



Thetis Island Local Trust Committee Regular Meeting Addendum

Date: October 11, 2016
Time: 9:30 am
Location: Thetis Island Community Centre (Forbes Hall)
North Cove Road, Thetis Island, BC

	Pages
10. APPLICATIONS AND REFERRALS	10:15 AM - 11:00 AM
10.3 TH-RZ-2016.1 (West Vancouver Yacht Club)	
10.3.1 <u>Staff Report Dated October 11, 2016</u>	2 - 33



STAFF REPORT

File No.: TH-RZ-2016.1 (West
Vancouver Yacht Club)

DATE OF MEETING: October 11, 2016
TO: Thetis Island Local Trust Committee
FROM: Marnie Eggen, Planner 2
Northern Office
SUBJECT: Application to Rezone Lands to Permit Breakwater Improvements
Applicant: West Vancouver Yacht Club
Location: Adjacent to Lot 88, Kendrick Island, Valdes Island

RECOMMENDATION

1. **THAT the Thetis Island Local Trust Committee request that the applicant provide a detailed archaeological impact assessment report, prepared by a Qualified Archaeologist who is a member in good standing with the BC Association of Professional Archaeologists, to assess the impact of the proposed breakwater on protected archaeological materials and make recommendations to mitigate any anticipated impacts.**
2. **THAT the Thetis Island Local Trust Committee request that the applicant invite Lyackson First Nation to elect members to accompany the Qualified Archaeologist on any field investigations for the purpose of preparing the archaeological impact assessment.**
3. **THAT the Thetis Island Local Trust Committee request that the applicant provide the following:**
 - a) **confirmation in writing that timing of construction of the breakwater will be consistent with the recommended construction windows as recommended in the letter dated September 9, 2016 by Madrone Environmental Services Ltd.;**
 - b) **a current copy of the Department of Fisheries and Oceans Permit authorizing construction of the proposed breakwater; and**
 - c) **a current copy of the Transport Canada Notice of Works for the proposed breakwater.**
4. **THAT the Thetis Island Local Trust Committee engage in discussion with Lyackson First Nation regarding its interests in Valdes Island and the Thetis Local Trust Area.**

REPORT SUMMARY

The purpose of this report is the following:

- Review agency and First Nations referral responses received to date regarding proposed Bylaw No. 101;
- Review the professional report provided by applicant regarding migratory and resident bird species; and
- Request direction from the Local Trust Committee (LTC) regarding next steps.

BACKGROUND

On July 26, 2016, the Thetis LTC passed the following resolutions:

TH-2016-048

That the Thetis Island Local Trust Committee Bylaw No. 101 cited as “Valdes Island Rural Land Use Bylaw, 1998, Amendment No. 2, 2016” be read a first time.

TH-2016-049

That the Thetis Island Local Trust Committee has reviewed the Islands Trust Policy Statement Directives Only Checklist and determined that Bylaw No. 101 cited as “Valdes Island Rural Land Use Bylaw, 1998, Amendment No. 2, 2016” is not contrary to or at variance with the Islands Trust Policy Statement.

TH-2016-050

That the Thetis Island Local Trust Committee request staff to refer Bylaw No. 101 cited as “Valdes Island Rural Land Use Bylaw, 1998, Amendment No. 2, 2016” to the following agencies and First Nations for comment:

Local Governments:

Cowichan Valley Regional District; Nanaimo Regional District

Local Trust Committees:

Gabriola Island Local Trust Committee; Galiano Island Local Trust Committee, Salt Spring Island Local Trust Committee;

Provincial Agencies:

Ministry of Environment, Parks; Ministry of Forests, Lands and Natural Resource Operations – Ecosystems; Ministry of Forests, Lands & Natural Resource Operations - Archaeology Site Inventory; School District #68 (Nanaimo-Ladysmith)

Federal Agencies:

Transport Canada; Environment Canada; Parks Canada;

First Nations (as determined from the Provincial Consultative Areas Database and in consultation with the Ministry of Community, Sport and Cultural Development):

Semiahmoo First Nation; Stz'uminus First Nation; Cowichan Tribes; Halalt First Nation; Lake Cowichan First Nation; Lyackson First Nation; Penelakut Tribe; Snuneymuxw First Nation; Hul'qumi'num Treaty Group.

TH-2016-051

That the Thetis Island Local Trust Committee request staff to refer Bylaw No. 101 cited as “Valdes Island Rural Land Use Bylaw, 1998, Amendment No. 2, 2016” to the Valdes Island Conservancy.

TH-2016-052

That the Thetis Island Local Trust Committee request the applicant to provide a report from Qualified Environmental Professional regarding appropriate times for construction that would not impact migratory and resident bird species.

ANALYSIS

Consultation:

The following are the referral responses received regarding Bylaw No. 101. Copies of referral responses received to date are attached. Staff recommend no changes to the bylaw as a result of the referral responses.

Cowichan Valley Regional District

Interests unaffected

Regional District of Nanaimo

Interests unaffected

Gabriola Local Trust Committee

To be considered by the Gabriola LTC at their October 13, 2016 business meeting.

Galiano Local Trust Committee

Interests unaffected and that the Protocol Agreement with the Lyackson First Nation be respected.

Salt Spring Local Trust Committee

Interests unaffected

Ministry of Forests, Lands and Natural Resource Operations – Ecosystems

Approval recommended subject to the applicant obtaining Crown tenure before construction of the breakwater and using clean rock for the breakwater. Staff note that the licence of occupation was issued August 2015.

Ministry of Forests, Lands and Natural Resource Operations – Archaeology Site Inventory

There are no known archaeological sites recorded in the area proposed for the breakwater; however, the land above the high tide does have high potential to contain previously unknown/unrecorded archaeological deposits. A permit is not required; however, the Branch suggests that prior to any land alterations, an archaeologist should review the proposed activities to determine whether the work may impact protected archaeological materials. If it is determined that there will be no impacts then a permit is not required.

Transport Canada

Recommend approval subject to applicant submitting their Notice of Works application.

Cowichan Tribes

Defer to Lyackson First Nation.

Lyackson First Nation

Staff met with the new referral coordinator on September 8, 2016 who continued to relay Lyackson First Nation's concerns with regard to impacts on traditional/archaeological sites the environment and their intentions of conducting their own archaeological and environmental studies. Additionally, a formal referral was received October 6, 2016 and the main concerns mentioned in the response regarding the bylaw amendment are:

- Potential biological impacts of the breakwater on fish, shellfish, waterfowl, marine mammals, faunal invertebrates, algae.
- Potential impacts of the breakwater on archeological sites.

No responses were received from the following agencies and First Nations: BC Ministry of Environment, Parks; School District #68 (Nanaimo-Ladysmith); Environment Canada; Parks Canada; Semiahmoo First Nation; Stz'uminus First Nation; Halalt First Nation; Lake Cowichan First Nation; Penelakut Tribe; Snuneymuxw First Nation; Hul'iqumi'num Treaty Group.

Staff will continue to follow up with First Nations.

