subdivision within the ALR, the ALC requests a restrictive covenant on the access road to ensure unimpeded use of the road by any future agricultural operator on the property, to prohibit impermeable surfaces on the access road, and to prohibit fill per Section 36 of the ALC Use Regulation. The ALC also requires a restrictive covenant prohibiting dwellings on the common property parcel. The LTC is required to be a party of this covenant as the LTC is the legal land use authority (the authority to prohibit dwellings on the common property).

As the South Pender LTC is a grantee of the covenant, the LTC Chair's signature is required. The ALC covenant is Attachment No. 2.

Recommendation

Staff is recommending that the recommendations on page 1 be supported for the following reasons:

- Registering the two covenants will satisfy the conditions of the subdivision application, the ALC application, and also the regulations in the South Pender LUB.

ALTERNATIVES

1. Request further information

The LTC may request further information prior to making a decision. If selecting this alternative, the LTC should describe the specific information needed and the rationale for this request.

Recommended wording for the resolution is as follows:

That the South Pender Island Local Trust Committee request further information regarding..

Submitted By:	Kim Stockdill, Island Planner	July 25, 2023
Concurrence:	Robert Kojima, Regional Planning Manager	July 25, 2023

ATTACHMENTS

1. Common Property draft covenant
2. ALC draft covenant
3. ALC Decision – January 11, 2023

TERMS OF INSTRUMENT – PART 2

SECTION 219 COVENANT

This **COVENANT** dated for reference the _____ day of May, 2023.

BETWEEN:

**MARK OLIVER MACHE and
HORATIO CLAUDIO KEMENY**

(together the “Grantor”)

OF THE FIRST PART

AND:

SOUTH PENDER ISLAND LOCAL TRUST COMMITTEE
Incorporated under the *Islands Trust Act*, R.S.B.C. 1996, c. 239
Suite 200 – 1627 Fort Street
Victoria, B.C.
V8R 1H8

(the “Grantee”)

OF THE SECOND PART

W H E R E A S:

A. _____ The Grantor has the management and control of the common property of Strata Plan No. VIS _____ (the “Common Property”);

B. _____ Section 219 of the *Land Title Act* provides for the registration of a covenant of a negative or positive nature as a charge against title to land in favour of a local trust committee under the *Islands Trust Act*, providing that the land shall not be subdivided except as allowed by the covenant;

C. _____ The Grantor has agreed to grant to the Grantee the Section 219 Covenant contained in this Agreement over the Common Property.

THIS AGREEMENT is evidence that in consideration of payment of \$2.00 by the Grantee to the Grantor and other good and valuable consideration, the receipts of which is acknowledged by the Grantor, the Grantor covenants and agrees with the Grantee in accordance with Section 219 of the *Land Title Act* as follows:

1. **Limitations on Subdivision / Land Use by Dwelling Units** - The Common Property shall not be subdivided by any means including by subdivision plan, reference plan, strata plan or otherwise and no residential dwelling unit or cottage shall be constructed on the Common Property and the Common Property shall not be sold separately from the strata lots.
2. **Inspection** – The Grantee, its officers, employees and agents shall have access to the Common Property at all reasonable times, following reasonable notice to the Grantor, as may be necessary to ascertain compliance with this covenant.
3. **Use and Enjoyment** - No provision herein will prevent the Grantor from using the Common Property in a manner which does not interfere with the exercise by the Grantee of its rights hereunder.
4. **Effect of Covenant** – This covenant runs with the Common Property and is binding upon the owners of the Common Property from time to time and every reference to the Grantor includes the Grantor's successors in title. The Grantors and any subsequent owner shall not be liable for any breach of this covenant occurring after they have ceased to be an owner of the Common Property.
5. **No Liability In Tort** – The parties agree that this covenant creates only contractual obligations and obligations arising out of the nature of this document as a covenant under seal. The parties agree that no tort obligations or liabilities of any kind exist between the parties in connection with the performance of, or any default under or in respect of, this covenant. The intent of this section is to exclude tort liability under or in respect of, this covenant. The intent of this section is to exclude tort liability of any kind and to limit the parties to their rights and remedies under the law of contract and under the law pertaining to covenants under seal.
6. **Indemnity** - The Grantor shall indemnify and save the Grantee harmless from all costs, damages or other loss resulting from any claim or proceedings arising from the granting or existence of this covenant or resulting from any breach of this covenant. The Grantor's obligations under this section 6 shall survive any discharge of this covenant and any transfer of title to the Common Property, in respect of events first arising prior to the discharge or transfer.
7. **Bylaw to the Contrary** - This covenant shall restrict use of the Common Property in the manner provided herein notwithstanding any right or permission to the contrary contained in any bylaw of the Grantee.
8. **No Public Law Duty** – Where the Grantee is required or permitted by this covenant to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the Grantor agrees that the Grantee is under no public law duty of fairness or natural justice in that regard and agrees that the Grantee may do any of those things in the same manner as if it were a private party and not a public body.

9. **Runs with the Common Property** - Every obligation and covenant of the Grantor in this covenant constitutes both a contractual obligation and a covenant granted under Section 219 of the *Land Title Act* in respect of the Common Property and this covenant burdens the Common Property and runs with it and binds the successors in title to the Common Property. This covenant burdens and charges all of the Common Property and any parcel into which the Common Property are consolidated (including by removal of interior parcel boundaries) and shall be extended, at the Grantor's cost, to burden and charge any land consolidated with the Common Property.
10. **Notice** – Any notice under this covenant shall be in writing and shall be sufficient if delivered to the recipient's address set out above, or to such other address as either party may provide to the other from time to time, or in the case of any owner subsequent to the Grantor, to the address of such owner according to the Land Title Office records in respect of the Common Property.
11. **Waiver** – An alleged waiver of any breach of this covenant is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this covenant does not operate as a waiver of any other breach of this covenant.
12. **Severance** – If any part of this covenant is held to be invalid, illegal or unenforceable by a court having the jurisdiction to do so, that part is to be considered to have been severed from the rest of this covenant and the rest of this covenant remains in force unaffected by that holding or by the severance of that part.
13. **Enurement** – This covenant binds the parties to it and their respective successors, heirs, executors and administrators.
14. **Further Assurances** – The parties hereto shall execute and do all such further deeds, acts, things and assurances that may be reasonably required to carry out the intent of this covenant.
15. **Time** – Time is of the essence of this covenant.
16. **Execution** – By executing and delivering this Agreement each of the parties intends to create both a contract and a deed executed and delivered under seal.

IN WITNESS whereof the parties hereto have, by their respective executions of Part 1 of this Instrument, executed this Instrument as of the first day and year appearing in Item 8 of the Form C and Form D comprising Part 1 of this Instrument.

This is the instrument creating the condition or covenant entered into under s.219 of the *Land Title Act* required by the Approving Officer for the subdivision under Plan EPP_____.

Approving Officer

Name

END OF DOCUMENT

TERMS OF INSTRUMENT – PART 2

COVENANT - SECTION 219 OF THE LAND TITLE ACT

THIS AGREEMENT made the _____ day of May, 2023

BETWEEN:

MARK OLIVER MACHE
of Lot 1, 8970 Gowlland Point Road
South Pender Island, BC V0N 2M3

And

HORATIO CLAUDIO KEMENY
of Lot 2, 8970 Gowlland Point Road
South Pender Island, BC V0N 2M3

(together the “**Covenantor**”)

OF THE FIRST PART

AND:

AGRICULTURAL LAND COMMISSION,
a corporation governed by the Agricultural Land Commission Act
(British Columbia) with an office at:
Unit 201 – 4940 Canada Way, Burnaby, BC V5G 4K6

(the “**ALC**”)

OF THE SECOND PART

AND:

SOUTH PENDER ISLAND LOCAL TRUST COMMITTEE
Incorporated under the *Islands Trust Act*, R.S.B.C. 1996, c. 239
Suite 200 – 1627 Fort Street
Victoria, BC V8R 1H8

(the “**South Pender LTC**”)

OF THE THIRD PART

WHEREAS:

- A. The Covenantor is the registered owner of the land (the “**Lands**”) legally described at Part 2 of the Land Title Act Form C - General Instrument attached to and forming part of this Agreement.
- B. By Resolution #17/2023, a copy of which is appended as Schedule “A”, the ALC has agreed to permit the Covenantor, subject to certain conditions including the registration of this Agreement against title to the Lands, and the Covenantor’s agreement to create strata parcels of 2.0 ha, 2.1 ha

and 3.7 ha and to use an existing 0.18 ha road for access.

- C. Section 22(1) of the Agricultural Land Commission Act (British Columbia) provides that the ALC may enter into a covenant under the Land Title Act (British Columbia) with an owner of agricultural land.
- D. The Owner has agreed to enter into this Section 219 Covenant (the “**Agreement**”) with the South Pender LTC and the ALC as a condition of the ALC approving the Lot A Subdivision, and to provide notice to any user or purchaser of the Lands of the Decision and the conditions contained therein and herein.
- E. Section 219 of the Land Title Act, R.S.B.C. 1996, Chapter 250, provides, inter alia, that there may be registered as a charge against the title to land a covenant in favour of a Crown corporation or agency or South Pender LTC, as covenantee, whether of a negative or positive nature, in respect of the use of the land of the use of a building on the land or that the land is not to be built on except in accordance with the covenant, which covenant is binding on the covenantor and the covenantor’s successors in title even if the covenant is not annexed to the land owned by the covenantee.

