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**REPORT TO THE JUAN DE FUCA LAND USE COMMITTEE  
MEETING OF TUESDAY, JULY 19, 2022**

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**SUBJECT**      **Comprehensive Community Development Plan Amendment Application for Blocks D and E, District Lots 751 and 911, Renfrew District, Plan EPC2056 (Crown Lease #927321)**

**ISSUE SUMMARY**

The applicant proposes to rezone the subject property from Marine (M) to a new Commercial Marina (CM-1) zone in order to permit a commercial marina, community use services, food service establishments and retail establishments. An area of foreshore fill in proximity to sea caves is proposed to be zoned as a new Heritage Conservation (HC) zone to protect the integrity of the caves and access to them.

**BACKGROUND**

The subject property includes the surface of the water and breakwater fill areas within Crown Lease #927321, and is located adjacent to 17110 Parkinson Road in Port Renfrew (Appendices A and B). The property is designated as Marine Protection (M) under Bylaw No. 3109, Schedule 'A', and is currently zoned Marine (M) under Bylaw No. 3109, Schedule 'B' (Appendix C). The property is adjacent to Community Residential – One (CR-1) zoned land to the south and southeast, Tourist Commercial – One (TC-1) zoned land to the southwest, and the waters of Port San Juan, which are zoned M, to the north, west and east.

The area was included in the Port Renfrew Water Supply Local Service Area under Bylaw No. 4442 on December 8, 2021. The adjacent upland property is within the Port Renfrew Fire Protection Local Service Area; however, the lease area that is the subject of this application currently remains outside the fire protection area.

The subject property was initially granted status as a Licence of Occupation area by the Province on February 25, 2016. Temporary Use Permit TP000008 was then issued by the CRD Board on June 28, 2016, to authorize a 60-slip commercial marina, offices, food services, fuel sales, recreation, boat trailer parking and boat storage. The Permit renewal was authorized by the CRD Board on July 10, 2019, and will expire on July 24, 2022. The Provincial Licence of Occupation area has recently been resurveyed and registered as a Crown Lease area.

Staff have drafted Bylaw No. 4473 (Appendix D) in response to the owner's application to rezone the marina lease area in order to allow the marina to continue to operate upon expiry of the temporary use permit.

At its meeting of February 15, 2022, the Juan de Fuca Land Use Committee recommended referral of the proposed bylaw to a Public Information Meeting, CRD departments, BC Hydro, Cowichan Valley Regional District, Department of Fisheries and Oceans, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNR), FLNR - Archaeology Branch, Island Health, Ministry of Transportation & Infrastructure, Pacheedaht First Nation, RCMP, and Sooke School District #62. Comments have been received and are included in Appendix E.

## **ALTERNATIVES**

### *Alternative 1*

The Land Use Committee recommends to the Capital Regional District (CRD) Board:

1. That the referral of proposed Bylaw No. 4473, “Comprehensive Community Development Plan for Port Renfrew, Bylaw No. 1, 2003, Amendment Bylaw No. 14, 2022”, to a Public Information Meeting, CRD departments, BC Hydro, Cowichan Valley Regional District, Department of Fisheries and Oceans, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNR), FLNR - Archaeology Branch, Island Health, Ministry of Transportation & Infrastructure, Pacheedaht First Nation, RCMP, and Sooke School District #62 be approved and the comments received;
2. That proposed Bylaw No. 4473 be introduced and read a first time and read a second time; and
3. That in accordance with the provisions of section 469 of the *Local Government Act*, the Director for the Juan de Fuca Electoral Area, or Alternate Director, be delegated authority to hold a Public Hearing with respect to Bylaw No. 4473.

### *Alternative 2*

That the CRD Board not proceed with proposed Bylaw No. 4473.

## **IMPLICATIONS**

### *Legislative*

The Advisory Planning Commissions (APCs) were established to make recommendations to the Land Use Committee on land use planning matters referred to them relating to Part 14 of the *Local Government Act (LGA)*. At the present time, there is no active APC for Port Renfrew; therefore, a Public Information Meeting was held in person and via video and tele-conference.

Should the proposal proceed, a public hearing pursuant to Part 14, Division 3 of the *LGA* will be required subsequent to the amendment passing second reading by the CRD Board. Property owners within 500 m of the subject property will be sent notice of the proposed bylaw amendment and a public hearing will be advertised in the local paper and on the CRD website.

### *Regional Growth Strategy*

Section 445 of the *LGA* requires that all bylaws adopted by a regional district board after the board has adopted a Regional Growth Strategy (RGS) be consistent with the RGS. In accordance with CRD policy, where a zoning bylaw amendment that applies to land within the Port Renfrew Comprehensive Community Development Plan area is consistent with the Plan, it does not proceed to the Planning and Protective Services Committee and the CRD Board for a determination of consistency with the RGS. The proposed zoning amendment is consistent with the policies of the Plan.