Issues and Opportunities:

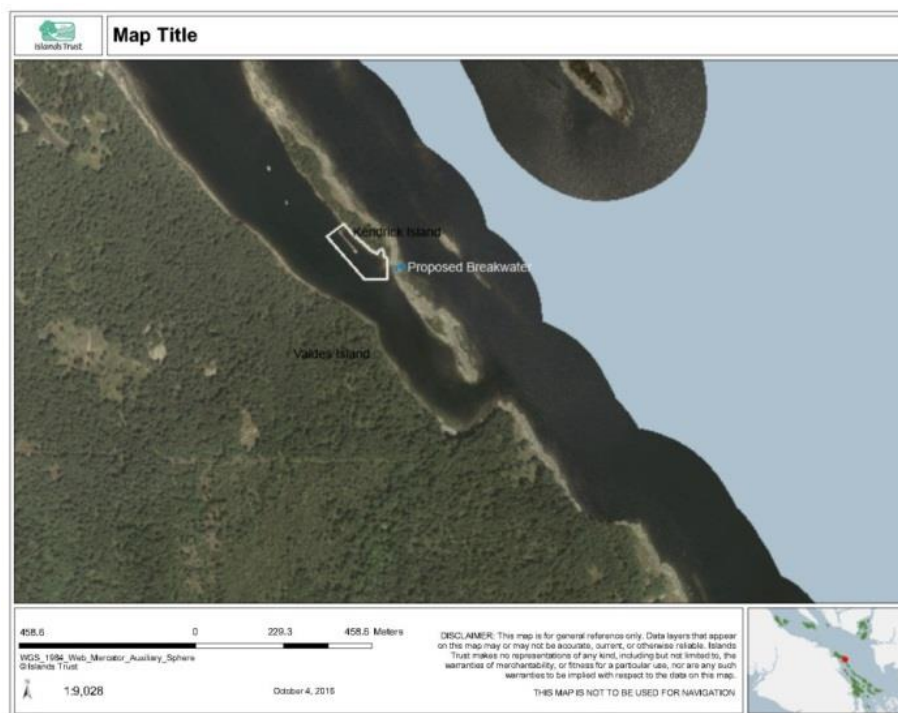
Lyackson First Nation Concerns with Regard to the Bylaw Amendment

Through the early referral to Lyackson First Nation in April 2016 and more recent formal referral, Lyackson First Nation have relayed the following concerns specific to the proposed bylaw amendment:

- That the breakwater would facilitate public access to traditional sites on Valdes Island that wouldn't otherwise exist.

Staff note that the breakwater is proposed to be located on an islet that is separated from Valdes Island by the ocean, even at low tide. The addition of the breakwater will not change the fact that the islet remains separated from Valdes Island by the ocean, and access to Valdes Island is unchanged.

Figure 1: Location of Breakwater, Islet, and Valdes Island



Potential impacts to archaeological and/or traditional sites

The BC Archaeological Branch has indicated that there are no known archaeological sites at the location of the proposed breakwater, but suggest that the applicant should hire an archaeologist to review the proposed activities to determine whether the work may impact protected archaeological materials that may occur there. Staff recommend that the LTC request that the applicant hire a Qualified Archaeologist to undertake such a review. Staff also recommend that the applicant invite Lyackson First Nation members to attend any site visits. Staff note that the Lyackson First Nation has expressed interest in conducting their own Traditional Use Study.

Potential environmental impacts

This concern is noted in the detailed policy analysis in the Staff Report dated March 14, 2016, and resulting request for a geomorphic assessment from a qualified professional regarding the potential impacts of the proposed breakwater on coastal processes and adjacent marine areas and shorelines. The report concluded that impacts from the proposed breakwater are negligible, and as such, staff concluded that if there are minimal

changes to the coastal processes, that resulting changes to surrounding habitat would also be minimal. No associated biological assessment was requested by staff. Lyackson First Nation have requested that a third party geomorphic assessment report be undertaken.

In response to their concern about potential environmental impacts, Lyackson First Nation also requests that a biological assessment started by Q'ul-Ihanumutsun Aquatic Resources Society (QARS) be completed before any final decisions are made on the proposed bylaw.

Additionally, concerns from the Valdes Island Conservancy regarding impacts on resident and migratory birds were addressed with the LTC's request for an additional report on recommended appropriate construction timing to avoid disturbance to resident and migratory birds.

Protocol of Cooperation with Lyackson First Nation

Staff are aware of the Protocol of Cooperation with Lyackson First Nation. Staff have honoured the Protocol by providing information in a timely manner through an early referral to the First Nation for this bylaw amendment, and by engaging in dialogue throughout the bylaw amendment process, including attending several referral meetings with the First Nation over the past year.

Lyackson First Nation Concerns Regarding Valdes Island, including Kendrick Island

During the course of dialogue with Lyackson First Nation regarding this bylaw amendment and as stated in their formal referral response, staff have become aware of the importance of Le'eyqsun (Valdes Island), including Kendrick Island to Lyackson First Nation as the cultural homeland of the Nation. Also, staff recognise the Lyackson First Nation's interest in meaningful engagement with the Thetis LTC regarding land use of Le'eyqsun. In recognition of this importance and Lyackson First Nation's request to be meaningfully consulted with respect to land use on Valdes Island, staff recommend that the LTC engage in discussions with Lyackson First Nation.

Professional Report Regarding Timing Windows for Birds

Madrone Environmental Services Ltd. was contracted by the applicant to address the LTC's request for a report regarding appropriate times for construction to avoid impacting migratory and resident bird species. The report, prepared by a Qualified Environmental Professional (QEP), recommends that breakwater upgrades should occur during the winter, beginning on or after December 1st, and be completed no later than February 5th. The QEP notes that this would cover recommended construction windows for birds and fish. Alternatively, the QEP suggests that it may be possible to conduct the work in August subject to verification by a qualified bird biologist. Staff suggest requesting from the applicant, prior to final approval of the bylaw amendment, confirmation that timing of construction will be consistent with the recommended construction windows.

DFO Permit

Staff note that a permit with the Department of Fisheries and Oceans was applied for and obtained in 2010 by the applicant (as reported in Staff Report dated March 14, 2016); however, staff understand that it may be expired and if so a new application will be required prior to construction. Staff suggest requesting from the applicant, a copy of a current permit from Department of Fisheries and Oceans for the proposed breakwater.

Transport Canada Notice

Transport Canada request an application for a Notice of Works. Staff suggest requesting from the applicant, a current copy of the Transport Canada Notice of Works.

Rationale for Recommendations:

As a result of the referral responses from the Archaeological Branch and Lyackson First Nation, staff recommend requesting an archaeological study to assess any impacts to archaeological materials prior to moving forward with the next steps of the bylaw amendment process. The results of the archaeological assessment may suggest changes to the proposed breakwater (e.g. location, the size and dimensions), requiring revisions to the proposed bylaw amendment.

Staff also recommend that, should the LTC wish to proceed with the bylaw amendment, that the applicant provide confirmation that senior government requirements have been satisfied prior to final bylaw adoption.

Alternatives:

1. Request further information

The LTC may request a follow up assessment the potential biological impacts of the proposed breakwater as requested by Lyackson First Nation. If selecting this alternative, the LTC should describe the rationale for this request.

Resolution:

That the Thetis Island Local Trust Committee request that the applicant submit to the Islands Trust an assessment of the potential biological impacts of the proposed breakwater on fish, shellfish, waterfowl, marine mammals, faunal invertebrates, algae, and mitigation measures completed by a Registered Professional Biologist with appropriate expertise in marine biology.