NOW THEREFORE THIS AGREEMENT WITNESSETH THAT pursuant to Section 219 of the Land Title Act, and in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration now paid by the ALC to the Covenantor (the receipt and sufficiency whereof is hereby acknowledged), the parties hereto covenant and agree that the Lands shall not be used or built on except in accordance with this Covenant as follows:

- 1. **Covenantor Covenants.** The Covenantor covenants and agrees with the ALC as follows:
 - (a) to ensure unimpeded use of the road by any future by any future agricultural operator on the Lands;
 - (b) to prohibit impermeable surfaces on the access road and prohibited fill pursuant to Section 36 of the Agricultural Land Commission Use Regulation;
 - (c) that no residential dwelling unit or cottage shall be constructed on the Lands;
 - (d) the Owner shall from time to time on request promptly provide to the ALC and the South Pender LTC a sworn declaration affirming that the Owner is in compliance with this Covenant and the Decision and affirming any other matters related to this Covenant and the Decision as may be requested by the ALC and/or the South Pender LTC, all at the Owner’s sole expense.
- 2. **Indemnity** – The Covenantor and each of its heirs, executors, administrators, successors and assigns hereby releases, and shall jointly and severally indemnify and save harmless, the ALC and the **South Pender** and each of their respective elected officials, appointed officials, officers, employees, contractors, agents, consultants and licensees from and against any and all claims, demands, actions, causes of action, suits, liabilities, demands, losses, damages, expenses (including legal fees and disbursements on a solicitor-client basis), charges, fines and penalties suffered or incurred by the ALC or **South Pender** or any of their respective elected officials, appointed officials, officers, employees, contractors, consultants and agents in any way arising or resulting from, or related to, the subject matter of this Agreement, the presence, occupation, construction, maintenance, demolition or removal of any Residential Structure (including the New Principal Residence) on the Lands, the existence of this Agreement, the restrictions contained herein and any breach of the Covenantor’s covenants and obligations under this Agreement. This provision shall survive the release, expiration or sooner termination of this Agreement.

General

3. **Covenantor Contact Information** – For the purposes of enabling the ALC to provide notice by telephone or email, the Covenantor will provide a telephone number and email address for such purposes promptly upon request by the ALC, and will provide the ALC with any changes to that number or email address promptly on and when such number or email address may change from time to time.
4. **Runs With Land** – This Agreement burdens and runs with, and binds the successors in title to, the Lands and each and every part into which the Lands may be subdivided by any means.
5. **Specific Relief** – Because of the public interest in ensuring that all of the matters described in this Agreement are complied with, the public interest strongly favours the award of a prohibitory or mandatory injunction, or an order for specific performance or other specific relief, by the Supreme Court of British Columbia at the request of the ALC, in the event of an actual or threatened breach of any of the Covenantor's covenants or obligations under this Agreement.
6. **No Effect on Powers** – This Agreement does not:
 - (a) affect or limit the discretion, rights or powers of the ALC in any way whatsoever, including under any enactment or at common law, including in relation to the use or subdivision of the Land;
 - (b) affect or limit any enactment, including any enactment relating to the use or subdivision of the Land; or
 - (c) relieve the Covenantor from complying with any enactment, including in relation to the use or subdivision of the Lands or in respect of the resolution of the ALC which this Agreement relates.
7. **No Public Law Duty** – Where the ALC or any representative of the ALC is required or permitted under this Agreement to form an opinion, exercise a discretion, express satisfaction, make a determination or give its consent, the ALC or its representative, as the case may be, is under no public law duty of fairness or natural justice in that regard and the ALC or its representative may do any of those things in the same manner as if it were a private party and not a public body or a representative thereof.
8. **No Obligation To Enforce** – The rights given to the ALC under this Agreement are permissive only and nothing in this Agreement imposes any legal duty of any kind on the

ALC to anyone, or obliges the ALC to enforce this Agreement, to perform any act or to incur any expense in respect of this Agreement.
9. **Covenantor's Expense** – The Covenantor shall be solely responsible for all costs of complying with and performing its obligations under this Agreement. Where this Agreement permits the ALC to do something at the Covenantor's expense, the Covenantor will reimburse the ALC for its costs of doing so within 30 calendar days of receipt of an invoice from the ALC.
10. **Waiver** – A waiver of any breach of this Agreement is effective only if it is an express waiver in writing of the breach in respect of which the waiver is asserted. A waiver of a breach of this Agreement does not operate as a waiver of any other breach or continuing breach of this Agreement. No amendment or discharge of this Agreement shall be binding on the ALC unless such amendment or discharge is in writing and duly executed by the ALC. Nothing herein provided for shall be

deemed to constitute satisfaction or a waiver of any other requirement with which the Covenantor would otherwise be obligated to comply with including other agreements with respect to the subject matter of this Agreement.

11. **Priority** – The Covenantor shall, at its expense, promptly do or cause to be done all acts necessary to register this Agreement in the land title office against title to the Lands with priority over all financial charges, liens and encumbrances registered, or pending registration, at the time of application for registration of this Agreement against the title to the Land.
12. **Time of Essence** – Time is of the essence of this Agreement.
13. **Further Assurances** – The Covenantor shall from time to time and at all times upon every reasonable request from the ALC and at the cost of the Covenantor do and execute or cause to be made, done or executed all such further and other lawful acts, deeds, things, devices, conveyances and assurances in law whatsoever for the better assuring unto the ALC of the rights granted under this Agreement.
14. **No Vesting of Fee** – No part of the title in fee simple to the soil shall pass to or be vest in the ALC under or by virtue of this Agreement.
15. **Joint and Several Liability** – Where the Covenantor is at any time comprised of more than one person, all of the Covenantor’s obligations under this Agreement shall be construed as being several as well as joint.
16. **Covenants and Agreements** – All covenants and agreements of the Covenantor under this Agreement shall be construed as covenants and agreements as though the words importing covenants and agreements were used in each provision, and the Covenantor agrees that each are personal contractual obligations as well as having been made pursuant to Section 219 of the Land Titles Act (British Columbia).
17. **Severance** - If any part of this Agreement is for any reason held to be invalid, illegal or unenforceable by a decision of a court with the jurisdiction to do so, the invalid, illegal or unenforceable part shall be considered severed from the rest of this Agreement to the extent of such invalidity, illegality or unenforceability, and the decision that it is invalid, illegal or unenforceable shall not affect the validity of the remainder of this Agreement.
18. **Interpretation** - In this Agreement:
 - (a) reference to the singular includes reference to the plural, and vice versa, unless the context requires otherwise;
 - (b) article and section headings have been inserted for ease of reference only and are not to be used in interpreting this Agreement;
 - (c) the term “enactment” has the meaning given to it under the Interpretation Act (British Columbia) on the reference date of this Agreement;
 - (d) reference to any enactment includes any regulations, orders or directives made under the authority of that enactment;
 - (e) reference to any enactment (including, for clarity, any bylaw) is a reference to that enactment as consolidated, revised, amended, re-enacted or replaced from time to time,

unless otherwise expressly provided;

- (f) reference to a particular numbered section or article, or to a particular lettered Schedule, is a reference to the correspondingly numbered or lettered article, section or Schedule of this and any Schedules to this Agreement form part of this Agreement; and
 - (g) where the word "including" is followed by a list (which list may comprise only one item), the contents of the list are not intended to circumscribe the generality of the expression preceding the word "including", and where the word "or" is used, it shall be read and interpreted as "and/or".
19. **Governing Law** – This Agreement shall be governed by and construed in accordance with the laws of the Province of British Columbia, which shall be deemed to be the proper law hereof.
20. **Enurement** – This Agreement and each and every provision hereof shall enure to the benefit of and be binding upon the parties hereto and their respective permitted heirs, executors, administrators, successors and assigns, as the case may be.

As evidence of their agreement to be bound by this Agreement, the parties have executed the Land Title Act Form C - General Instrument attached to and forming part of this Agreement.

END OF DOCUMENT



Agricultural Land Commission
201 – 4940 Canada Way
Burnaby, British Columbia V5G 4K6
Tel: 604 660-7000
Fax: 604 660-7033
www.alc.gov.bc.ca

January 11, 2023

ALC File: 63121

Taylor Johnson
Airey Homes Inc.
DELIVERED ELECTRONICALLY

Dear Taylor Johnson:

Re: Reasons for Decision - ALC Application 63121

Please find attached the Reasons for Decision of the Island Panel for the above noted application (Resolution #17/2023). As agent, it is your responsibility to notify the applicants accordingly.

Please note that the submission of a \$150 administrative fee may be required for the administration, processing, preparation, review, execution, filing or registration of documents required as a condition of the attached Decision in accordance with s. 11(2)(b) of the ALR General Regulation.

Under section 33.1 of the *Agricultural Land Commission Act* (“ALCA”), the Chair of the Agricultural Land Commission (the “Commission”) has 60 days to review this decision and determine if it should be reconsidered by the Executive Committee in accordance with the ALCA. You will be notified in writing if the Chair directs the reconsideration of this decision. The Commission therefore advises that you consider this 60 day review period prior to acting upon this decision.

Under section 33 of the ALCA, a person affected by a decision (e.g. the applicant) may submit a request for reconsideration. A request to reconsider must now meet the following criteria:

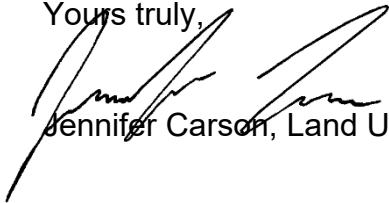
1. No previous request by an affected person has been made, and
2. The request provides either:
 - a. Evidence that was not available at the time of the original decision that has become available, and that could not have been available at the time of the original decision had the applicant exercised due diligence, or
 - b. Evidence that all or part of the original decision was based on evidence that was in error or was false.

The time limit for requesting reconsideration of a decision is one year from the date of the decision’s release, as per [ALC Policy P-08: Request for Reconsideration](#).

Please refer to the ALC's [Information Bulletin 08 – Request for Reconsideration](#) for more information.

Please direct further correspondence with respect to this application to
ALC.Island@gov.bc.ca.

Yours truly,



Jennifer Carson, Land Use Planner

Enclosures: Reasons for Decision (Resolution #17/2023)
Schedule A: Decision Map
Schedule B: Covenant Template

cc: Islands Trust (File SP-ALR-2022.1) Attention: Kim Stockdill

63121d1



**AGRICULTURAL LAND COMMISSION FILE 63121
REASONS FOR DECISION OF THE ISLAND PANEL**

Subdivision Application Submitted Under s.21(2) of the Agricultural Land Commission
Act

Applicants: Mark Mache
Horatio Kemeny

Agent: Taylor Johnson (Airey Homes Inc.)