### *Referral Comments*

Referrals were sent to 13 agencies and CRD departments, and to a Public Information Meeting. Comments received are summarized below and included in Appendix E.

CRD Building Inspection advised that an open gazebo had been approved in 2016, but has since been altered to that of a fully enclosed restaurant. The building should either be returned to an open gazebo or permits obtained upon completion of the rezoning to allow the alterations. Approvals for services to new buildings for water, sewage and stormwater will required prior to the issuance of building permits.

CRD Integrated Water Services advised that community piped water can be supplied to the lease area by the CRD. They further advised that a value of 13 single-family equivalents (SFEs) has been assigned to the property by agreement and that this is to be monitored by a water meter. As a condition to further development, the owners are to provide a water service application and development site plan.

CRD Protective Services recommended that the zoning amendment be held at third reading until a Fire Service Area amendment process is substantially complete. The process would evaluate code compliance, infrastructure improvements and fire department capacity.

Department of Fisheries and Oceans (DFO) advised that they would not provide detailed comments on the rezoning application, but recommended that land use planning processes consider establishing regulations to meet environmental conservation and protection objectives related to freshwater and marine fish habitat.

FLNR - Archaeology Branch advised that previously recorded archaeological site DdSc-24 is located on the foreshore area within the lease area and that the waterfront location of the area increases the potential for unknown/unrecorded archaeological deposits to exist in the area. The registered site is recorded as a burial cave and is protected under the *Heritage Conservation Act* and must not be damaged or altered without a Provincial heritage permit. Any land activity planned in the vicinity of the site, or of any other site in proximity to the lease area, would also require a Provincial permit.

FLNR – Authorizations (West Coast Region) stated that the rezoning will align with the Province's issuance of the lease for a Commercial Marina and that they had no further comment. During a follow-up conversation between Ministry and CRD staff on May 19, 2022, Ministry staff advised that environmental and archaeological considerations had been part of an extensive approval review process that included both the applicant and First Nations. FLNR staff advised that concerns related to marina infrastructure and operations, environmental conditions or to archaeological sites in proximity to the marina should be brought to the attention of the Resource Manager for enforcement action by the Province.

Ministry of Transportation & Infrastructure stated the rezoning does not require formal approval, but that the applicant is required to apply for a commercial access permit.

Pacheedaht First Nation representatives and JdF Planning staff met on April 1, 2022, to discuss the proposed zoning amendment for a commercial marina. Concerns raised at that time related to the roles that various government agencies play in regulating the marine environment, archaeological sites and grey water discharge. At a follow-up meeting on May 26, 2022, CRD staff relayed information obtained from FLNR advising that issues related to the marina infrastructure and operations, the marine environment, and archaeological sites should be referred directly to the Provincial Resource Manager. In order to protect archaeological features immediately adjacent to the lease area, as well as access to them, a new land use zone was suggested as a potential solution. Formal comment from Pacheedaht on this specific application has not been received as of the writing of this report. Any comments received prior to July 19, 2022, will be brought to the Land Use Committee at that time.

RCMP stated that they have no position on this application.

A Public Information Meeting was held at the Juan de Fuca Local Area Services Building and via video and tele-conference on March 7, 2022, to consider the application. Approximately five members of the public attended in-person and sixteen members of the public attended via electronic participation.

Members of the public asked questions and raised concerns regarding environmental impacts of the marina infrastructure and operations on the surrounding marine environment, septic disposal, water consumption, the scale of the existing food service facility in relation to the temporary use permit, and the siting and condition of fuel services for the facility.

### *Land Use*

Schedule 'A' of the Comprehensive Community Development Plan for Port Renfrew, Bylaw No. 3109, designates the subject property, which is defined by Crown Lease #927321, as Marine Protection (M). The Marine Protection designation does not support log booming operations, and is silent on other maritime uses. The subject property is currently zoned Marine (M) under Schedule 'B' of Bylaw No. 3109, which only permits private boat docks.

The proposed uses in the Commercial Marina (CM-1) zone include commercial marina, community use services such as government services, food service establishments and retail establishments. These uses are currently authorized under Temporary Use Permit TP000008. The Permit will expire on July 24, 2022, and there is no option to renew the permit for another term.

Construction of the breakwater and dock facilities was approved by the Province through the issuance of the original Licence of Occupation. At that time, the Province required detailed environmental assessments that led to the present location and configuration of the breakwater structures. The marina provides a year-round safe harbour and plays an important economic role for the surrounding community.

Construction of a picnic shelter and the siting of portable washrooms and marina office were permitted under the existing temporary use permit. Modifications to the picnic shelter have been made without a building permit and are to be brought into compliance with the *BC Building Code* in accordance with comments from CRD Building Inspection and Protective Services. The applicant wishes to keep the existing structure and has agreed to provide building inspection staff with a code analysis, detailing any requirements for bringing them into compliance. However, in order to issue building permits, the use must first be permitted under the land use bylaw.