2. Continue with Second Reading.

The LTC may choose not to request further information from the applicant and move to second reading. However, the LTC should state the reasons for moving forward and not requesting further information.

Resolutions:

THAT the Thetis Island Local Trust Committee Bylaw No. 101 cited as "Valdes Island Rural Land Use Bylaw, 1998, Amendment No. 2, 2016" be read a second time.

THAT the Thetis Island Local Trust Committee request staff to schedule a community information meeting and public hearing for Bylaw No. 101 cited as "Valdes Island Rural Land Use Bylaw, 1998, Amendment No. 2, 2016."

Submitted By:	Marnie Eggen, MCIP, RPP Planner 2	October 7, 2016
Concurrence:	Ann Kjerulf, MCIP, RPP Regional Planning Manager, Northern Office	October 7, 2016

ATTACHMENTS

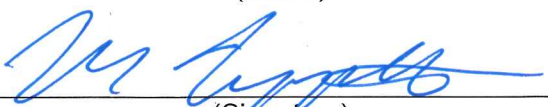
1. Referral responses
2. Protocol for Cooperation with Lyackson First Nation
3. Madrone Environmental Services Ltd. letter dated September 9, 2016

BYLAW REFERRAL FORM RESPONSE SUMMARY

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

Thetis Island Local Trust Area

(Island)



(Signature)

2016/08/19

(Date)

Amendment Bylaw No. 101
(Amending Valdes Island Rural Land Use Bylaw No. 42)

(Bylaw Number)

MIKE TIPPETT, MANAGER C.R. PLANNING

(Name and Title)

CVRD

(Agency)

BYLAW REFERRAL FORM RESPONSE SUMMARY

☐

Approval Recommended for Reasons Outlined Below

☐

Approval Recommended Subject to Conditions Outlined Below

☒

Interests Unaffected by Bylaw

☐

Approval Not Recommended Due to Reason Outlined Below

Thetis Island Local Trust Area

(Island)



(Signature)

Sept. 2, 2016

(Date)

Amendment Bylaw No. 101

(Amending Valdes Island Rural Land Use Bylaw No. 42)

(Bylaw Number)

Paul Thompson, Manager Long Range Plan

(Name and Title)

Regional District of Nanaimo

(Agency)

BYLAW REFERRAL FORM RESPONSE SUMMARY

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

- That the Protocol Agreement with the
Lyackson First Nation should be respected.

Thetis Island Local Trust Area

(Island)

S. L. deRosario

(Signature)

Aug. 29/16

(Date)

Amendment Bylaw No. 101
(Amending Valdes Island Rural Land Use Bylaw No. 42)

(Bylaw Number)

Sharon Lloyd-deRosario *Deputy Secretary*

(Name and Title)

Galiano Is. LTC

(Agency)

BYLAW REFERRAL FORM RESPONSE SUMMARY

☐

Approval Recommended for Reasons Outlined Below

☐

Approval Recommended Subject to Conditions Outlined Below

☒

Interests Unaffected by Bylaw

☐

Approval Not Recommended Due to Reason Outlined Below

Thetis Island Local Trust Area

(Island)

(Signature)

(Date)

Amendment Bylaw No. 101
(Amending Valdes Island Rural Land Use Bylaw No. 42)
(Bylaw Number)

(Name and Title)

(Agency)



Islands Trust

BYLAW REFERRAL FORM

Suite 200, 1627 Fort Street
Victoria, B.C. BC V8R 1H8
Ph: (250) 405-5151
Fax: (250) 405-5155
information@islandstrust.bc.ca
www.islandstrust.bc.ca

Island: Thetis Island Local Trust Area Bylaw No.: 101 Date: August 4, 2016

You are requested to comment on the attached Bylaws for potential effect on your agency's interests. We would appreciate your response within 30 days. If no response is received within that time, it will be assumed that your agency's interests are unaffected.

APPLICANTS NAME / ADDRESS:

West Vancouver Yacht Club, 5854 Marine Dr., West Vancouver, BC

PURPOSE OF BYLAW:

To amend the Valdes Island Rural Land Use Bylaw No. 42 by changing the zoning classification of the unsurveyed Crown foreshore or land covered by water being part of the bed of Strait of Georgia, Nanaimo District, 0.95 ha of marine waters between Valdes Island and Kendrick Island from Marine Conservation (W-1) to Yacht Club Outstation (W2)(a) to allow a rock breakwater only.

For staff reports and background information please see the Thetis Island webpage:
<http://www.islandstrust.bc.ca/islands/local-trust-areas/thetis/current-applications/>

GENERAL LOCATION:

Crown foreshore in adjacent to Kendrick Island near Valdes Island.

LEGAL DESCRIPTION:

Unsurveyed Crown foreshore or land covered by water being part of the bed of Strait of Georgia, Nanaimo District.

SIZE OF PROPERTY AFFECTED:

Approximately 0.95 ha

ALR STATUS:

n/a

OFFICIAL COMMUNITY PLAN DESIGNATION:

n/a

OTHER INFORMATION:

Additional information, including the current bylaws, is available at: www.islandstrust.bc.ca

Please fill out the Response Summary on the back of this form. If your agency's interests are "Unaffected", no further information is necessary. In all other cases, we would appreciate receiving additional information to substantiate your position and, if necessary, outline any conditions related to your position. Please note any legislation or official government policy which would affect our consideration of this Bylaw.

M. Eggen

(Signature)

Name: Marnie Eggen

Title: Planner 2
Contact Info: Tel: 250-247-2210
Email: meggen@islandstrust.bc.ca

PLEASE TURN OVER →

BYLAW REFERRAL FORM RESPONSE SUMMARY

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

- OBTAIN THE NECESSARY TENURE FROM FLNRO CROWN LANDS SECTION BEFORE CONSTRUCTION OF THE ROCK BREAKWATER.
- USE CLEAN ROCK FOR BREAKWATER CONSTRUCTION.

Thetis Island Local Trust Area

(Island)

Amendment Bylaw No. 101
(Amending Valdes Island Rural Land Use Bylaw No. 42)
(Bylaw Number)

Dr. Grant Brachor P.A. R.P. Bio.
(Signature)

DR. GRANT BRACHOR P.A. R.P. Bio.
(Name and Title)

AUGUST 15, 2016
(Date)

ECOSYSTEMS SECTION
(Agency)

BC MINISTRY OF FORESTS, LANDS
AND NATURAL RESOURCES
OPERATIONS

From: Cooper, Diana FLNR:EX [mailto:Diana.Cooper@gov.bc.ca]

Sent: Friday, September 02, 2016 11:11 AM

To: Marnie Eggen

Cc: Becky McErlean

Subject: RE: Bylaw Referral - Thetis Island Local Trust Committee Bylaw No. 101 (Valdes Island) West Van Yacht Club MFLNRO Archaeology Branch

Hello Marnie,

Thank you for your referral about the proposed change to the Thetis Island Local Trust Committee Bylaw No. 101 which will change the zoning classification of the unsurveyed Crown foreshore or land covered by water being part of the bed of Strait of Georgia, Nanaimo District, 0.95 ha of marine waters between Valdes Island and Kendrick Island from Marine Conservation (W-1) to Yacht Club Outstation (W2)(a) to allow a rock breakwater only.