Property: Parcel Identifier: 005-802-938
Legal Description: Lot 1, Section 20, Pender
Island, Cowichan District, Plan 7022, Except
that part thereof lying to the east of a boundary
parallel to and perpendicularly distant 200 feet
from the easterly boundary of said lot
Civic: Gowlland Point Road, Pender Island, BC
Area: 8.05 ha (3.93 ha within the ALR)

Panel: Linda Michaluk, Island Panel Chair
Jennifer Woike

OVERVIEW

- [1] The Property is located partially within the Agricultural Land Reserve ("ALR") as defined in s. 1 of the *Agricultural Land Commission Act* ("ALCA").
- [2] The Applicants are applying to the Agricultural Land Commission (the "Commission" or "ALC") under s. 21(2) of the ALCA to create strata parcels of 2.0 ha, 2.1 ha and 3.7 ha and to use an existing 0.18 ha road for access (the "Proposal"). The proposed 2.0 ha and 2.1 ha parcels are completely outside the ALR, whereas the proposed 3.7 ha common lot and the proposed access are within the ALR.
- [3] The Proposal was considered in the context of the purposes and priorities of the Commission set out in s. 6 of the ALCA:

6 (1) The following are the purposes of the commission:

- (a) to preserve the agricultural land reserve;
 - (b) to encourage farming of land within the agricultural land reserve in collaboration with other communities of interest; and,
 - (c) to encourage local governments, first nations, the government and its agents to enable and accommodate farm use of land within the agricultural land reserve and uses compatible with agriculture in their plans, bylaws and policies.
- (2) The commission, to fulfill its purposes under subsection (1), must give priority to protecting and enhancing all of the following in exercising its powers and performing its duties under this Act:
- (a) the size, integrity and continuity of the land base of the agricultural land reserve;
 - (b) the use of the agricultural land reserve for farm use.

EVIDENTIARY RECORD

[4] The Proposal, along with related documentation from the Applicants, Agent, local government, and Commission is collectively referred to as the “Application”. All documentation in the Application was disclosed to the Agent in advance of this decision. While all the information was reviewed and discussed, this decision only discusses the pertinent documents provided which helped form the decision.

BACKGROUND

[5] In 1981, the Commission refused an exclusion application (ALC Application 13440) on the Property but instead allowed an eleven parcel strata subdivision (Resolution #1860/81). In 2006, the Commission accepted a revised 14-parcel subdivision as the Commission found it to be in substantial compliance with Resolution #1860/81. In 2007, the Commission accepted a second revised plan for a seven-parcel subdivision in lieu of the 1981 and 2007 subdivision plans.

[6] In 2012, the Commission approved a strata subdivision proposed (ALC Application 52708) to create four strata lots on 4.1 ha, with 3.9 ha as the common property due to the existing approval on the Property. The approval was conditional on the subdivision being completed within three years of the decision, and agreement to rescind the previous subdivision approvals granted on the Property (Resolution #366/2012). The 2012 subdivision was not completed.

[7] The Applicants are proposing a strata subdivision and access road for estate planning purposes. There are currently two residences on the Property, situated outside the ALR. The Agent also submits that there are currently no farming activities on the Property and that there is no way to access the residential/non-ALR

portion of the Property without going through the ALR on the existing driveway. The Agent explains that the existing driveway allows for maximum available grazing land to be preserved and that any relocation would bisect this grazing area or require significant re-grading and tree removal. The ALR portion of the Property contains a barn and accessory structures. The Agent explains that the Applicants have offered to register a covenant on the ALR portion of the Property to restrict dwellings.

[8] At its meeting of May 6, 2022, the Islands Trust Board authorized the application to proceed to the ALC and asked that the Applicants also provide a restriction on further subdivision of the Rural Residential Lots in the covenant they proposed to restrict residences on the ALR portion of the Property.

[9] Islands Trust Staff indicate that options for access to the residential/ non-ALR portion of the Property are limited due to steep topography.

ANALYSIS AND FINDINGS

[10] The Proposal was considered in the context of the purposes and priorities of the Commission set out in s. 6 of the ALCA. As such, the Panel considered whether the subdivision layout of the Proposal would have less impact on the ALR and the agricultural use of the Property than the existing four, eleven and fourteen lot configurations currently approved through previous applications to the Commission.

[11] The Panel discussed the existing approvals and finds that the current Proposal would have the least impact on the ALR portion of the Property as it would contain the ALR within one common strata parcel and would result in better preservation of ALR land as more land would be available for agriculture. The Panel notes that the Applicants offered to register a covenant on the proposed strata common parcel

which would prohibit dwellings and make it easier to farm the proposed strata common lot. The Panel encourages the Applicants to contact the Ministry of Agriculture and Food or other programs such as the Young Agrarians land matching program, which could allow the ALR common strata parcel to be used for agriculture through leases.

[12] The Panel also notes that the current access road bisects the Property and has arable areas on either side. Although the access road is only for use by the proposed strata lots, the Panel is concerned that formalizing the existing access road could negatively impact the continuity of the proposed common parcel for agricultural use. The Panel notes the need for continued and unimpeded access on the road for farm related activities, such as vehicle and animal/livestock crossing, and does not support widening or impermeable surfacing of the road.

[13] The Panel discussed the most effective legal mechanism that would ensure road widening and resurfacing does not occur and finds that should the Applicant agree to register a restrictive covenant with provisions appropriate to address the Panel's concerns, the access road will not significantly impact the ALR land on either side or prevent the Property from being used for agricultural production.

[14] The Application indicates no fill (including gravel or sand) is required for registering the proposed access road on the proposed strata common parcel. The Panel notes that should any material be required, a Notice of Intent for Soil and Fill may be required before any removal or placement of material on the Property can commence.

DECISION

[1] For the reasons given above, the Panel approves the Proposal to create strata parcels of 2.0 ha, 2.1 ha and 3.7 ha and to use an existing 0.18 ha road for access subject to the following conditions:

- a. Written confirmation from the Applicants rescinding the previous approvals granted under Resolution #1860/81 and Resolution #366/2012;
- b. No additional roads or trails be constructed on the proposed strata common parcel;
- c. Prior to, or concurrently with submission of a final surveyed subdivision plan for approval by the Commission, the Applicant shall submit to the Commission for its review and execution for deposit with the Registrar of Land Titles, the following restrictive covenants:
 - i. Restrictive covenant on the access road to:
 - Ensure unimpeded use of the road by any future agricultural operator on the Property. The road dedication shall be registered against the applicable strata lands wherein the ALR lands are the dominant tenement, and the strata lands the servient tenement.
 - Prohibit impermeable surfaces on the access road and prohibited fill per Section 36 of the ALC Use Regulation.
 - ii. Restrictive covenant to prohibiting dwellings on the common strata parcel.
- d. Submission to the Commission of a final surveyed subdivision plan signed by a Registered BC Land Surveyor, showing the proposed strata subdivision and road access, within three years of the date of the release of this decision and that is in compliance with Schedule A of this decision.

- [15] When the Commission confirms that all conditions have been met, it will authorize the Registrar of Land Titles to accept registration of the subdivision plan and covenants.
- [16] Should the above conditions of approval not be completed to the satisfaction of the ALC within the timeframe(s) specified, the approval will expire and a new application may be required.
- [17] This decision does not relieve the owner or occupier of the responsibility to comply with applicable Acts, regulations, bylaws of the local government, and decisions and orders of any person or body having jurisdiction over the land under an enactment.
- [18] These are the unanimous reasons of the Panel.
- [19] A decision of the Panel is a decision of the Commission pursuant to s. 11.1(3) of the ALCA.

- [20] Resolution #17/2023
Released on January 11, 2023

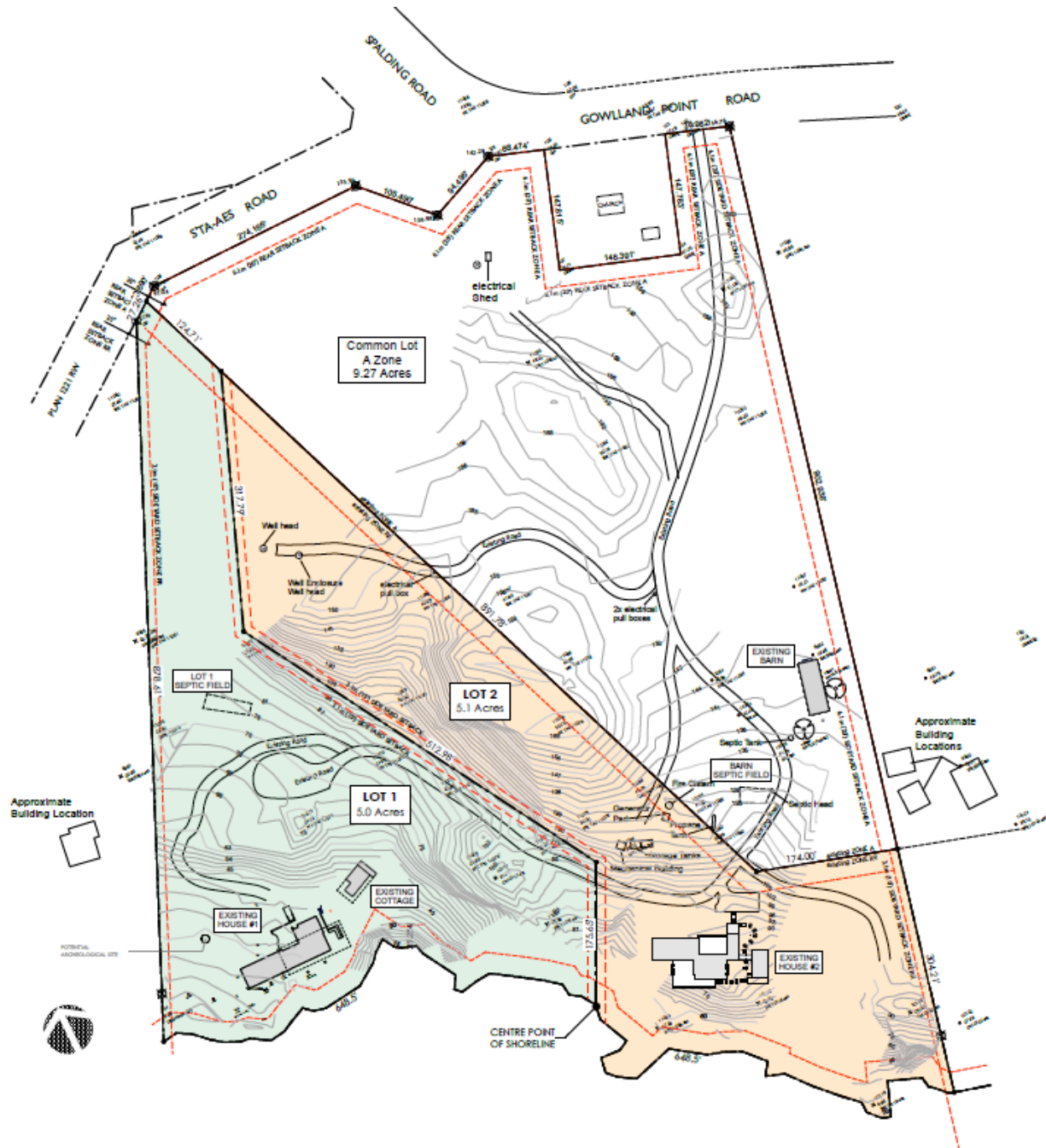
A handwritten signature in black ink, appearing to read "Linda Michaluk", is written over a horizontal line.

