

DATE: August 3, 2017 **FILE:** 6470-20

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Ann MacDonald, MCIP, RPP
Acting Chief Administrative Officer

RE: Denman Island Bylaw No. 225 referral (Land Use Bylaw Amendment to Generally Prohibit Vehicles and Ground-Based Machinery in Water Zones)

Purpose

The purpose of this report is to apprise the board of Denman Island's proposed Bylaw No. 225 (see Appendix A), a general amendment to prohibit the use of vehicles and ground-based machinery in the Island's water zones (see Appendix B).

Policy Analysis

The Comox Valley Regional District's (CVRD) Official Community Plan (OCP) contains a range of policies intended to support the aquaculture industry as a key economic driver and to balance that support with assessment of the impact of the industry on the marine environment and upland land uses/users. The OCP, does not however apply to lands/water within the jurisdiction of the Islands Trust.

Aquaculture licenses are issued by Fisheries and Oceans Canada (DFO) and tenures are granted by the Ministry of Forests, Lands, and Natural Resource Operations.

Executive Summary

- There is no overlap in the CVRD's and the Islands Trust's zoning jurisdiction;
- Islands Trust's proposed amendment will prohibit the use of vehicles and other ground-based machinery from entering Denman's water zones except where federally licensed aquaculture operations are entitled to this equipment in accordance with an aquaculture license;
- Islands Trust has identified one water zone, being W3, where aquaculture can be undertaken;
- It appears that the proposed bylaw may be used to limit existing aquaculture operators from accessing tenures within the W3 zone (i.e. access provided by traversing a W1 zone) as well as limiting the expansion of operations into areas of the foreshore that are not presently zoned for aquaculture;
- The CVRD supports aquaculture and staff is concerned that Denman's proposed bylaw may negatively impact the aquaculture industry within the jurisdiction of the Islands Trust, ultimately impacting the regional industry.

Recommendation from the Acting Chief Administrative Officer:

THAT the Denman Island Trust Committee be advised that the CVRD is concerned that proposed Bylaw No. 225, being a bylaw to amend the Denman Island Land Use Bylaw No. 186, 2008 by adding a general prohibition against the use of vehicles and ground-based machinery in the W1, W3

and W4 zones, applicable to the majority of the Denman Island marine foreshore, may negatively impact current and future lawful access to aquaculture tenures by aquaculture operators and request that the Denman Island Trust Committee consult with the aquaculture industry before processing further.

Respectfully:

A. MacDonald

Ann MacDonald, MCIP RPP
Acting Chief Administrative Officer

Background/Current Situation

In a December 2016 report to the Islands Trust Council, Islands Trust staff state that “there has been a growing concern over the last several years about increased industrial and recreational use of the marine waters of the Trust area”. The report identifies a range of marine protection tools that the Trust can consider in implementing its provincial mandate to preserve and protect the Trust area. Zoning is among the tools that is identified that can be used to regulate land use (including regulation over the surface of the water).

The Denman Island Trust Committee has defined four marine water zones. Aquaculture is a permitted use in one of those zones, the W3 zone (see Appendix B). While not bound to abide local zoning, it has been the CVRD’s experience that DFO considers local government zoning in its issuance of aquaculture licenses.

CVRD staff understands, through its work on the Baynes Sound Initiative, that many of Denman’s aquaculture operators access their foreshore tenures by motorized vehicle and/or use vehicles and other ground-based machinery to harvest their product. It would appear that for these operators a restriction on vehicular access within the foreshore will impact their ability to operate, notwithstanding the part of Denman’s proposed bylaw that acknowledges that some licenses include a provision to operate vehicles/other ground-based machinery. Staff is concerned that the proposed bylaw, if adopted, may be used to prevent issuance of future licenses given DFO’s past recognition of local government zoning.

Options

1. Advise the Islands Trust (Denman Island Trust Committee) that the CVRD is concerned that the proposed bylaw will negatively impact the regional aquaculture industry;
2. Refer the matter back to staff with direction on next steps.

Staff recommends option 1.

Financial Factors

There are no financial factors arising from staff’s recommendation.

Legal Factors

There are no legal factors arising from staff’s recommendation. Aquaculture is broadly permitted within the CVRD’s Baynes Sound jurisdiction. While zoning can be used to identify locations where aquaculture can locate, zoning authority does not extend to regulating the practice of the industry.