According to Provincial records, there are no known archaeological sites recorded in the area proposed for the breakwater. The land above the high tide land does have high potential to contain previously unknown/unrecorded archaeological deposits however. [REDACTED]

Archaeological sites (both recorded and unrecorded, disturbed and intact) are protected under the *Heritage Conservation Act* and must not be altered or damaged without a permit from the Archaeology Branch.

Prior to any land alterations, an Eligible Consulting Archaeologist should be contacted to review the proposed activities and, where warranted, conduct a walk over and/or detailed study of the proposed project area to determine whether the work may impact protected archaeological materials. An Eligible Consulting Archaeologist is one who is able to hold a Provincial heritage permit that allows them to conduct archaeological studies. Ask an archaeologist if he or she can hold a permit, and contact the Archaeology Branch (250-953-3334) to verify an archaeologist's eligibility. Consulting archaeologists can be contacted through the BC Association of Professional Archaeologists (www.bcapa.ca) or through local directories.

If the archaeologist determines that construction activities will not impact any archaeological deposits, then a permit is not required.

In the absence of a confirmed archaeological site, the Archaeology Branch cannot require the proponent to conduct an archaeological study or obtain a permit prior to development. In this instance it is a risk management decision for the proponent.

If any land-altering development is planned and proponents choose not to contact an archaeologist prior to development, operators should be notified that if an archaeological site is encountered during development, activities **must** be halted and the Archaeology Branch contacted at 250-953-3334 for direction. If an archaeological site is encountered during development and the appropriate permits are not in place, proponents will be in contravention of the *Heritage Conservation Act* and likely experience development delays while the appropriate permits are obtained.

Please let me know if you have any questions.

Kind regards,

Diana



Diana Cooper | Archaeologist/Archaeological Site Inventory Information and Data Administrator

Archaeology Branch | Ministry of Forests, Lands and Natural Resource Operations
Unit 3 – 1250 Quadra Street, Victoria, BC V8W2K7 | PO Box 9816 Stn Prov Govt, Victoria BC V8W9W3
Phone: 250-953-3343 | Fax: 250-953-3340 | Website: <http://www.for.gov.bc.ca/archaeology/>



Islands Trust

BYLAW REFERRAL FORM

Suite 200, 1627 Fort Street
Victoria, B.C. BC V8R 1H8
Ph: (250) 405-5151
Fax: (250) 405-5155
information@islandstrust.bc.ca
www.islandstrust.bc.ca

Island: Thetis Island Local Trust Area Bylaw No.: 101 Date: August 4, 2016

You are requested to comment on the attached Bylaws for potential effect on your agency's interests. We would appreciate your response within 30 days. If no response is received within that time, it will be assumed that your agency's interests are unaffected.

APPLICANTS NAME / ADDRESS:

West Vancouver Yacht Club, 5854 Marine Dr., West Vancouver, BC

PURPOSE OF BYLAW:

To amend the Valdes Island Rural Land Use Bylaw No. 42 by changing the zoning classification of the unsurveyed Crown foreshore or land covered by water being part of the bed of Strait of Georgia, Nanaimo District, 0.95 ha of marine waters between Valdes Island and Kendrick Island from Marine Conservation (W-1) to Yacht Club Outstation (W2)(a) to allow a rock breakwater only.

For staff reports and background information please see the Thetis Island webpage:

<http://www.islandstrust.bc.ca/islands/local-trust-areas/thetis/current-applications/>

GENERAL LOCATION:

Crown foreshore in adjacent to Kendrick Island near Valdes Island.

LEGAL DESCRIPTION:

Unsurveyed Crown foreshore or land covered by water being part of the bed of Strait of Georgia, Nanaimo District.

SIZE OF PROPERTY AFFECTED:

Approximately 0.95 ha

ALR STATUS:

n/a

OFFICIAL COMMUNITY PLAN DESIGNATION:

n/a

OTHER INFORMATION:

Additional information, including the current bylaws, is available at: www.islandstrust.bc.ca

Please fill out the Response Summary on the back of this form. If your agency's interests are "Unaffected", no further information is necessary. In all other cases, we would appreciate receiving additional information to substantiate your position and, if necessary, outline any conditions related to your position. Please note any legislation or official government policy which would affect our consideration of this Bylaw.

M. Eggen

(Signature)

Name: Marnie Eggen

Title: Planner 2
Contact Info: Tel: 250-247-2210
Email: meggen@islandstrust.bc.ca

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This referral has been sent to the following agencies:

Federal Agencies

Environment Canada
Parks Canada
Transport Canada

Provincial Agencies

Ministry of Environment, Parks
Ministry of Forest, Lands & Natural Resource Operations
- Archaeology Branch
- Ecosystems Branch

Non-Agency Referrals

School District No. 68 (Nanaimo-Ladysmith)
Valdes Island Conservancy

Regional Agencies

Cowichan Valley Regional District
Nanaimo Regional District

Adjacent Local Trust Committees and Municipalities

Galiano Island Local Trust Committee
Salt Spring Island Local Trust Committee
Gabriola Island Local Trust Committee

First Nations

Semiahmoo First Nation
Stz'uminus First Nation
Cowichan Tribes
Halalt First Nation
Lake Cowichan First Nation
Lyackson First Nation
Penelakut Tribe
Snuneymuxw First Nation
Hul'qumi'num Treaty Group

BYLAW REFERRAL FORM RESPONSE SUMMARY

☐

Approval Recommended for Reasons Outlined Below

☒

Approval Recommended Subject to Conditions Outlined Below

☐

Interests Unaffected by Bylaw

☐

Approval Not Recommended Due to Reason Outlined Below

Our Office received a referral from the MFLNRO in August 2015. The proponent was notified that the proposal repairs and modification to the breakwater would require the submission of a Notice of Works (application) to be reviewed pursuant to the Navigation Protection Act (NPA), current NPA file # 2009-500550.

They have to submit their Notice.

Thetis Island Local Trust Area

(Island)

Brent Magee

(Signature)

2016/09/12

(Date)

Amendment Bylaw No. 101

(Amending Valdes Island Rural Land Use Bylaw No. 42)

(Bylaw Number)

Brent Magee NPP Officer

(Name and Title)

Transport Canada - Navigation Protection Program

(Agency)

From: Candace Charlie [mailto:Candace.Charlie@cowichantribes.com]
Sent: Monday, August 08, 2016 11:43 AM
To: Becky McErlean
Subject: Re: Bylaw Referral - Thetis Island Local Trust Committee Bylaw No. 101 (Valdes Island) West Van Yacht Club - Cowichan Tribes

Ms. McErlean,

Cowichan Tribes is in receipt of your referral package regarding the proposed marine zoning between Valdes Island and Kendrick Island. We will defer this particular referral to the Lyackson First Nation.

Regards,

Candace Charlie
Referrals & Land Code Technician
Lands & Governance, Cowichan Tribes
5760 Allenby Road
Duncan BC V9L 5J1
Ph: (250) 748-3196 ext. 415
candace.charlie@cowichantribes.com

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>>> Becky McErlean <bmcerlean@islandstrust.bc.ca> 8/8/2016 11:11 AM >>>
Attention: Candace Charlie, Referral Coordinator, Cowichan Tribes

Please find attached a bylaw referral package from the Thetis Island Local Trust Committee of the Islands Trust for consideration by your Chief and Council. This package contains a referral response form and a copy of proposed bylaw, No. 101.