Linda Michaluk, Panel Chair

On behalf of the Island Panel



Schedule A: Agricultural Land Commission Decision Sketch Plan
ALC File 63121 (Mache)
Conditionally Approved Subdivision
ALC Resolution #17/2023



File No.: SP-ALR-2023.1
x-ref: SP-TUP-2023.1

DATE OF MEETING: August 1, 2023
TO: South Pender Island Local Trust Committee
FROM: Charly Caproff, Planner 1
Southern Team
COPY: Robert Kojima, Regional Planning Manager
SUBJECT: Non-Farm Use: SP-ALR-2023.1
Applicant: Chad Bengert
Location: 9861 Spalding Road

RECOMMENDATION

1. That the South Pender Island Local Trust Committee supports application SP-ALR-2023.1 (Bengert) and requests staff to forward the application to the Agricultural Land Commission (ALC) for further consideration

REPORT SUMMARY

The purpose of this report is to consider a non-farm use on a property within the Agricultural Land Reserve (ALR). Approval is required from the Agricultural Land Commission (ALC) to allow a non-farm use on the property. This application is in conjunction with SP-TUP-2023.1 to allow for storage of up to 4000 tonnes of aggregate rock in a 0.38 ha (0.94 ac) temporary use permit (TUP) area.

The above recommendation for the issuance of the TUP is supported as:

- there is a plan in place to restore the property to existing conditions;
- no aggregate processing or sorting will occur as part of the application;
- justification for the proposed activities occurring on ALR land has been provided by the applicant and owner; and
- the proposed use supports a highway flood recovery project

BACKGROUND

The property is located at 9861 Spalding road and is 19.07 ha (47.12 ac) in area. The proposed area for the non-farm use is 0.38 ha (0.94 ac). The property owner has offered their land to the Ministry of Transportation and Infrastructure (MOTI) to store aggregate material from Canal Road on South Pender Island. The site was chosen due to its proximity to the road works and because it is relatively flat. As per the ALC application form, alternative sites had been proposed but there are no other known properties in South Pender that could accommodate the volume of aggregate material. Areas within the Ministry of Transportation and Infrastructure (MOTI) right of way (ROW) are not suitable due to steep slopes or are located in area that are not easily accessible. No imported fill will be required for the non-adhering use. The property currently produces hay (900 bales per year) as a commercial crop. Agricultural improvements made to the property include tilling, levelling, and seeding several acres of field for hay production and future livestock pasture. The owner has been improving site drainage through

re-contouring and installation of sub-surface drains. The total area of arable land has been increased with removal of roads throughout the property and creation of fields for forage crop and pasture. To ensure the land is returned to its existing state following the non-farm use, the deposit area (Figure 2) would be stripped of top soil and then replaced and regraded once the project is complete. According to the owner, the deposit area would be regraded and restored to existing conditions, supporting agriculture in the short and long term following project completion (Attachment 4). Staff contacted the owner by phone on June 14, 2023 to confirm that the proposed activity will not decrease agricultural production on the property and the owner's rationale is also included as Attachment 3.

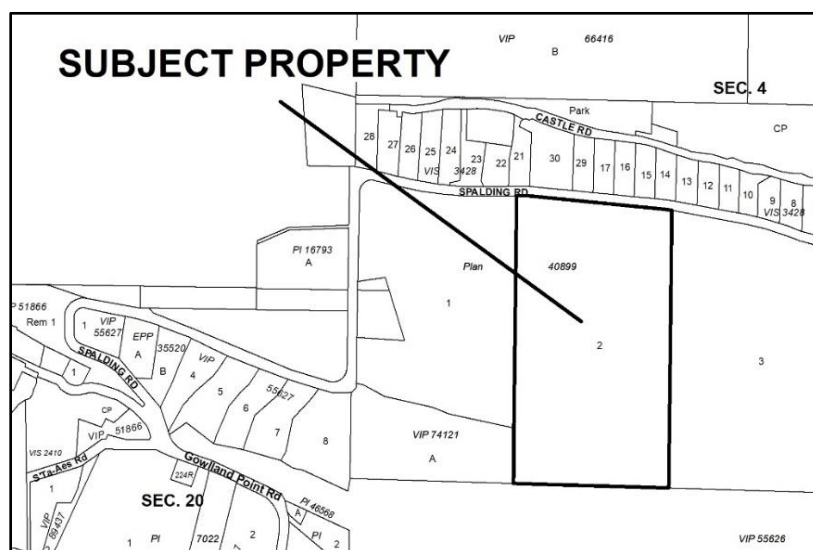


Fig. 1 – Subject Property



Fig. 2 – TUP Area

ANALYSIS

Policy/Regulatory

Islands Trust Policy Statement:

Relevant ITPS sections:

- 4.1.2** Trust Council shall consult with the Ministry of Agriculture, Fisheries and Food and the British Columbia Land Reserve Commission to request that agriculture policies applied to the Trust Area are appropriate to the nature of agriculture within the Trust Area, including, but not limited to, the smaller island scale of agricultural activities.
- 4.1.4** Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the identification and preservation of agricultural land for current and future use.
- 4.1.6** Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the use of adjacent properties to minimize any adverse effects on agricultural land.

Official Community Plan:

The property is designated Agriculture – A and Forest Land Use and Development – F in the South Pender Official Community Plan Bylaw No. 107, 2011. The deposit area (Figure 2) is sited within the Agriculture designated area of the property. The Agricultural Objectives include:

- a) to protect lands having characteristics suitable for agriculture.
- b) to support the use and development of agricultural lands for mixed agricultural activities and practices that do not compromise the land for future farm use, create conflicts with other adjacent land uses, or impair the island's water supplies.
- c) To enhance the viability of agricultural activity on the island.
- d) To increase local food security and sustainable agriculture, including community gardens and local land trusts where possible and appropriate.

As described previously, the intent is to return the property to its existing state once the temporary use is completed and according to the owner, the selected site is not optimal for agriculture use due to drainage issues.

Land Use Bylaw:

The property is zoned Agriculture – A and Forestry – F in the South Pender Land Use Bylaw No. 114, 2016. The deposit area is sited within the Agriculture – A zoned area of the property. The proposed use is not permitted under the land use regulations and therefore a TUP (SP-TUP-2023.1) is being sought, in conjunction with this application.

Islands Trust Conservancy:

There are no ITC covenants or nature reserves on or adjacent to the property. The application does not have any direct conflicts with ITC policy.

Issues and Opportunities

Potential issues with the application include:

- impacts to ALR land due to storage of aggregate rock;
- decrease in agricultural productivity due to the storage of aggregate rock; and
- noise and dust from the proposed activity

The site chosen will be returned to its existing condition as described in the Background section of this report. The owner has indicated that this use will not impact agricultural activity on the property. As mentioned the owner has made considerable improvements to the property to increase agricultural productivity, the access route is relatively close to Spalding Road (91.4 m from the road when the property is approximately 600 m in depth) and utilizes an existing roadway. The applicant confirms that the hours of operation will comply with CRD bylaws and environmental mitigations as per their Construction Environmental Management Plan (see SP-TUP-2023.1 TUP checklist for additional information).

CONSULTATION

First Nations

Staff have conducted desktop review that indicates there is archaeological potential on the property and an archaeological site in proximity to the property. Therefore, land owners should request archaeological site information from the BC Archaeology Branch and be guided by the Islands Trust Chance Find Protocol.

Rationale for Recommendation

The recommendation on page one (1) is supported as:

- measures are in place to ensure that the project has minimal impact on the land and to neighbours;
- the impacts to agricultural production on the property are negligible according to the owner; and
- the proposed use supports a highway flood recovery project

ALTERNATIVES

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

1. Deny the application

The LTC may deny the application. As this application is related to SP-TUP-2023.1, that application would also be denied. Recommended wording for the resolution is as follows:

That the South Pender Island Local Trust Committee deny application SP-ALR-2023.1

NEXT STEPS

- Staff will forward the LTC’s decision to the ALC. If supported by the LTC, then the application would be submitted to the ALC for deliberation. If this application is refused by the ALC, then it does not proceed further, nor does SP-TUP-2023.1. If this application is supported by the ALC, then both applications proceed.

