
INFORMATION BULLETIN

For Immediate Release
2016FLNR0010-000205
Feb. 12, 2016

Ministry of Forests, Lands and Natural Resource
Operations

Pender Harbour Dock Management Plan next steps

VICTORIA – The next steps in finalizing the Pender Harbour Dock Management Plan were announced today with the release of Barry Penner’s review and recommendations of the draft dock management plan.

The Ministry of Forests, Lands and Natural Resource Operations retained Penner’s services to conduct further engagement with Pender Harbour residents and dock owners and to provide options to address public concerns.

Penner met with 75 community members, local government representatives and the shíshálh First Nation. His report contains 13 recommendations on which the ministry will act.

Most notably, the ministry will undertake further environmental and archaeological studies related to Pender Harbour before finalizing the draft dock management plan. It is anticipated that these studies may take up to a year to complete. The ministry will also consider extending, right away, existing Pender Harbour dock tenures for up to two years, while the further environmental and archaeological studies are undertaken.

The ministry will also engage further with the public and shíshálh Nation before finalizing the dock management plan.

Learn More:

Barry Penner’s final report is available online:

<http://www.arfd.gov.bc.ca/ApplicationPosting/viewpost.jsp?PostID=43285>

A backgrounder with the full list of recommendations and ministry’s response follows.

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BACKGROUND

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Penner Report – Summary of Recommendations and Provincial Responses

1. The B.C. Government should devise and implement a public education strategy to inform the public about the imperative for reconciliation with First Nations, and what this means in practical terms for British Columbians.

Response: The Province is committed to reconciliation with First Nations and agrees it is important for the public to have a better understanding of the constitutional rights of Aboriginal people and the Crown's duty to consult, and where appropriate, accommodate Aboriginal interests.

2. The Ministry, perhaps with support from Fisheries and Oceans Canada, should conduct an in-depth environmental study of the impact of docks in Pender Harbour, with a focus on but not limited to Zone 1 as defined by the draft dock management plan. Ongoing monitoring of environmental conditions and habitat impacts should be undertaken, and an annual limit on new applications should be considered depending on the outcome of studies/ monitoring.

Response: The Province will undertake an environmental study and use the study results to inform the need for ongoing monitoring and limiting the number of new dock applications each year.

3. Informed by the results of the environmental study in Recommendation #2, the Ministry should identify opportunities for habitat restoration and enhancement projects in Pender Harbour.

Response: The Province will identify opportunities for habitat restoration and enhancement projects as part of the terms of reference for the environmental study.

4. The B.C. Government should complete an archaeological inventory for the north side of Pender Harbour (e.g. Gunboat Bay and Garden Bay) sufficient to satisfy the requirements for a "preliminary field reconnaissance" and make a summary of the results publicly available. A summary of the archaeological inventory conducted in 2004 for the south side of Pender Harbour should also be made public. Archaeological information should be made available to prospective tenure applicants for use in support of their dock application.

Response: The Province will begin an archaeological inventory for the north side of Pender Harbour. Working with the shíshálh Nation, the Province will develop an historical overview document of Pender Harbour including its cultural and social importance to the shíshálh people. The release of archaeological information will follow standard government practices to ensure the ongoing integrity of sites and compliance with B.C.'s *Heritage Conservation Act*. shíshálh Nation will be consulted.

The draft dock management plan will be amended for *new* dock tenures to clarify that applicants for new docks should first contact FrontCounterBC to confirm whether or not a preliminary assessment of archaeological resources has been completed for the proposed project footprint. If one has been completed and does not indicate the need for a more in-depth archaeological assessment, then further archaeological work will not be required. This provision would be consistent with the draft dock management plan provision with respect to replacement dock tenures.

5. The draft dock management plan should be amended to eliminate the absolute prohibition on new docks in Zone 1, and instead require appropriate studies from qualified professionals to demonstrate a proposed dock will be designed and constructed in such a way as to avoid significant adverse environmental or archaeological effects.