The Thetis Island Local Trust Committee has given first reading to Proposed Bylaw No. 101 on July 26, 2016. The earliest date anticipated for a Public Hearing is October 11, 2016.

If adopted, Bylaw No. 101 will amend the Valdes Island Rural Land Use Bylaw No. 42 by changing the zoning classification of the unsurveyed Crown foreshore or land covered by water being part of the bed of Georgia Strait, Nanaimo District, 0.95 ha of marine waters between Valdes Island and Kendrick Island from Marine Conservation (W-1) to Yacht Club Outstation (W2)(a) to allow a rock breakwater.

For staff reports and background information please see the Thetis Island webpage:
<http://www.islandstrust.bc.ca/islands/local-trust-areas/thetis/current-applications/>

The purpose of this referral is to request that you identify any potential aboriginal rights and interests that may be impacted by these proposed bylaws.

A referral response form for the bylaw is included for your convenience, should you wish to use this document. We would appreciate your comments by **October 7, 2016**.

For more information on the proposed bylaw please contact Marnie Eggen, Island Planner at meggen@islandstrust.bc.ca or 250-247-2210.

Thank you for your time and consideration,

Becky McErlean
Legislative Clerk
Northern Office, Islands Trust
700 North Road
Gabriola, BC V0R 1X3
250-247-2206
Enquiry BC Toll-free call 1-800-663-7867
or from the lower mainland 604-660-2421

Websites: www.islandstrust.bc.ca | www.islandstrustfund.bc.ca
Preserving Island communities, culture and environment since 1974



Lyackson First Nation
7973A Chemainus Road
Chemainus BC V0R 1K5
Telephone: (250) 246-5019
Fax: (250) 246-5049

October 4, 2017

Attention: Marnie Eggen
Islands Trust, Northern Office
700 North Road, Gabriola Island, BC, V0R 1X3
(250) 247-2210

Dear Ms. Eggen,

Re: Lyackson First Nation response to Referral for proposed changes to the Valdes Island Rural Land Use Bylaw No. 42 to change the zoning classification of the unsurveyed Crown foreshore or land covered by water being part being part of the bed of Georgia Strait, Nanaimo District, 0.95 ha of marine waters between Valdes Island and Kendrick Island from Marine Conservation (W-1) to Yacht Club Outstation (W2)(a) to allow a rock breakwater

Background

Lyackson First Nation

Lyackson First Nation (LFN) is a Hul'q'umi'num-speaking Coast Salish group with a registered population, as of August 2015, of 198. The majority of LFN members live off-reserve and in or near LFN ancestral lands located on the eastern shore of Vancouver Island and the adjacent southern Gulf Islands of the Salish Sea. Chemainus, BC serves as the administrative center for the LFN, but the eastern Gulf Island of Le'eyqsun (also known by its English name, Valdes) is the cultural homeland of the Nation. LFN are part of the Hul'q'umi'num Mustimuhw, a group of six Vancouver Island First Nations that together form the Hul'qumi'num Treaty Group (HTG). The HTG is currently in Stage 4 of the BC Treaty process. Le'eyqsun is unique as the homeland of the LFN people, one of the primary locations of LFN's villages and oral histories, and is one of the few remaining islands in the Salish Sea that remains largely undisturbed by development or contamination from residential or industrial sources. LFN people traveled between Le'eyqsun and the mouth and south arm of the Fraser River year-round for visiting and resource-harvesting purposes, as well as up and down the Northwest Coast.

LFN maintains a broad view of its Aboriginal rights and title, including cultural, subsistence, transportation, governance, and commercial rights, extending from the heartland of Le'eyqsun, including surrounding waters and foreshore, and across the Salish Sea to the mouth and south arm of the Fraser River and village site at Tl'uqtinus. The Crown has determined that Lyackson First Nations holds strong claims in portions of the southern Gulf islands that lie to the west of Galiano Island and above Active Pass and areas proximal to Valdes Island. As such, consultation within this portion of the southern Gulf Islands fall within the highest consultation spectrum, with the deepest level of consultation.

LFN community members still fish and harvest a wide variety of marine resources including clams, chiton, mussels, oysters, crabs, sea cucumber, sea urchin, octopus, pink, sockeye, coho and spring salmon, dogfish, flounder, ling cod, rock cod, sturgeon and herring. Two main regions are used for fishing and marine harvesting: Le'eyqsun (Valdes Island) and from the mouth of the Fraser River to Seabird Island. LFN maintains long-standing and ongoing use rights throughout the Salish Sea. Le'eyqsun is one of the only places remaining within LFN or Hul'q'umi'num territories that is accessible to LFN, remains largely under LFN stewardship and control, and sustains the quality, quantity and diversity of land-based, marine, and foreshore resources necessary to maintain the current and future practice of LFN culture and rights. Because of its unique place in LFN culture and history and its productive marine and foreshore ecosystems, Le'eyqsun is an irreplaceable refuge for LFN peoples. Through LFN sharing of resources, its importance extends beyond the LFN community to other Hul'q'umi'num nations and into the wider Coast Salish world.

Kendrick Island

Kendrick Island is an outcropping of sandstone located off the northeast coast of Valdes Island with the longitudinal axis of the long, narrow island trending northwest to southeast. The northern half of the island is sufficiently elevated above sea level to support terrestrial vegetation in the form of trees, while the majority of the southern half of the island is devoid of vegetation except for two small patches of shrubs and grasses. The remainder of the island is of lower elevation, lying within the intertidal zone or exposed to breaking waves and wave run-up. Kendrick Island is of particular interest and importance to LFN, given its historical importance as a burial island. Kendrick Island is furthermore of significant environmental importance due to its sensitive marine and terrestrial ecosystem.

West Vancouver Yacht Club

The West Vancouver Yacht Club (WVYC) operates a small float and dock at Kendrick Island, located off the north east coast of Valdes Island. According to WVYC members, a small breakwater was constructed in the 1970s, a short time after the Kendrick Island site was purchased in 1975, in order to reduce the effects of swell from the Strait of Georgia. The existing breakwater structure is located to the southeast of the facility in an area described as a rocky reef. Rocks were apparently placed in a small gap in the sandstone reef adjoining the two higher elevation portions of the island. The rock breakwater also benefited from the presence of a large log that formed part of the structure, but the log apparently eventually disintegrated and/or the rocks settled, resulting in the swell having a greater impact on the moorage area. WVYC wishes to place additional rock boulders on an existing breakwater to provide additional protection to boats moored or docked at the facility. It is important to note that LFN was not consulted when the West Vancouver Yacht Club (WVYC) initially started their operation on Kendrick Island; nor was LFN consulted when the initial breakwater was installed.

Thetis Island Trust

The Thetis Island Local Trust Committee received a Proposed Bylaw No. 101 on July 26, 2016. Bylaw No. 101 is a bylaw to amend the Valdes Island Rural Land Use Bylaw No. 42, 1998, to rezone the subject waters from Marine Conservation (W1) to a site specific zoning under Yacht Club Outstation (W2) to permit a rock breakwater. This is consistent with the Licence of Occupation that was issued for the subject area; no other use is permitted, except a breakwater. LFN was not adequately or meaningfully consulted on the issuance of the License of Occupation to allow for the breakwater.