Submitted By:	Charly Caproff, Planner 1	July 20, 2023
Concurrence:	Robert Kojima, Regional Planning Manager	July 21, 2023

ATTACHMENTS

1. Site Context

2. Maps, Plans, Photographs
3. Owner Rationale Letter
4. ALC Application

ATTACHMENT 1 – SITE CONTEXT

LOCATION

Legal Description	LOT 2, SECTIONS 2 AND 4, PENDER ISLAND, COWICHAN DISTRICT, PLAN 40899
PID	000-583-456
Civic Address	9861 Spalding Road

LAND USE

Current Land Use	Agriculture
Surrounding Land Use	Forestry, Residential, National Park

HISTORICAL ACTIVITY

File No.	Purpose
SP-BP-2012.1	Construction of a barn

POLICY/REGULATORY

Official Community Plan Designations	The property is designated Agriculture (A) and Forest Land Use Development (F) in the South Pender Island OCP No. 107, 2011
Land Use Bylaw	The property is zoned Agriculture (A) and Forestry (F) in the South Pender Island LUB No. 114, 2006
Other Regulations	N/A
Covenants	Restrictive covenant - 21521
Bylaw Enforcement	SP-BE-2015.1 - closed

SITE INFLUENCES

Islands Trust Conservancy	N/A
Regional Conservation Plan	Low ranking conservation priority.
Species at Risk	N/A
Sensitive Ecosystems	N/A
Hazard Areas	Moderate and low risk steep slope at southern (rear) lot line
Archaeological Sites	Notwithstanding the foregoing, and by copy of this report, the owners and applicant should be aware that there is still a chance that the lot may contain previously unrecorded archaeological material that is protected under the <i>Heritage Conservation Act</i> . If such material is encountered during development, all work should cease and Archaeology Branch should be contacted immediately as a <i>Heritage Conservation Act</i> permit may be needed before further development is undertaken. This may involve the need to hire a qualified archaeologist to monitor the work.

Climate Change Adaptation and Mitigation	Minimal impact
Shoreline Classification	Not Applicable
Shoreline Data in TAPIS	N/A

2.3 SITE VISIT JUNE 14, 2023





ALR Permitting

I have owned and been developing my property as a farm for 13 years now and have developed skills, acquired equipment and made improvements with the primary goal of farming the property to help be beneficial to the farming community while integrating with and respecting the natural environment.

I am now able to focus on developing the farm as I have eliminated debts and am retiring from my day job as a contractor. I have at my disposal the equipment and skills to finish re-working my fields, fence and finish ponds for both agriculture and natural habitats. This will allow me to properly manage livestock which is presently boarded on other properties and continue to produce high quality forage for myself and other farmers on the Penders.

To the best of my ability in this letter I will address three questions requested by the Land Commission.

Improvements to date;

- I have tilled, levelled and seeded several acres of field for hay production and eventual pasture. In doing so I have gradually been improving drainage through re-contouring and installing sub-surface drains. Also I have erased 800' of road that existed on the property when I purchased my land to create a field for forage crop and pasture.
- I have developed a work area close the the main road that acts as equipment storage, repair area and for a hay barn. I have built an access road through the centre of the property for year round access to different areas of the farm. This is significant because of the wet nature of the valley through the winter months.

Present agricultural activities;

- Hay crop consisting of approximately 900 bales per year
- Annual meat bird production, this is limited to providing meat for participating neighbours.
- Also a garden and orchard shared with participating neighbours.

Non agricultural uses;

- I have activities typical of a developing farm including a non commercial portable sawmill and an area for stored recycled building materials for future farm related buildings.
- I have also been creating dug outs and artificial wetlands for enhanced natural habitats.

I have reasons for a willingness to accommodate the temporary rock storage on my property. Even though it will be temporarily disruptive it will have a net benefit for the greater community and I am hoping a small portion will be able to be left on my property to create dry ground for over wintering my livestock. I am also confident that the work stripping and replacing soil will be done in the most mindful way to limit the damage to soil structure and drainage. It may even and probably will be beneficial considering the poor drainage in the area chosen as a lay down area.

Sincerely,

Ron Henshaw



Provincial Agricultural Land Commission - Applicant Submission

Application ID: [REDACTED]

Application Status: N/A

Applicant: RONALD HENSHAW

Agent: Ministry of Transportation and Infrastructure

Local Government: Islands Trust Regional District

Local Government Date of Receipt: 05/15/2023

ALC Date of Receipt: This application has not been submitted to ALC yet.

Proposal Type: Non-Farm Use

Proposal: The purpose of this proposal is to utilize a significant area in order to store disposal materials from the Canal Rd Dip Slide project. Due to the Canal Rd bridge restrictions, we are forced to haul off South Pender Island. The project will be utilizing a landing area off of Boundary Passage Dr. and barging off material. We are required to store the necessary material so that hauling onto the barge can happen at high tides (~4 hour window). The majority of materials are blast rock from the project site, with over 15,000 m³ of rock to be removed, the storage of rock will be utilized in order to haul off in significant amounts (2000m³) at a time on the barge. The material would be hauled from the project site, to this storage facility, and then hauled to the barge once a significant amount can be hauled directly onto the barge at high-tide.

Other materials that are anticipated to be stored at this proposed location could include, timber, mulch, top-soil (to be reused at the project site) and removed asphalt. All of these materials would be hauled off-island and only stored temporarily (<10 months).

The proposed location would be stripped of topsoil and kept on-site, so that a clean surface would be utilized to store materials. At the end of the project, the area would be clean of debris and the topsoil previously stripped, would be reused and graded within the used storage area.

MoTI has been in contact with the property owner in early processes for storage of material and has provided significant help to move the project along.

Agent Information

Agent : Ministry of Transportation and Infrastructure

Parcel Information

Parcel(s) Under Application

1. **Ownership Type :** Fee Simple

Parcel Identifier : 000-583-456

Legal Description : LOT 2, SECTIONS 2 AND 4, PENDER ISLAND, COWICHAN DISTRICT,

Applicant: RONALD HENSHAW

PLAN 40899

Parcel Area : 19.1 ha

Civic Address : 9861 Spalding Rd

Date of Purchase : 04/22/2010

Farm Classification : Yes

Owners

1. **Name :** RONALD HENSHAW

Address :



Phone :

Email :



Current Use of Parcels Under Application

1. Quantify and describe in detail all agriculture that currently takes place on the parcel(s).

Hay crop consisting of approximately 900 bales per year

Annual meat bird production, this is limited to providing meat for participating neighbours.

Also a garden and orchard shared with participating neighbours.

2. Quantify and describe in detail all agricultural improvements made to the parcel(s).

I have tilled, levelled and seeded several acres of field for hay production and eventual pasture. In doing so I have gradually been improving drainage through re-contouring and installing sub-surface drains. Also I have erased 800 of road that existed on the property when I purchased my land to create a field for forage crop and pasture.

I have developed a work area close the the main road that acts as equipment storage, repair area and for a hay barn. I have built an access road through the centre of the property for year round access to different areas of the farm. This is significant because of the wet nature of the valley through the winter months.

3. Quantify and describe all non-agricultural uses that currently take place on the parcel(s).

I have activities typical of a developing farm including a non commercial portable sawmill and an area for stored recycled building materials for future farm related buildings.

I have also been creating dug outs and artificial wetlands for enhanced natural habitats.

Adjacent Land Uses

North

Land Use Type: Residential

Specify Activity : Residential housing

East

Land Use Type: Agricultural/Farm

Specify Activity : Farm and gardening

South

Land Use Type: Agricultural/Farm

Specify Activity : Farm and gardening

West

Land Use Type: Agricultural/Farm

Specify Activity : Farm and gardening

Proposal

1. How many hectares are proposed for non-farm use?

0.38 ha

2. What is the purpose of the proposal?

The purpose of this proposal is to utilize a significant area in order to store disposal materials from the Canal Rd Dip Slide project. Due to the Canal Rd bridge restrictions, we are forced to haul off South Pender Island. The project will be utilizing a landing area off of Boundary Passage Dr. and barging off material. We are required to store the necessary material so that hauling onto the barge can happen at high tides (~4 hour window). The majority of materials are blast rock from the project site, with over 15,000 m³ of rock to be removed, the storage of rock will be utilized in order to haul off in significant amounts (2000m³) at a time on the barge. The material would be hauled from the project site, to this storage facility, and then hauled to the barge once a significant amount can be hauled directly onto the barge at high-tide.

Other materials that are anticipated to be stored at this proposed location could include, timber, mulch, top-soil (to be reused at the project site) and removed asphalt. All of these materials would be hauled off-island and only stored temporarily (<10 months).

The proposed location would be stripped of topsoil and kept on-site, so that a clean surface would be utilized to store materials. At the end of the project, the area would be clean of debris and the topsoil previously stripped, would be reused and graded within the used storage area.

MoTI has been in contact with the property owner in early processes for storage of material and has provided significant help to move the project along.

3. Could this proposal be accommodated on lands outside of the ALR? Please justify why the proposal cannot be carried out on lands outside the ALR.

Other alternatives have been proposed, but no significant areas on South Pender Island could accommodate such a request. Areas within Ministry of Transportation and Infrastructure right of way would not be able to accommodate this storage due to steep slopes, or undeveloped areas that aren't easily accessible.

4. Does the proposal support agriculture in the short or long term? Please explain.

Yes, the temporary use of the site would be regraded and placed back to the land's original conditions with the same material that was stripped off. This would support agriculture in both the short or long term after the project is completed.

5. Do you need to import any fill to construct or conduct the proposed Non-farm use?

No

Applicant Attachments

- Agent Agreement - Ministry of Transportation and Infrastructure
- Proposal Sketch - 67834
- Other correspondence or file information - Letter from property owner
- Certificate of Title - 000-583-456

ALC Attachments

None.

Decisions

None.

File No.: SP-TUP-2023.1
x-ref: SP-ALR-2023.1

DATE OF MEETING: August 1, 2023
TO: South Pender Island Local Trust Committee
FROM: Charly Caproff, Planner 1
Southern Team
COPY: Robert Kojima, Regional Planning Manager
SUBJECT: Temporary Use Permit: SP-TUP-2023.1
Applicant: Chad Bengert
Location: 9861 Spalding Road

RECOMMENDATION

1. That the South Pender Island Local Trust Committee approve issuance of Temporary Use Permit SP-TUP-2023.1 (Bengert), subject to approval of the proposed non-farm use by the Agricultural Land Commission (ALC)

REPORT SUMMARY

The purpose of this report is to consider a temporary use permit (TUP) application for storage of up to 4000 tonnes of aggregate rock on the above noted property for the Canal Road Dip Slide highway flood recovery project.