Regional Growth Strategy Implications

The Regional Growth Strategy (RGS) does not apply to Denman Island, however, as a regional source of employment, the RGS maintains that existing shellfish farms and tenures should be

protected with no net loss. A bylaw that may have the effect of prohibiting lawful access may result in the functional loss of an existing tenure.

Intergovernmental Factors

The Islands Trust issued this referral to a range of First Nations and agencies, including the K’omoks First Nation.

Interdepartmental Involvement

Planning staff have undertaken the review of the Islands Trust’s proposed bylaw.

Citizen/Public Relations

There are no citizen/public relations matters arising from the recommendation contained within this report.

Prepared by:

A. Mullaly

Alana Mullaly, MCIP RPP
Manager of Planning Services

Concurrence:

A. MacDonald

Ann MacDonald, MCIP, RPP
General Manager of Planning
and Development Services
Branch

Attachments: Appendix A – “Denman Island’s proposed Bylaw No. 225”
Appendix B – “Denman Island’s zoning maps”

DENMAN ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. 225

A bylaw to amend the Land Use Bylaw to prohibit the use of vehicles and ground based machinery on the foreshore in the W1, W3 and W4 zones.

The Denman Island Local Trust Committee, being the Local Trust Committee having jurisdiction in respect of the Denman Island Local Trust Area in the Province of British Columbia pursuant to the *Islands Trust Act*, enacts as follows:

- 1 Denman Island Land Use Bylaw No. 186, cited as "Denman Island Land Use Bylaw, 2008", is amended as detailed on attached Schedule 'A' of this amending bylaw.
- 2 This Bylaw may be cited as "Denman Island Land Use Bylaw No. 186, 2008, Amendment No 1, 2017".

READ A FIRST TIME this 6TH day of JUNE , 2017

PUBLIC HEARING this day of , 201X

READ A SECOND TIME this day of , 201X

READ A THIRD TIME this day of , 201X

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST

this day of , 201X

ADOPTED this day of , 201X

Chairperson

Secretary

**DENMAN ISLAND LOCAL TRUST COMMITTEE
BYLAW NO.225**

Schedule 'A'

1. PART 3 ZONE REGULATIONS, Section 3.7 Water Zoning Tables is amended by the addition of a new "Table 5 – Prohibited Uses" as shown below:

Table 5 – Prohibited Uses

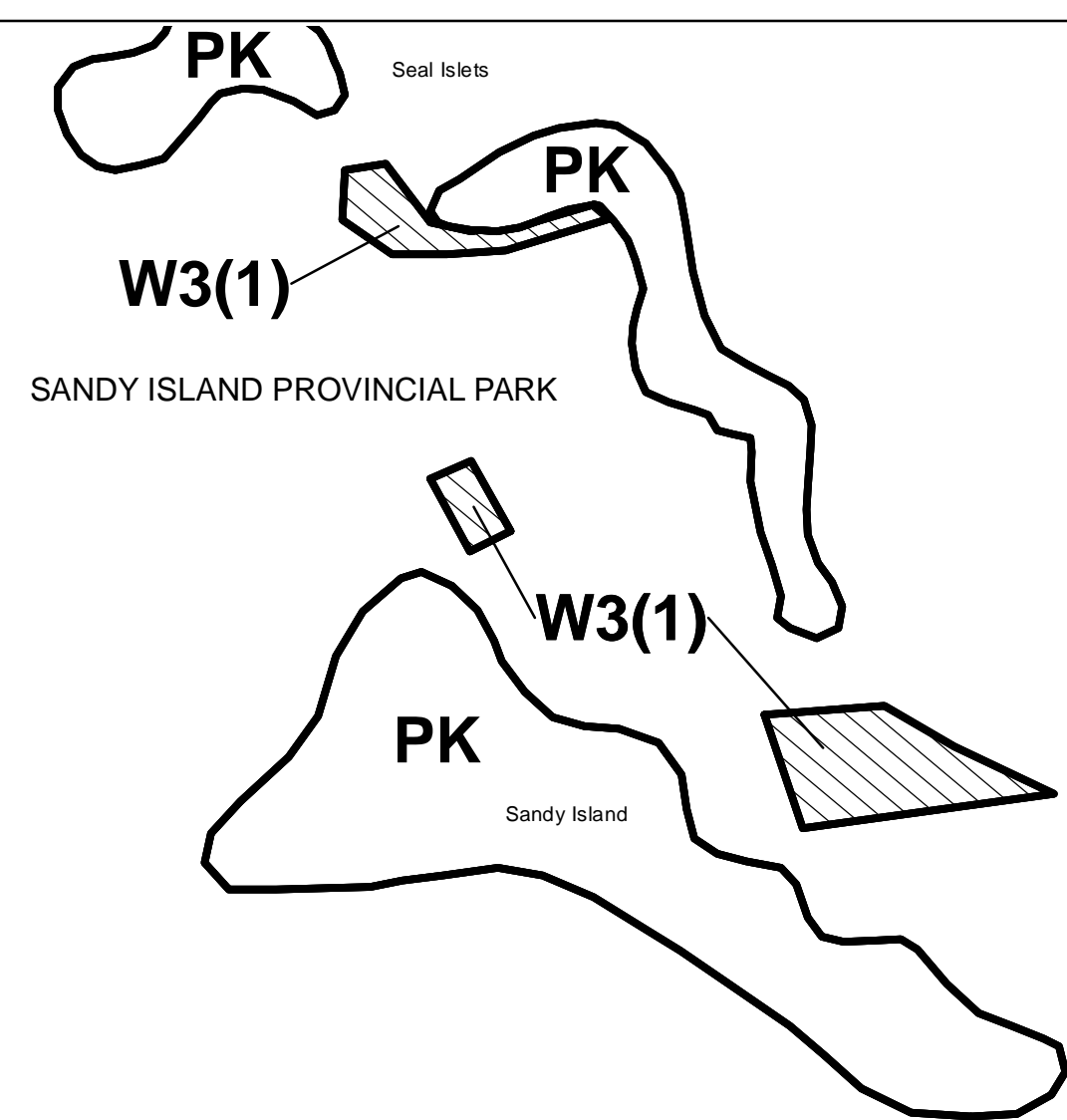
The regulations listed in this table are intended to be applied in conjunction with the provisions of Table1, "Permitted Uses" in order to provide additional guidance and clarity on acceptable implementation actions and practices associated with the permitted uses

Zoning Code	Regulations