The lease area is currently located outside the Port Renfrew Fire Protection Local Service Area. Inclusion of the parcel in the service area requires a service area bylaw amendment, which would be subject to confirmation from Protective Services that hazards have been identified and that the required resources can be put in place to provide service to the area. The process to review and amend the service area bylaw is currently underway in consultation with the applicant.

CRD staff have had several conversations with representatives of Pacheedaht First Nation regarding the proposal to rezone the marina lease area. Pacheedaht have expressed ongoing concern regarding environmental conditions associated with marina operations and with the location of the marina breakwater structures. Approval of the breakwater location was the subject of the Provincial lease application process and any concerns related to the marine environment are the jurisdiction of the federal and provincial governments.

Pacheedaht expressed additional concern regarding the status of buildings associated with the marina operation and with the impact of the marina on adjacent sea caves that hold significant cultural and archaeological importance to the Nation. This includes potential impact to the cave feature at registered archaeological site DdSc-24, also known as Cave 3. A second cave (Cave 2) is located in close proximity to registered archaeological site DdSc-24. Cave 2 is considered to have high archaeological potential and is of significant importance to Pacheedaht.

CRD staff and Pacheedaht representatives have discussed the option of including a new Heritage Conservation (HC) zone to cover an area of foreshore fill to the north of the caves (Appendix D). The intent of the Heritage Conservation zone is to protect Caves 2 and 3, and to provide access to Cave 3 by Pacheedaht for cultural purposes. Proposed permitted uses are limited to *heritage conservation*, which is defined as, "the conservation of lands that have been identified as an area requiring protection or access for cultural or heritage purposes." At this time, Pacheedaht have not provided formal support for this proposal; however, the application of such a zone is the only means available to the CRD to provide additional protection to the lease area, which is otherwise regulated by the Province.

With regards to environmental impacts of the marina infrastructure and operations, FLNR staff confirmed that an extensive review was conducted during the lease application process, and that concerns related to current impacts should be brought to the attention of the Resource Manager for investigation and action by the Province.

Based on the information provided by the applicant, referral comments received and confirmation from FLNR that it has issued the lease for commercial marina purposes having considered potential environmental and archaeological impacts, staff recommend receipt of referral comments, that proposed Bylaw No. 4473 be read a first and second time, and that a public hearing with respect to the bylaw be held.

### **CONCLUSION**

The purpose of this zoning bylaw amendment application is to rezone the subject property in Port Renfrew from Marine (M) to a new Commercial Marina (CM-1) zone for the purposes of permitting a commercial marina, community use services, food service establishments and retail establishments upon the expiry of Temporary Use Permit TP000008. In addition to the application of the new CM-1 zone, staff recommend that a new Heritage Conservation (HC) zone be applied to the fill area between two sea caves and the natural boundary of the sea within the lease area to address concerns expressed by Pacheedaht First Nation representatives regarding protection of the caves and ongoing access to them. Staff have prepared proposed Bylaw No. 4473 and recommend receipt of referral comments, first and second reading, and advancement to public hearing.

### **RECOMMENDATION**

#### *Alternative 1*

The Land Use Committee recommends to the Capital Regional District (CRD) Board:

1. That the referral of proposed Bylaw No. 4473, “Juan de Fuca Land Use Bylaw, 1992, Amendment Bylaw No. 155, 2022”, to Public Information Meeting, CRD departments, BC Hydro, Cowichan Valley Regional District, Department of Fisheries and Oceans, Ministry of Forests, Lands, Natural Resource Operations and Rural Development (FLNR), FLNR - Archaeology Branch, Island Health, Ministry of Transportation & Infrastructure, Pacheedaht First Nation, RCMP, and Sooke School District #62 be approved and the comments received.
2. That proposed Bylaw No. 4473 be introduced and read a first time and read a second time; and;
3. That in accordance with the provisions of section 469 of the *Local Government Act*, the Director for the Juan de Fuca Electoral Area, or Alternate Director, be delegated authority to hold a Public Hearing with respect to Bylaw No. 4473.

Submitted by:	Iain Lawrence, RPP, MCIP, Senior Manager, Juan de Fuca Local Area Services
Concurrence:	Kevin Lorette, P.Eng., MBA, General Manager, Planning & Protective Services
Concurrence:	Robert Lapham, RPP, MCIP, Chief Administrative Officer

### **ATTACHMENTS**

- Appendix A: Context Map
- Appendix B: Subject Property Map
- Appendix C: Current Zoning – Marine (M) Zone
- Appendix D: Proposed Bylaw No. 4473
- Appendix E: Referral Comments