The above recommendation for the issuance of the TUP is supported as:

- there is a plan in place to restore the property to existing conditions;
- no aggregate processing or sorting will occur as part of the application; and
- the proposed use supports a highway flood recovery project

BACKGROUND

The property is located at 9861 Spalding road and is 19.07 ha (47.12 ac) in area. The proposed TUP area is 0.38 ha (0.94 ac). The property owner has offered their land to the Ministry of Transportation and Infrastructure (MOTI) to store aggregate material from Canal Road on South Pender Island. The site was chosen due to its proximity to the road works and because it is relatively flat. According to the applicant, due to Canal Road Bridge weight restrictions, the material will be barged off the island and require hauling at high tides. The intent is to store up to 4000 tonnes of aggregate rock on the property, then to transfer the material onto a barge. The proposed use generally complies with TUP guidelines (Attachment 4). To ensure the land is returned to its existing state, the area would be stripped of top soil and then replaced and regraded once the project is complete. The property is within the Agricultural Land Reserve – therefore approval is required from the Agricultural Land Commission (ALC) for a non-farm use. There is a concurrent application, SP-ALR-2023.1 (Bengert), seeking LTC to request staff to forward the application to the ALC for further consideration. According to the owner the TUP area selected is poorly drained and therefore not optimal for agricultural production. Staff contacted the owner by phone on June 14, 2023 to confirm that the proposed activity will not decrease agricultural production on the property and the owner's rationale is also included as Attachment 3.

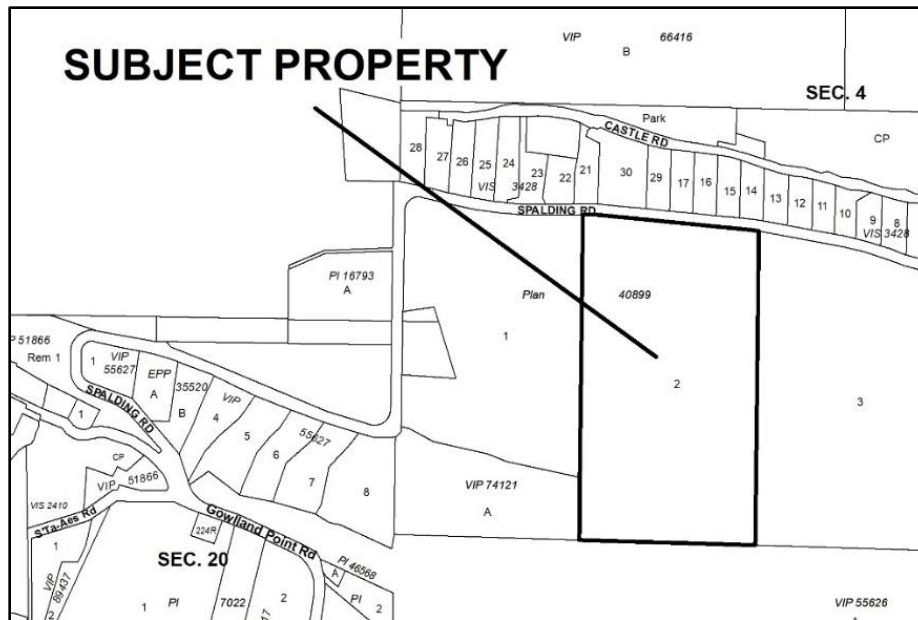


Fig. 1 – Subject Property

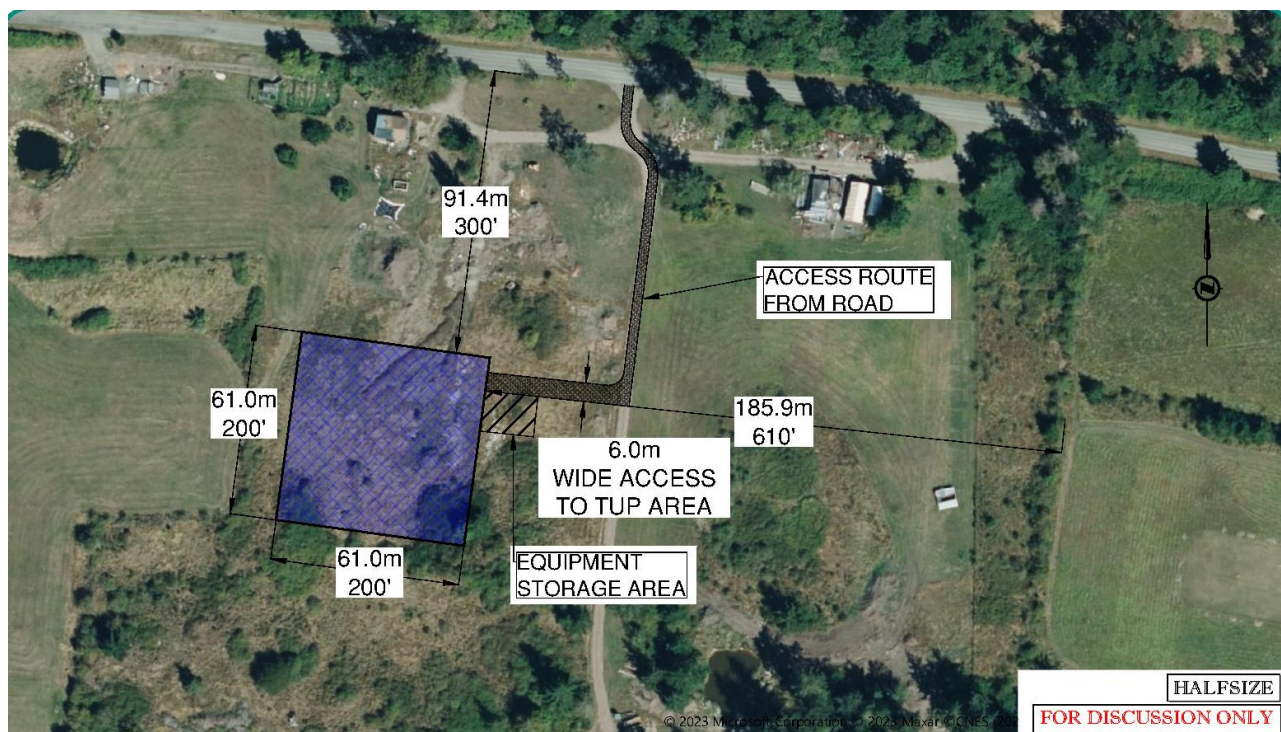


Fig. 2 – TUP Area

ANALYSIS

Policy/Regulatory

Islands Trust Policy Statement:

Relevant ITPS sections:

- 4.1.2** Trust Council shall consult with the Ministry of Agriculture, Fisheries and Food and the British Columbia Land Reserve Commission to request that agriculture policies applied to the Trust Area are appropriate to the nature of agriculture within the Trust Area, including, but not limited to, the smaller island scale of agricultural activities.
- 4.1.4** Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the identification and preservation of agricultural land for current and future use.
- 4.1.6** Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address the use of adjacent properties to minimize any adverse effects on agricultural land.

Official Community Plan:

The property is designated Agriculture – A and Forest Land Use and Development – F in the South Pender Official Community Plan Bylaw No. 107, 2011. The TUP area is sited within the Agriculture designated area of the property. The Agricultural Objectives include:

- a) to protect lands having characteristics suitable for agriculture.
- b) to support the use and development of agricultural lands for mixed agricultural activities and practices that do not compromise the land for future farm use, create conflicts with other adjacent land uses, or impair the island's water supplies.
- c) To enhance the viability of agricultural activity on the island.
- d) To increase local food security and sustainable agriculture, including community gardens and local land trusts where possible and appropriate.

As described previously, the intent is to return the property to its existing state once the temporary use is completed and as mentioned by the owner, the selected site is not optimal for agriculture use.

Land Use Bylaw:

The property is zoned Agriculture – A and Forestry – F in the South Pender Land Use Bylaw No. 114, 2016. The TUP area is sited within the Agriculture – A zoned area of the property. The proposed use is not permitted under the land use regulations and therefore a TUP is being sought.

Islands Trust Conservancy:

There are no ITC covenants or nature reserves on or adjacent to the property. The application does not have any direct conflicts with ITC policy.

Issues and Opportunities

Potential issues with the application include:

- impacts to ALR land due to storage of aggregate rock;
- decrease in agricultural productivity due to the storage of aggregate rock;
- construction delays resulting in more time than anticipated required for the proposed temporary use; and
- noise and dust from the proposed activity

The site chosen will be returned to its existing condition as described in the Background section of this report. The owner has indicated that this use will not impact agricultural activity on the property. Anticipating that the project may extend beyond one year, a three year TUP is proposed. The applicant confirms that the hours of operation

will comply with CRD bylaws and environmental mitigations as per their Construction Environmental Management Plan.

CONSULTATION

Circulation

TUP notices were circulated to surrounding property owners and residents on July 14, 2023. The notification period ends on July 25, 2023. The notice was published in the Driftwood on July 26, 2023. At the time of writing the report, one submission has been received regarding the proposed use. The writer states that they support the proposed use but would prefer that the hours of operation be reduced to 7 a.m. to 7 p.m. weekdays only. Any submissions received after the agenda is published will be sent to LTC prior to the August 1, 2023 meeting and will be raised by the planner at that meeting.

First Nations

Staff have conducted desktop review that indicates there is archaeological potential on the property and an archaeological site in proximity to the property. Therefore, land owners should request archaeological site information from the BC Archaeology Branch and be guided by the Islands Trust Chance Find Protocol.