LFN Environmental Concerns

Review of Biological assessment

On May 8, 2012, WVYC commissioned Envirowest Consultants Inc. to visit Kendrick Island to conduct a biological assessment. The biological assessment concluded that as the new boulders will create new habitat for the encrusting community and, hence, habitat for fish food organisms, residual impacts to fish or fish habitat are not associated with the expanded breakwater.

In March 2016, LFN commissioned Q'ul-Ihanumutsun Aquatic Resources Society (QARS) to conduct a third party review of the biological assessment. The QARS review of this assessment was largely limited to the data provided by Envirowest Consultants Inc. The original WVYC proposal was not provided and therefore specifics related to the expanded breakwater design, dimensions, materials, methods, rationale, and expected use of the area were not known. The QARS has not yet had the opportunity to visit the site of the proposed expanded breakwater and is therefore unable to verify the findings of Envirowest Consultants Inc. QARS further concluded that it is likely that conditions would have changed given the season and length of time since the assessment was completed.

LFN remains concerned with potential impacts of the proposed breakwater on rockfish in rockfish conservation areas (RCAs). Without data on the benthic habitat and local rockfish population it is difficult to make conclusions about impacts to rockfish. LFN is further concerned that the breakwater will adversely affect fish and other marine life, including shellfish, waterfowl, faunal invertebrates, macro and microalgae. LFN is concerned that the different effects on different fish and marine animals at different stages of their life cycle have not been adequately understood or assessed to date.

There are further several eelgrass beds located directly adjacent to the area proposed for the expanded breakwater. Eelgrass beds provide shelter and nutrients to numerous species of fish, shellfish, waterfowl, and faunal invertebrates, provide a surface area for macro- and microalgae growth, provide a spawning substrate for Pacific herring, prevent erosion due to their complex root system, and provide many species with detritus. It is not certain if the breakwater itself will negatively impact the eelgrass beds and surrounding habitat, this should be further assessed. QARS alerts that mooring, anchoring, and recreational activities that impact the sea bottom or disturb wildlife utilizing this habitat should be avoided to protect these delicate ecosystems. Indeed, after surveying Valdes Island for eelgrass beds in 2013 Wright et al. (2014)¹ stated "The location of mooring buoys in eelgrass habitats with fifty-one buoys observed within beds and the interruption of eelgrass continuity by the construction of docks are the major anthropogenic impacts affecting eelgrass habitats on Valdes."

As a follow-up to the QARS review of the Envirowest Consulting Inc. biologist assessment, LFN requested that QARS comment on the WVYC' use of mooring buoys in relation to the impacts on rockfish in the area situated between Kendrick Island and Valdes Island. QARS suggested that a dive or video survey of the area in question be conducted to determine rockfish presence/absence and to determine the structure of benthic habitat (i.e. is it suitable rockfish habitat). QARS further suggested that a study be undertaken to determine the impacts of the mooring buoys on the seafloor and to turbidity. QARS has also suggested that a Remote Operated Vehicle (ROV) is used to assess potential impacts to rockfish and other marine creatures around the break water, such as juvenile herring.

¹Wright, N., L. Boyer, and K. Erikson. 2014. 2012-2014 Final report nearshore eelgrass inventory. Prepared for: Islands Trust and Islands Trust Fund.

LFN believes that Kendrick Island was/is of importance for marine mammals, including sea lions and seals. The impacts of potential marine mammals as a result of the breakwater must be considered. The presence of marine mammals on the Island should be further investigated, potentially with the aid of a drone. The location where the breakwater is proposed to be built supports Gary Oak, which is known to support a myriad of plants, lichens, fungi, insects etc. In addition to understanding the marine impacts, an unbiased assessment of the potential impacts to the terrestrial environment as a result of the breakwater should be undertaken and adequately assessed in various seasons. LFN is further concerned that by changing the wave patterns to allow for better mooring conditions, the WVYC operations will potentially expanding, with the potential of more intrusive human caused impacts to the ecological sensitive sites on Kendrick Island, including pollution.

Geomorphic Assessment

Northwest Hydraulic Consultants Ltd. (NHC) was engaged by the WVYC to conduct a geomorphic assessment of physical coastal and marine processes in and around the general area of Kendrick Island and Valdes Island. The assessment report concludes that impacts on coastal processes from the proposed breakwater are negligible. Since impacts on the coastal processes were concluded to be negligible, Island Trust staff concluded that resulting impacts to sensitive marine and foreshore habitat will be minimal.

LFN has to date not had the opportunity to conduct a third party review of the WVYC commissioned geomorphic assessment. LFN is not convinced that the proposed new breakwater will have no impact on redirecting waves or otherwise cause significant direct changes to the geomorphic conditions. There are further outstanding concerns with respect to impacts on eelgrass beds, the influence on adjacent shorelines and rockfish habitat. LFN requests that a third party review of the geomorphic assessment is conducted.

Traditional Uses

LFN's traditional use activities are directly linked to the quality and quantity of marine resources. Given that LFN questions the findings of the biological and geomorphic assessments commissioned by the WVYC, LFN is not assured that impacts to traditional use resources will be negligible. Once a third party, unbiased biological and geomorphic assessment has been conducted, LFN wish to conduct a Traditional Use Study to assess how specifically identified environmental concerns may directly impact LFN's rights and interests, based on LFN traditional Knowledge.

Archeology

An unbiased archeological assessment has to date not been undertaken on Kendrick Island. Given the historical importance of Kendrick Island as a burial island, it is critical that an adequate, archeological survey conducted by a third party accredited archeologist is conducted, to prevent any damage to potential archeological sites. LFN is further concerned that by changing the wave patterns to allow for better mooring conditions, the WVYC operations will potentially be expanded, with the potential of more intrusive human caused impacts to historical sensitive sites on Kendrick Island.

Recommendations

- LFN is concerned that the findings from the WVYC commissioned biological assessment study are outdated and inadequate. LFN requests that QARS third party recommendations are completed, including:
 - o Site visits at different seasons to accurately assess potential impacts,
 - o ROV assessment of the subsurface and potential impacts to the marine habitat,
 - o Drone to take aerial photos to inform an ecological assessment of the island,
 - o Dive or video survey of the area to determine rockfish presence/absence and the structure of benthic habitat,
 - o Study to determine the impacts of the mooring buoys on the seafloor and turbidity.
- LFN request that a third party assessment of the WVYC commissioned Geomorphic assessment is conducted to further validate and assess potential impacts associated with physical coastal and marine processes.
- LFN requests that a third party archeological study is conducted, to identify historical sites of importance to LFN.
- LFN further requests that a Traditional Use Study (TUS) is conducted, where information on existing LFN uses and traditional knowledge is collected to understand and assess how LFN rights and interests may be impacted by potential impacts to LFN's cultural and traditional resources.

Conclusion

To date, Lyackson First Nation has not been meaningfully or adequately consulted with respect to any existing or future project approvals on Kendrick Island. The Government has not accounted for how Kendrick Island is of great ecological, cultural, and historical importance to Lyackson First Nation in any decisions that have been made to date. Until Lyackson's environmental, historical, cultural and traditional interests and rights are adequately identified and assessed, and until any potential concerns are meaningfully and adequately addressed, Lyackson First Nation rejects any existing or other future projects on Kendrick Island.