Response: The Province will review this recommendation once the studies are completed (See recommendations #2 and #4).

6. The Ministry should start requiring the posting of adequate security for tenures in Zone 1 to help defray costs to the provincial government in the event of default or non-compliance with the tenure agreement.

Response: The Province will consider this recommendation, including its applicability province-wide to ensure fair and equitable treatment of dock tenure holders using Crown land.

7. The draft dock management plan should be amended to explicitly state the issuance of dock tenures does not grant exclusive access to the foreshore, and members of the public, including members of the shíshálh Nation, continue to have a right to make lawful use of resources on the foreshore (e.g., harvesting of shellfish).

Response: All foreshore licences of occupation allow for public and First Nations' access to the foreshore. Including this provision in the dock management plan will provide additional clarity.

8. Consideration should be given to adjusting/fine-tuning the zone boundaries as defined in the draft dock management plan based on information contained in the environmental study mentioned in Recommendation #2 and the archaeological inventories referred to in Finding #6 and Recommendation #3.

Response: The Province will consider this recommendation following completion of the recommended studies.

9. While studies are ongoing and consideration is given to revising the draft dock management plan, the Ministry should, within the next 90 days, grant two-year dock tenure renewals as a gesture of goodwill to those property owners who have faced uncertainty and stress over the past decade or more. Tenures should also be granted to those applicants who have been waiting many years, and spent considerable sums, planning for appropriately built dock if those applications meet the standards contained in the finalized dock management plan.

Response: With respect to existing dock tenures, the Province's statutory decision-makers (as designated under the Land Act) will consider extending existing Pender Harbour dock tenures (by issuing a modification agreement) for up to two years while the further environmental and archaeological studies are ongoing and the dock management plan is being finalized.

The recommendation with respect to new dock tenure applications will be considered once the draft dock management plan is finalized. This approach will ensure that any new docks fully align with the final dock management plan.

10. The Ministry should make it clear, either in additional wording in the dock management plan or through other means, that archaeological surveys or studies required by the dock management plan can be conducted by either qualified professionals working for shíshálh Nation or by other qualified professionals. Consideration should be given to informing property owners of how they can locate a qualified professional for this purpose.

Response: B.C.'s *Heritage Conservation Act* requires that any archaeological investigation be undertaken by a qualified archaeologist. The draft dock management plan does not include any requirement to use a specific archaeologist. When professional services are required by a proponent to complete an application, FrontCounterBC staff direct the proponent to the appropriate professional association (e.g., BC Association of Professional Archaeologists).

11. Property owners with untenured docks should be eligible to obtain a Licence of Occupation (tenure), provided they can meet the requirements of the dock management plan (assuming the dock management plan is implemented) which apply to tenure renewals.

Response: The Province has been extending dock tenures with expired terms on a month-to-month basis. The only untenured docks in Pender Harbour are those that have been constructed without legal authority and are in trespass. See Response to Recommendation #12 with regard to untenured docks.

With respect to existing dock tenures that have been continued on a month to month basis, the tenure holders will be eligible to apply for a longer term replacement tenure once the draft dock management plan is finalized. Also see Response to Recommendation #9.

12. Docks that are derelict, untenured and not in compliance with the dock management plan should be removed, following adequate notice/warning period. A variance or appeal process should be made available under the dock management plan.

Response: Under the Land Act, docks that are untenured are considered to be in trespass and can be ordered removed. Due process is followed, including adequate notice and the right to object to the order. On the expiry of a dock tenure, the tenant is required to restore the Crown land to the same condition as it was before any dock was constructed. These requirements apply province-wide, so additional processes are not required specific to Pender Harbour.

Where existing tenured docks may not be in compliance with the final dock management plan, the statutory decision-maker will consider opportunities for the dock tenure holder to bring the tenure into compliance in making tenure the replacement decision.

13. The Ministry should produce an easy-to-understand brochure to help explain the final dock management plan.

Response: The Province will produce a fact sheet or brochure to explain the final dock management plan.

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