Rationale for Recommendation

The recommendation on page one (1) is supported as:

- measures are in place to ensure that the project has minimal impact on the land and to neighbours;
- the impacts to agricultural production on the property are negligible according to the owner; and
- the proposed use supports a highway flood recovery project

ALTERNATIVES

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

1. Deny the application

The LTC may deny the application. As this application is in conjunction with SP-ALR-2023.1, staff would communicate the decision to the ALC in the referral response for SP-ALR-2023.1. Recommended wording for the resolution is as follows:

That the South Pender Island Local Trust Committee deny application SP-TUP-2023.1

NEXT STEPS

- This application is in conjunction with SP-ALR-2023.1. Staff will forward the LTC's decision to the ALC for SP-ALR-2023.1. If supported by the LTC, then the application would be submitted to the ALC for deliberation. Should the ALC approve the non-farm use, then SP-TUP-2023.1 would be issued. If the application is refused by the ALC, then it does not proceed further.

Submitted By:	Charly Caproff, Planner 1	July 20, 2023
Concurrence:	Robert Kojima, Regional Planning Manager	July 21, 2023

ATTACHMENTS

1. Site Context
2. Maps, Plans, Photographs
3. Owner Rationale Letter
4. TUP Guidelines
5. Notice
6. Temporary Use Permit SP-TUP-2023.1
7. Correspondence

ATTACHMENT 1 – SITE CONTEXT

LOCATION

Legal Description	LOT 2, SECTIONS 2 AND 4, PENDER ISLAND, COWICHAN DISTRICT, PLAN 40899
PID	000-583-456
Civic Address	9861 Spalding Road

LAND USE

Current Land Use	Agriculture
Surrounding Land Use	Forestry, Residential, National Park

HISTORICAL ACTIVITY

File No.	Purpose
SP-BP-2012.1	Construction of a barn

POLICY/REGULATORY

Official Community Plan Designations	The property is designated Agriculture (A) and Forest Land Use Development (F) in the South Pender Island OCP No. 107, 2011
Land Use Bylaw	The property is zoned Agriculture (A) and Forestry (F) in the South Pender Island LUB No. 114, 2006
Other Regulations	N/A
Covenants	Restrictive covenant - 21521
Bylaw Enforcement	SP-BE-2015.1 - closed

SITE INFLUENCES

Islands Trust Conservancy	N/A
Regional Conservation Plan	Low ranking conservation priority.
Species at Risk	N/A
Sensitive Ecosystems	N/A
Hazard Areas	Moderate and low risk steep slope at southern (rear) lot line
Archaeological Sites	Notwithstanding the foregoing, and by copy of this report, the owners and applicant should be aware that there is still a chance that the lot may contain previously unrecorded archaeological material that is protected under the <i>Heritage Conservation Act</i> . If such material is encountered during development, all work should cease and Archaeology Branch should be contacted immediately as a <i>Heritage Conservation Act</i> permit may be needed before further development is undertaken. This may involve the need to hire a qualified archaeologist to monitor the work.

Climate Change Adaptation and Mitigation	Minimal impact
Shoreline Classification	Not Applicable
Shoreline Data in TAPIS	N/A

ATTACHMENT 2 – MAPS, PLANS, DRAWINGS, PHOTOGRAPHS

2.1 AERIAL VIEW



2.2 SITE PLAN



Proposed TUP Area

2.3 SITE VISIT JUNE 14, 2023





ALR Permitting

I have owned and been developing my property as a farm for 13 years now and have developed skills, acquired equipment and made improvements with the primary goal of farming the property to help be beneficial to the farming community while integrating with and respecting the natural environment.

I am now able to focus on developing the farm as I have eliminated debts and am retiring from my day job as a contractor. I have at my disposal the equipment and skills to finish re-working my fields, fence and finish ponds for both agriculture and natural habitats. This will allow me to properly manage livestock which is presently boarded on other properties and continue to produce high quality forage for myself and other farmers on the Penders.

To the best of my ability in this letter I will address three questions requested by the Land Commission.

Improvements to date;

- I have tilled, levelled and seeded several acres of field for hay production and eventual pasture. In doing so I have gradually been improving drainage through re-contouring and installing sub-surface drains. Also I have erased 800' of road that existed on the property when I purchased my land to create a field for forage crop and pasture.
- I have developed a work area close the the main road that acts as equipment storage, repair area and for a hay barn. I have built an access road through the centre of the property for year round access to different areas of the farm. This is significant because of the wet nature of the valley through the winter months.

Present agricultural activities;

- Hay crop consisting of approximately 900 bales per year
- Annual meat bird production, this is limited to providing meat for participating neighbours.
- Also a garden and orchard shared with participating neighbours.

Non agricultural uses;

- I have activities typical of a developing farm including a non commercial portable sawmill and an area for stored recycled building materials for future farm related buildings.
- I have also been creating dug outs and artificial wetlands for enhanced natural habitats.

I have reasons for a willingness to accommodate the temporary rock storage on my property. Even though it will be temporarily disruptive it will have a net benefit for the greater community and I am hoping a small portion will be able to be left on my property to create dry ground for over wintering my livestock. I am also confident that the work stripping and replacing soil will be done in the most mindful way to limit the damage to soil structure and drainage. It may even and probably will be beneficial considering the poor drainage in the area chosen as a lay down area.

Sincerely,

Ron Henshaw

Attachment 4: TUP Checklist

SP-TUP-2023.1 (Bengert)
9861 Spalding Road

Guidelines	Comments
3.9.2 Aggregate Resource Policies	
a) The Local Trust Committee will support the Islands Trust policy “that there should be no extraction of aggregate from the foreshore or the sea floor of the Trust Area”.	No processing or sorting on site. The TUP Area will store disposal materials from the Canal Road Dip Slide project.
b) Aggregate processing is to be considered an industrial use of land for the purposes of this OCP. Historically aggregates have been available regionally, and no provision for the processing of aggregate resources as a permitted use is to be made within a regulatory bylaw implementing this OCP. In circumstances where a need for on-island aggregate processing occurs, consideration may be given to permitting it through a temporary use permit rather than a bylaw amendment to this OCP. As a condition of a temporary use permit, the LTC will require the land to be restored to its former condition by re-grading to approximate natural contours and by re-establishing the natural vegetation of its surroundings.	No aggregate processing proposed.
Advocacy Policies	
c) The relevant provincial ministry or agency is requested to require the landowner to restore the land to its former condition by re-grading to approximate natural contours and by re-establishing the natural vegetation of its surroundings when issuing permits.	Applicant response: <i>The site will be stripped of topsoil before storage of material begins and will be regraded with that topsoil at the end of the material storage use/project.</i>
d) The practice by the relevant provincial ministry or agency of referring permit applications made under the Mines Act for extraction of aggregate resources within the Island Trust Area is to be supported, as it allows opportunity for comment by the South Pender Island Local Trust Committee prior to permit issuance.	N/A
8.2 Temporary Use Permit Policies	
8.2.1 The Local Trust Committee may issue temporary use permits for any area covered by this OCP.	
8.2.2 The Local Trust Committee may consider requiring development information for temporary use permit applications through adoption of a development approval information bylaw.	
8.2.3 In order to determine whether the proposed temporary use would cause ongoing and undue disturbance to adjacent lands and the land on which it is to be conducted, the Local Trust Committee is to consider the following items when evaluating applications for temporary	a) characteristics inherent to the proposed use, eg, noise; <i>Contractor must abide by environmental mitigations as per their Construction Environmental Management Plan for the main project and the material storage site.</i>

Attachment 4: TUP Checklist

Guidelines	Comments
use permits: a) characteristics inherent to the proposed use, eg, noise; b) intended operational schedule and activity level, including daily hours of operation, number of days per week, and the extent or scale of activities on the site; c) adequacy of site access and off-street parking, water supply and sewage disposal arrangements; d) effect on groundwater supplies or other environmentally sensitive features and whether it would pose problems in providing adequate fire protection service; e) effect on the island's emergency and protective services; f) the climate change impacts of any significant change in use; and g) adequacy of plans for return of the site to a state resembling its condition prior to the use being undertaken or to an alternate state as agreed to by the Local Trust Committee.	b) intended operational schedule and activity level, including daily hours of operation, number of days per week, and the extent or scale of activities on the site; <i>Construction hours of operation will be in compliance with <u>CRD Bylaw No. 3378</u></i> c) adequacy of site access and off-street parking, water supply and sewage disposal arrangements; <i>Complies, see site plan for reference</i> d) effect on groundwater supplies or other environmentally sensitive features and whether it would pose problems in providing adequate fire protection service; <i>Contractor must abide by environmental mitigations as per their Construction Environmental Management Plan for the main project and the material storage site.</i> e) effect on the island's emergency and protective services; <i>This application is to provide storage for disposal materials from the Canal Road Dip Slide highway flood recovery project.</i> f) the climate change impacts of any significant change in use; and g) adequacy of plans for return of the site to a state resembling its condition prior to the use being undertaken or to an alternate state as agreed to by the Local Trust Committee. <i>The site will be stripped of topsoil before storage of material begins and will be regraded with that stripped topsoil at the end of the material storage use/project.</i>
8.2.4 In issuing a temporary use permit, the LTC should specify conditions under which the use may be carried on that would mitigate any impacts of the use, including restoration of land upon completion of the permit.	Included in the draft permit.
8.2.5 A bond or other security acceptable to the Local Trust Committee should be posted as a means to ensure compliance with proposed permit conditions and a funding source in the event of any incomplete site restoration or rehabilitation.	RPM determined not required, conditions included in draft TUP