W1, W3, W4	Despite Table 1 of this Section, the use of vehicles and ground based machinery on the foreshore is prohibited.

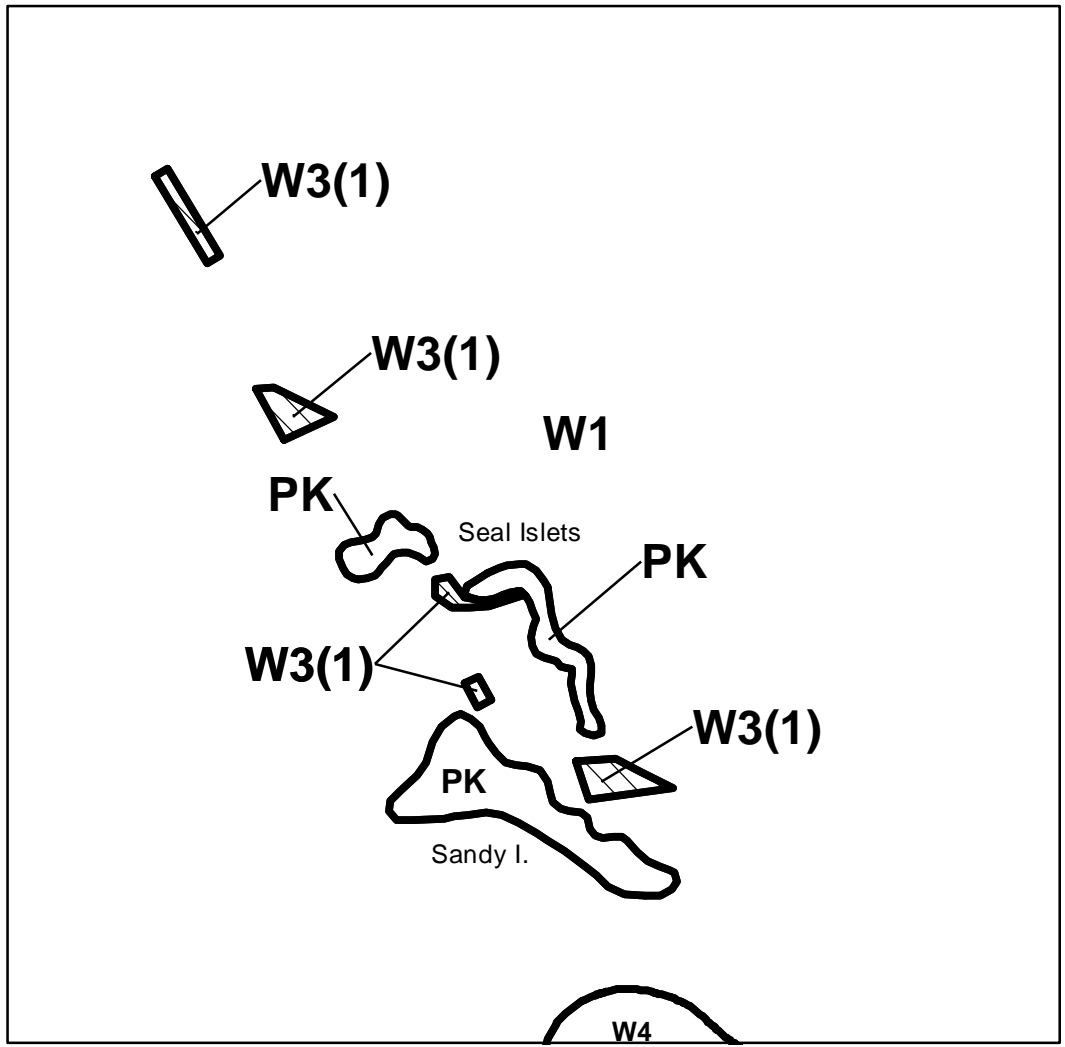
INFORMATION NOTE: Aquaculture operations in the W3 zone that are licensed under the *Fisheries Act (Canada)* may be entitled to operate vehicles or ground based machinery in accordance with the terms of the license.