Given that Lyackson has not yet conducted a third party review of the geomorphic assessment and there is still outstanding third party assessments required with respect to assessing the potential biological, historical and traditional use impacts, LFN requests that the rezoning is not approved until such a time that adequate studies have been conducted and that potential impacts have been meaningfully addressed and mitigated.

Sincerely,



Linda Aidnell
Land and Resource Coordinator
Lyackson First nation

Attachment 2

ISLANDS TRUST COUNCIL

BYLAW NO. 64

A bylaw to adopt a Protocol with the Lyackson First Nation

WHEREAS pursuant to Section 9(1) of the *Islands Trust Act* the Trust Council may, for the purpose of carrying out the object of the Trust, on behalf of one or more local trust committees, enter into agreements with First Nations, respecting the coordination of activities within the Trust Area;

NOW THEREFORE the Islands Trust Council, in open meeting assembled, enacts as follows:

Citation

1. This bylaw may be cited for all purposes as "Islands Trust Council/The Lyackson First Nation Protocol Bylaw No. 64, 1999."

Protocol

2. The protocol agreement attached as Schedule "A" and entitled "Protocol For Cooperation in the Thetis Island Local Trust Area and Lyackson Traditional Territory" is approved pursuant to Section 9(1) of the *Islands Trust Act*.

Severability

3. If any section, subsection, sentence, clause or phrase of this bylaw is for any reason held to be invalid by a decision of a court of competent jurisdiction, the decision shall not affect the validity of the remaining portions of the bylaw.

READ A FIRST TIME THIS 17TH DAY OF JUNE , 2000

READ A SECOND TIME THIS 17TH DAY OF JUNE , 2000

READ A THIRD TIME THIS 17TH DAY OF JUNE , 2000

APPROVED BY THE MINISTER OF MUNICIPAL AFFAIRS THIS
14TH DAY OF SEPTEMBER , 2000

ADOPTED THIS 8TH DAY OF DECEMBER , 2000

SECRETARY

CHAIR

SCHEDULE A

PROTOCOL FOR COOPERATION

In the Thetis Island Local Trust Area and Lyackson Traditional Territory

BETWEEN:

THE ISLANDS TRUST COUNCIL

(on behalf of the Thetis Island Local Trust Committee)

AND:

THE LYACKSON FIRST NATION

(referred to as the "Parties")

WHEREAS the Islands Trust Council:

- Is authorized to enter into interagency agreements on behalf of the Thetis Island Local Trust Committee respecting the coordination of activities within the Thetis Island Local Trust Area;
- On behalf of the Thetis Island Local Trust Committee is the local government responsible for land use planning and regulation for lands under its jurisdiction with the Thetis Island Local Trust Area; and
- Is responsible for achieving the legislation of *the Islands Trust Act* "to preserve the Trust Area and its unique amenities and environment for the benefit of the residents of the trust area and of the Province generally, in cooperation with the municipalities, regional districts, improvement districts, other persons and organizations, and the government of British Columbia."

WHEREAS the Lyackson First Nation:

- Is responsible for the coordination of activities for lands under its jurisdiction with the Lyackson First Nation's traditional territory that coincide with the Thetis Island local Trust Area; and
- Is attempting to resolve outstanding land issues in the Thetis Island Local Trust Area through the Federal and Provincial governments which acknowledge that this area has been part of the Lyackson First Nation's traditional territory.

Now, therefore, the Islands Trust Council, on behalf of the Thetis Island Local Trust Committee and the Lyackson First Nation wish to recognize mutual interests and their spirit of cooperation by entering into a Protocol for Cooperation within the Protocol Area which includes the Lyackson traditional territory and the Thetis Island Local Trust Area, with the following consideration on behalf of the citizens of each:

1.0 PRINCIPLES

The parties agree to the following principles of inter agency relations:

- 1.1 To pursue a renewed and lasting relationship based on trust and cooperation;
- 1.2 To respect the jurisdictional authority and interests asserted by each other; and
- 1.3 To seek areas of mutual interest for the sharing of information and possible collaboration.

2.0 SHARED VALUES

Both parties share the following values:

- 2.1 The protection of significant terrestrial and marine environmental features and ecosystems;
- 2.2 The celebration and protection of cultural and traditional values;
- 2.3 The encouragement of sustainable island communities which harmonize economic, social and environmental needs; and
- 2.4 The enhancement of the quality of life for all citizens.

3.0 AREAS FOR COOPERATION

The parties wish to pursue the following areas for cooperation:

- 3.1 Sharing of information which affects either party's jurisdiction and areas of mutual interest;
- 3.2 Promoting good relations with other levels of government to effectively deal with issues and coordinate activities;
- 3.3 Creating enhanced awareness and appreciation of the area's cultural heritage and the different needs of its communities;
- 3.4 Developing consultative processes to ensure effective communication in areas of overlapping jurisdiction;
- 3.5 Ensuring opportunities for dialogue to encourage understanding, cooperation and problem solving; and
- 3.6 Identifying areas of mutual interest for the interagency coordination of activities and/or resources among citizens and organizations.

4.0 SCOPE OF ACTIVITIES

- 4.1 Notice of **land use planning processes** with opportunities for the involvement of the other party;
- 4.2 Referral of **land use planning or land use change documents or contents** with opportunities for discussion of concerns before consideration by the respective party provided that this is not considered formal consultation;
- 4.3 Notice in writing of initiatives to establish agreements or projects with **other levels of government** to determine the interests and/or potential involvement of the other party;
- 4.4 Arrange **meetings as required** between the parties to discuss matters of concern as they arise; and
- 4.5 Notice of initiatives related to the **acquisition of Crown lands** for the use and benefit of either party's community.

5.0 COMMUNICATION EFFORTS

- 5.1 This protocol may be further defined by way of further agency agreements on specific areas for cooperation;
- 5.2 The purpose of notices is to provide parties with timely and sufficient information to facilitate meaningful opportunities for cooperation;
- 5.3 The purpose of referrals is to provide parties with timely and sufficient information for meaningful consultative dialogue prior to either of the Parties make a decision which may impact the other Party; and
- 5.4 The Executive Director of the Islands Trust is responsible to schedule an annual meeting to review the terms of the Protocol, discuss areas of interest and determine areas for cooperation.

6.0 CONDITIONS

- 6.1 Administration of this agreement will involve
 - a. The officials responsible for the notices and referrals referred to in this agreement:
 - Regional Planning Coordinator responsible for the Thetis Island Local Trust Area and
 - Chief of the Lyackson First Nation

b. The officials responsible for organizing meetings and facilitating cooperative efforts:

- Executive Director, Islands Trust; and
- Chief of the Lyackson First Nation

6.2 Notices and referrals referred to in the Agreement shall be delivered to:

Thetis Island Local Trust Committee
c/o Islands Trust Council

200 – 1627 Fort Street
Victoria, BC V8R 1H8
Email: gmcintosh@islandstrust.bc.ca
Telephone: (250) 405-5151
Facsimile: (250) 405-5155

Lyackson First Nation

RR #1
9137 Chemainus Road
Chemainus BC V0R 1K0
Telephone: (250) 246-5019
Facsimile: (250) 246-5049

6.3 Either party may terminate this agreement with thirty (30) days notice to the other party;

6.4 Nothing in this Protocol shall be construed as to fetter the legislative discretion of either of the Parties within their respective jurisdiction or to oblige either party to pursue an action, the application of any laws, statutory or otherwise; and/or

6.5 It is acknowledged that the spirit of this Protocol will be reflected in each of the Party's best efforts rather than any enforceable obligations to implement its terms and conditions.