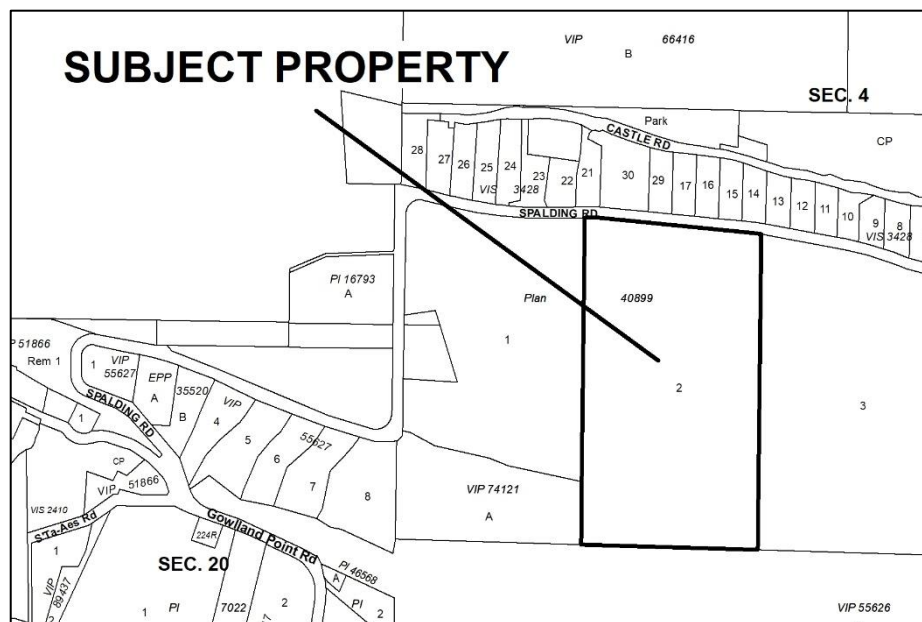
NOTICE
SP-TUP-2023.1
SOUTH PENDER ISLAND LOCAL TRUST COMMITTEE

NOTICE is hereby given pursuant to Section 494 of the *Local Government Act* that the South Pender Island Local Trust Committee (LTC) will be considering a resolution allowing for the issuance of a Temporary Use Permit. The proposed permit would apply to LOT 2, SECTIONS 2 AND 4, PENDER ISLAND, COWICHAN DISTRICT, PLAN 40899 (PID: 000-583-456). This property is located at 9861 Spalding Road, South Pender Island.

The purpose of the temporary use permit is to allow for storage and transfer of aggregate rock material.

The establishment of these uses would be subject to the conditions specified in the attached proposed permit. The permit would be issued for three (3) years and the owner may apply to the LTC to have it renewed once for an additional three (3) years.

The general location of the subject property is shown on the following sketch:



A copy of the proposed permit may be inspected at the Islands Trust Office, 200 - 1627 Fort Street, Victoria, B.C. V8R 1H8 between the hours of 8:30 a.m. to 4:30 p.m. Monday to Friday inclusive, excluding statutory holidays, commencing **July 14, 2023** and continuing up to and including **July 25, 2023**.

For the convenience of the public only, and not to satisfy Section 499 (2) (c) of the *Local Government Act*, additional copies of the Proposed Permit may be inspected at various Notice Boards on South Pender Island.

Enquiries or comments should be directed to Charly Caproff, Planner 1 at (250) 405-5172, for Toll Free Access, request a transfer via Enquiry BC: In Vancouver 660-2421 and elsewhere in BC 1-800-663-7867; or by fax (250) 405-5155; or by email to: southinfo@islandstrust.bc.ca before 4:30 p.m., **July 25, 2023**.

The South Pender Island Local Trust Committee may consider a resolution allowing for the issuance of the permit during the electronic special meeting starting at **10 a.m., August 1st, 2023**.

All applications are available for review by the public with prior appointment. Written comments made in response to this notice will also be available for public review.

Jas Chonk, Deputy Secretary



**SOUTH PENDER ISLAND LOCAL TRUST COMMITTEE
TEMPORARY USE PERMIT
SP-TUP-2023.1 (Bengert)**

9861 SPALDING ROAD

To: Ronald Henshaw
c/o Chad Bengert

1. This Permit applies to the land described below:

LOT 2, SECTIONS 2 AND 4, PENDER ISLAND, COWICHAN DISTRICT, PLAN 40899 (PID: 000-583-456).
2. This Permit is issued for the purpose of permitting the owner to conduct the following use on their property:
 - a) Aggregate storage and transfer for the Canal Road Dip Slide project.
3. The uses shall be carried on subject to the following conditions and specifications substantively consistent with Schedule 'A', attached to and forming part of this permit.
 - a) the storage area must be substantively consistent with the TUP Area shown on Schedule 'A', attached to and forming part of this permit;
 - b) the hours of operation are restricted to between the hours of 7 a.m. and 7 p.m., Monday to Friday and 8 a.m. to 7 p.m., Saturday to Sunday and on holidays;
 - c) the total volume aggregate rock stored at one time is limited to 4000 m³;
 - d) the storage of machinery in the TUP Area is limited as follows:
 - i. *One track hoe to offload material from rock trucks or tandems;*
 - e) the contractor must abide by environmental mitigation measures as per their Construction Environmental Management Plan (CEMP) for the material storage site;
 - f) the site must be restored to former condition by
 - i. *Stripping the topsoil prior to the storage of aggregate material*
 - ii. *Regrading with the stripped topsoil to the approximate natural contours at the conclusion of the temporary use.*
4. This permit is valid for three (3) years from date of issuance of the permit and upon expiry of the permit the owner of the site shall discontinue the temporary use to the satisfaction of the Islands Trust, or apply for a renewal of this permit.
5. This permit is not a building permit and does not remove any obligation on the part of the permittee to comply with all other requirements of "South Pender Land Use Bylaw No. 114, 2016" and to obtain other approvals necessary for completion of the proposed development, including approvals from the Capital Regional District, Island Health and Ministry of Transportation and Infrastructure.

AUTHORIZING RESOLUTION PASSED BY THE SOUTH PENDER LOCAL TRUST COMMITTEE THIS ##th DAY OF [MONTH], [YEAR].

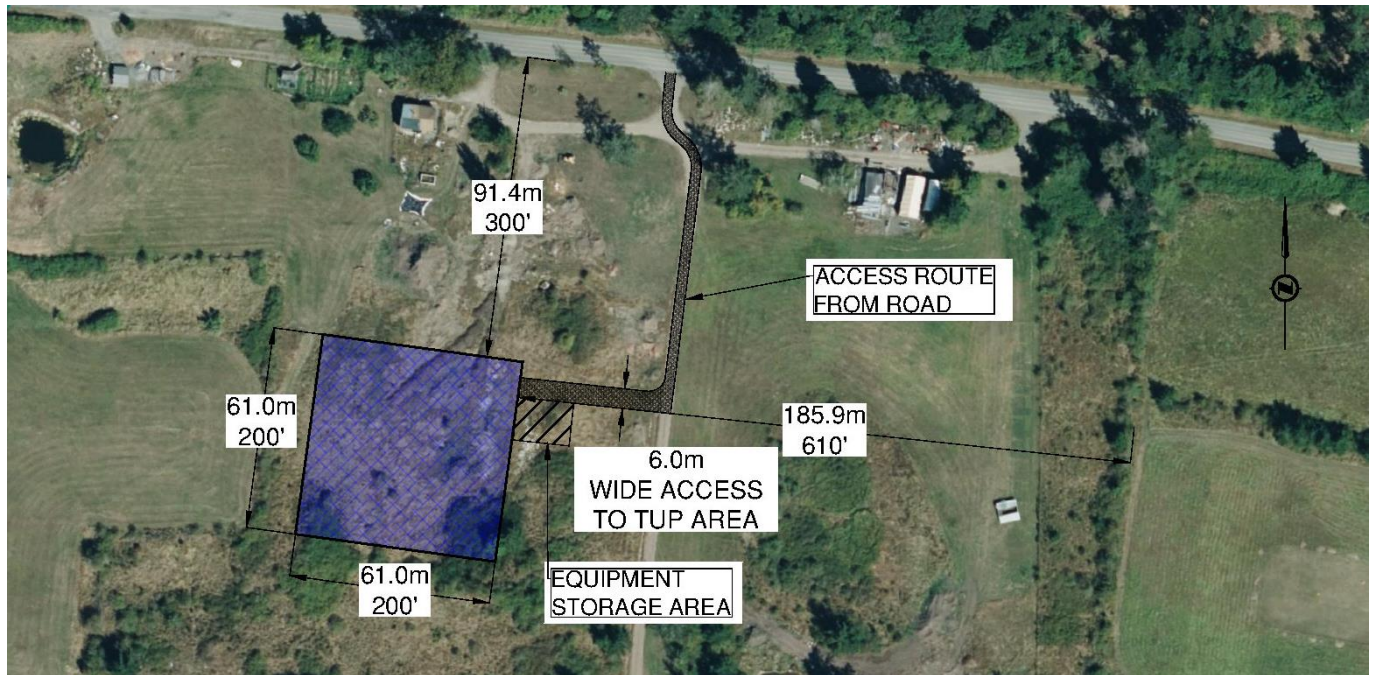
Deputy Secretary, Islands Trust

Date Issued

SOUTH PENDER ISLAND LOCAL TRUST COMMITTEE

SP-TUP-2023.1

SCHEDULE 'A'



From: Rebecca Eagen <[REDACTED]>
Sent: Tuesday, July 25, 2023 11:01 AM
To: SouthInfo <SouthInfo@islandstrust.bc.ca>
Subject: SP-TUP-2023.1

Dear SPI LTC,

I would like to comment on the above indicated temporary use permit, the allowance of which will be crucial for the repair of the dip on Canal Road.

While I appreciate, this repair is very necessary for our transportation infrastructure, I question whether a better balance could be achieved to minimize the impact for full-time residents. I note that item 3B of the permit application indicates that the hours of operation are all day, everyday, 7 days a week including weekends and holidays. The MOT website indicates that the projected duration for this project will be at least 3/4 of a year. Again, I appreciate that a project of this scope is a very complex orchestration of materials, labor, possible weather delays, combined with keeping the road open to traffic during construction all in a effort to stay on budget and provide a timely completion. However, I still feel that the projected all day every day hours of operation for 9 straight months as noted above, is perhaps too intensive and too disruptive to allow any normalcy at all for the full time residents of Canal or Spalding Road.

I would ask the LTC, if at all possible, to consider limiting the hours of operation to just 7 AM to 7 PM on weekdays only, if it results in timely and not excessively over budget completion of the dip repair.

Thank you,

Rebecca Eagen