1081 Canada Avenue
Duncan, BC V9L 1V2
P: 250.746.5545
F: 250.746.5850
www.madrone.ca
info@madrone.ca

Mr. David Jones
West Vancouver Yacht Club

By email to: Jones@bernardllp.ca

September 9th 2016

Re: Kendrick Island Breakwater Upgrades – Applicable Timing Windows to Avoid Disturbance to Resident and Migratory Birds

Dear Mr. Jones,

The operation of a mooring float on the west side of Kendrick Island by West Vancouver Yacht Club (WVYC) necessitated the construction of a breakwater to protect the mooring area from excessive wave energy. The existing breakwater was constructed in the 1970s, and consisted of a collection of angular boulders and a singular log placed on a sandstone reef crest located to the south of the mooring area. I understand that over the years, the breakwater has become less effective in blocking waves from the Strait of Georgia based on the fact that the original log has disintegrated and the rocks have settled. Your proposal is to repair the breakwater by placing one barge load (ten truck loads) of angular rock in and around the existing breakwater, extending the footprint to a maximum of 152 m². As part of the proposed repair, the height of the breakwater would be increased by approximately 0.5 m, with the structure blending into the surrounding reef.

The scope of this letter and Madrone's professional opinion is limited to recommending appropriate construction timing windows to avoid disturbance to resident and migratory birds. To help formulate an opinion, I reviewed the background reports completed by Envirowest (May 2012), which addresses biological concerns related to intertidal biota and also the geomorphic assessment completed by Northwest Hydraulic Consultants Ltd. (July 2016). Based on these reports, it appears that the proposed breakwater upgrades represent minimal encroachments into the intertidal habitat. Furthermore, significant or long-term impacts to coastal processes or marine biota are not anticipated. It also appears that the project footprint area will not have any significant impacts to potential shorebird breeding habitat, based on the fact that the majority of the upgrades will affect intertidal areas that are not used for nesting.

While I recognize that the general project area represents overwintering habitat for marine waterfowl and shorebirds, the premise for determining an appropriate construction timing window is based on disturbance to critical bird life stages (i.e., breeding and nesting).

Although the specific project footprint may not represent potential nesting habitat for shorebirds, there is the potential that construction activities could disturb birds nesting in the surrounding area. This disturbance could potentially extend beyond the immediate marine-influenced area to surrounding upland habitat on Valdez Island to the west and Kendrick Island to the north of the sandstone reef. For example, provincial Best Management Practices associated with raptor nests recommend a 300 m breeding season “quiet” buffer around active Bald Eagle (*Haliaeetus leucocephalus*) nests between February 5th and August 31st (MoE, 2013).

Background research using the Wildlife Tree Stewardship Atlas (WiTS 2016) indicated the occurrence of Bald Eagle nests approximately 1.1 km to the north and approximately 400 m to the south of the subject area on Valdez Island. Based on the distances involved, it is highly unlikely that the breakwater upgrade work would have any impacts on breeding activity associated with these nests, even if the work were to occur within the breeding period of Bald Eagles. It is possible, however, that additional Bald Eagle nests that may not be included in the Wildlife Tree Stewardship Atlas occur closer to the subject area.

In order to ensure that there are no disturbance-related impacts to the critical breeding bird period (including raptors such as Bald Eagles), it is important that an appropriate construction timing window is implemented during the breakwater upgrade work. It is also worth considering the applicability of provincial and federal regulations that are associated with the protection of breeding birds. Section 34 of the Wildlife Act states that: a person commits an offence if the person, except as provided by regulation, possesses, takes, injures, molests or destroys: (a) a bird or its egg; (b) the nest of an eagle, peregrine falcon, gyrfalcon, osprey, heron or burrowing owl, or; (c) the nest of a bird not referred to in (b) when the nest is occupied by a bird or its egg. Section 6 (a) of the federal Migratory Birds Convention Regulations (MBCR) states that it is illegal to destroy or take a nest, egg or nest shelter of a migratory bird. While there is no specific reference to the potential impacts of indirect disturbance to nests in the regulations, any disturbance that leads to nest abandonment would be in contravention of the intent of the regulations.

The vast majority of all bird species that may breed in the study area have generally either left the south coast of BC by the end of August (migratory species) or have completed breeding for the year. Based on breeding cycles, an acceptable window for completing the breakwater upgrades, which takes into account the protection of nesting birds, would be September 1st to February 5th. This window of opportunity takes into account the longest potential breeding period of any bird species that may be present in and around the subject area (the Bald Eagle). Breeding activity for this species may begin as early as February 6th and could potentially extend until August 31st in any given year (MoE 2013).

As the construction timing window is based on preventing disturbance to birds during the critical breeding period, construction activities would occur during a time when overwintering shorebirds and waterfowl may be present in and around the subject area. Impacts from the breakwater

upgrades to overwintering birds are not expected to be significant. This opinion is based on the fact that the disturbance, if any, will be temporary, of a short duration, and localized to a small area.

The proposed breakwater upgrade work would also be governed by least-risk windows that are associated with the protection of sensitive fish life processes. Fisheries and Oceans Canada (DFO) have developed summer and winter least-risk construction windows for coastal BC. Based on these least-risk windows, the construction would only be permitted during the period of June 1st to September 1st (summer window) or December 1st to February 15th (winter window). Therefore, in order to comply with the recommended construction windows for birds and fish, the breakwater upgrades should occur during the winter fisheries work window, beginning on or after December 1st, but completed no later than February 5th.

As another option for consideration, on the south coast of BC, resident and migratory birds often complete their breeding activities by August. It may be possible to conduct the work in August if this is verified by a qualified professional bird biologist (ornithologist). This approach would require a visit to the site in early August to confirm the following:

- No birds are breeding in or near the site (determined based on best management practices and species)
- No active Bald Eagle nests occur within 300 m of the planned work
- The professional determines that there is no risk for harm to resident or migratory birds at that time, and provides a letter that documents the verification process.

As long as the breakwater upgrades were completed prior to the end of August, this approach would comply with the least-risk fisheries window that closes on September 1st (the end of the summer window).

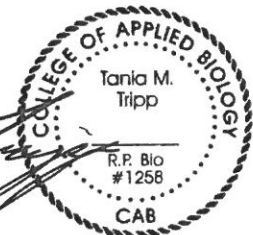
Please do not hesitate in contacting the undersigned should you have any questions or concerns.

Prepared by:



Trystan Willmott, B.Sc., A.Sc.T.
Fish and Wildlife Biologist.

Reviewed by:



Tania Tripp, M.Sc., R.P.Bio.
Senior Wildlife Biologist.

References

MoE, 2013. Guidelines for Raptor Conservation during Urban and Rural Land development in British Columbia.

http://www.env.gov.bc.ca/wld/documents/bmp/raptor_conservation_guidelines_2013.pdf

Wildlife Tree Stewardship Atlas, 2016. <http://cmnmaps.ca/wits/>