DENMAN ISLAND LAND USE BYLAW

Bylaw #186 SCHEDULE B - NORTH SHEET



INSET C
1 : 30,000



- RESIDENTIAL ZONES**
- R1 Residential
 - R2 Rural Residential
 - R3 Community Housing

- RESOURCE ZONES**
- A Agriculture
 - F Forestry
 - RE Resource

- COMMERCIAL AND LIGHT INDUSTRIAL ZONES**
- C Commercial
 - L Light Industrial

- COMMUNITY ZONES**
- IN Institutional
 - CN Conservation
 - PK Park

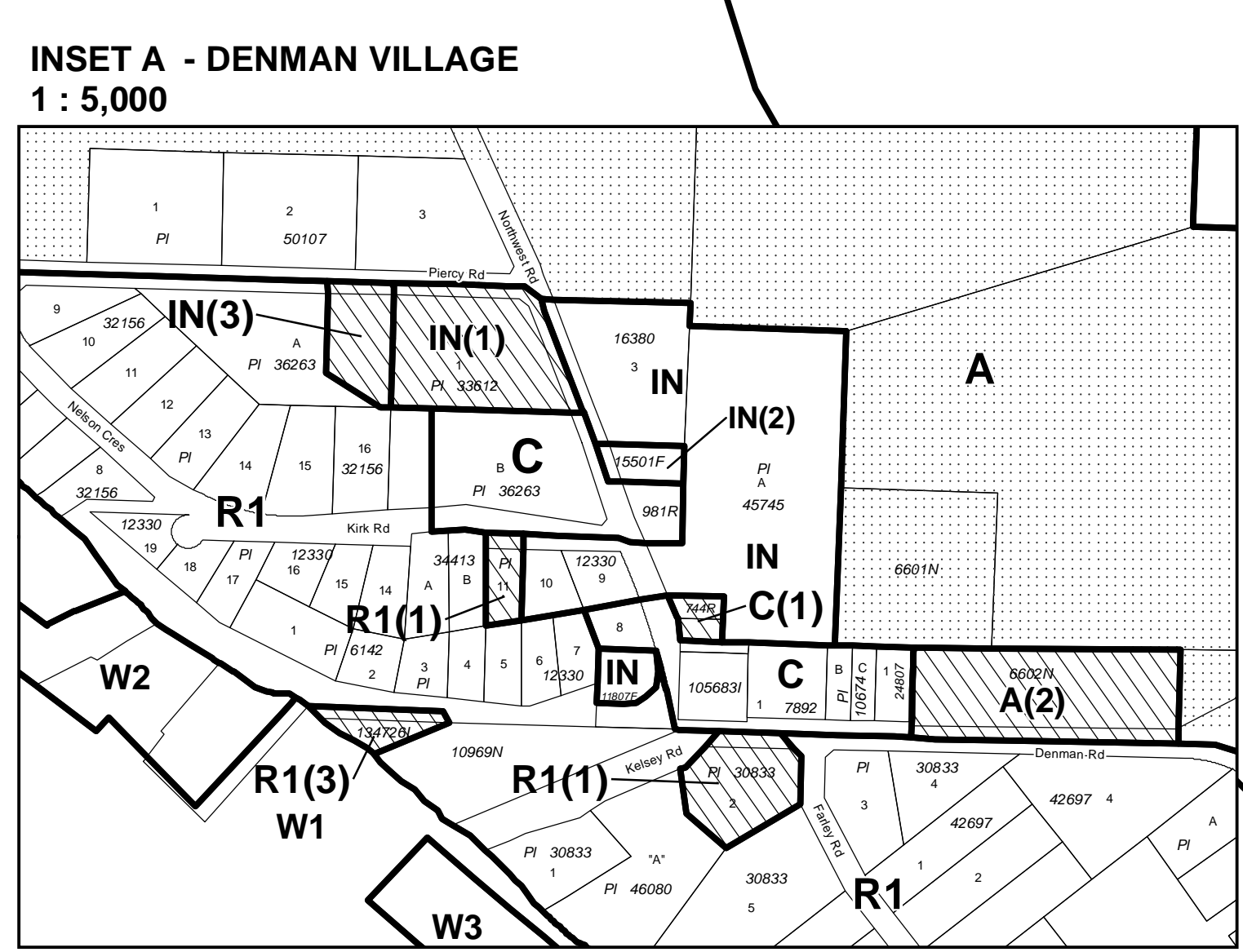
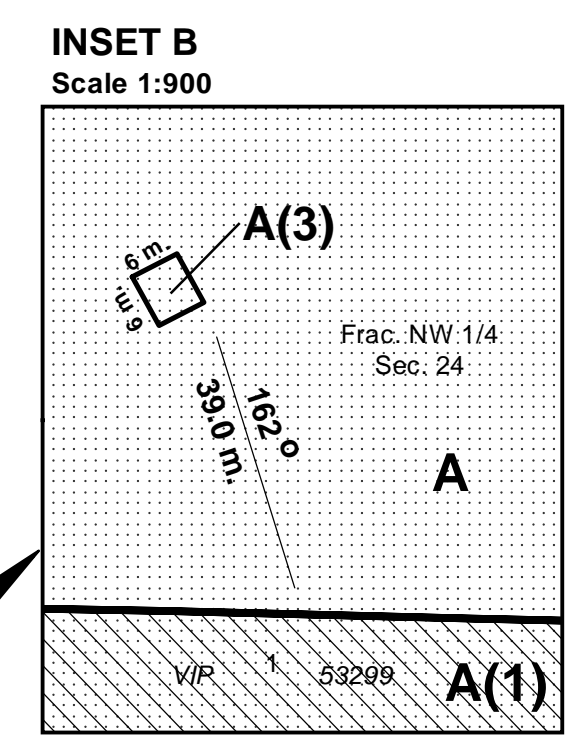
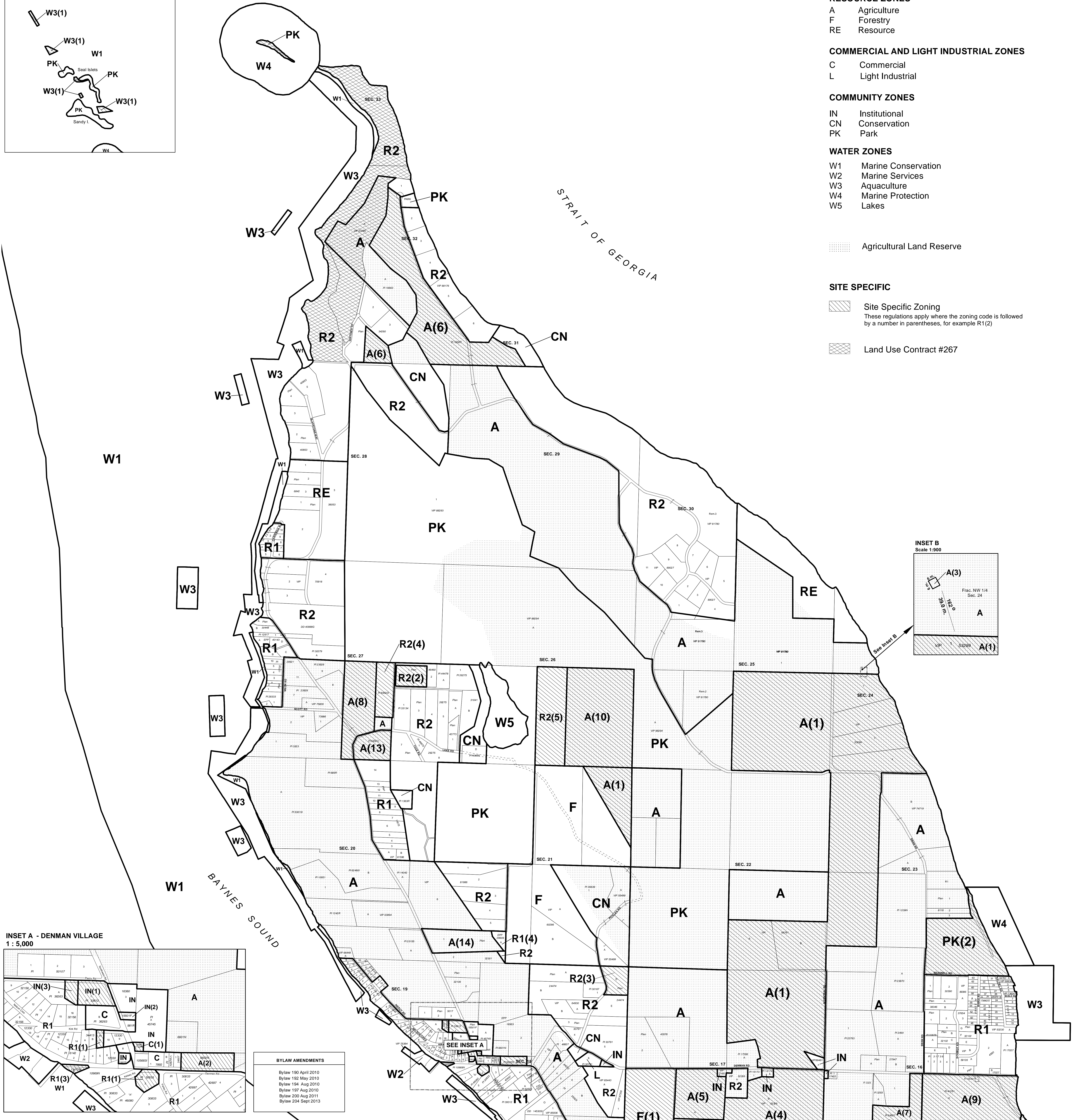
- WATER ZONES**
- W1 Marine Conservation
 - W2 Marine Services
 - W3 Aquaculture
 - W4 Marine Protection
 - W5 Lakes

Agricultural Land Reserve

SITE SPECIFIC

Site Specific Zoning
These regulations apply where the zoning code is followed by a number in parentheses, for example R1(2)

Land Use Contract #267



BYLAW AMENDMENTS

- Bylaw 190 April 2010
- Bylaw 192 May 2010
- Bylaw 194 Aug 2010
- Bylaw 197 Aug 2010
- Bylaw 200 Aug 2011
- Bylaw 204 Sept 2013

DENMAN ISLAND LAND USE BYLAW

Bylaw 186
SCHEDULE B - SOUTH SHEET

RESIDENTIAL ZONES

- R1 Residential
- R2 Rural Residential
- R3 Community Housing

RESOURCE ZONES

- A Agriculture
- F Forestry
- RE Resource

COMMERCIAL AND LIGHT INDUSTRIAL ZONES

- C Commercial
- L Light Industrial

COMMUNITY ZONES

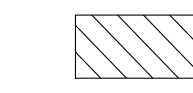
- IN Institutional
- CN Conservation
- PK Park

WATER ZONES

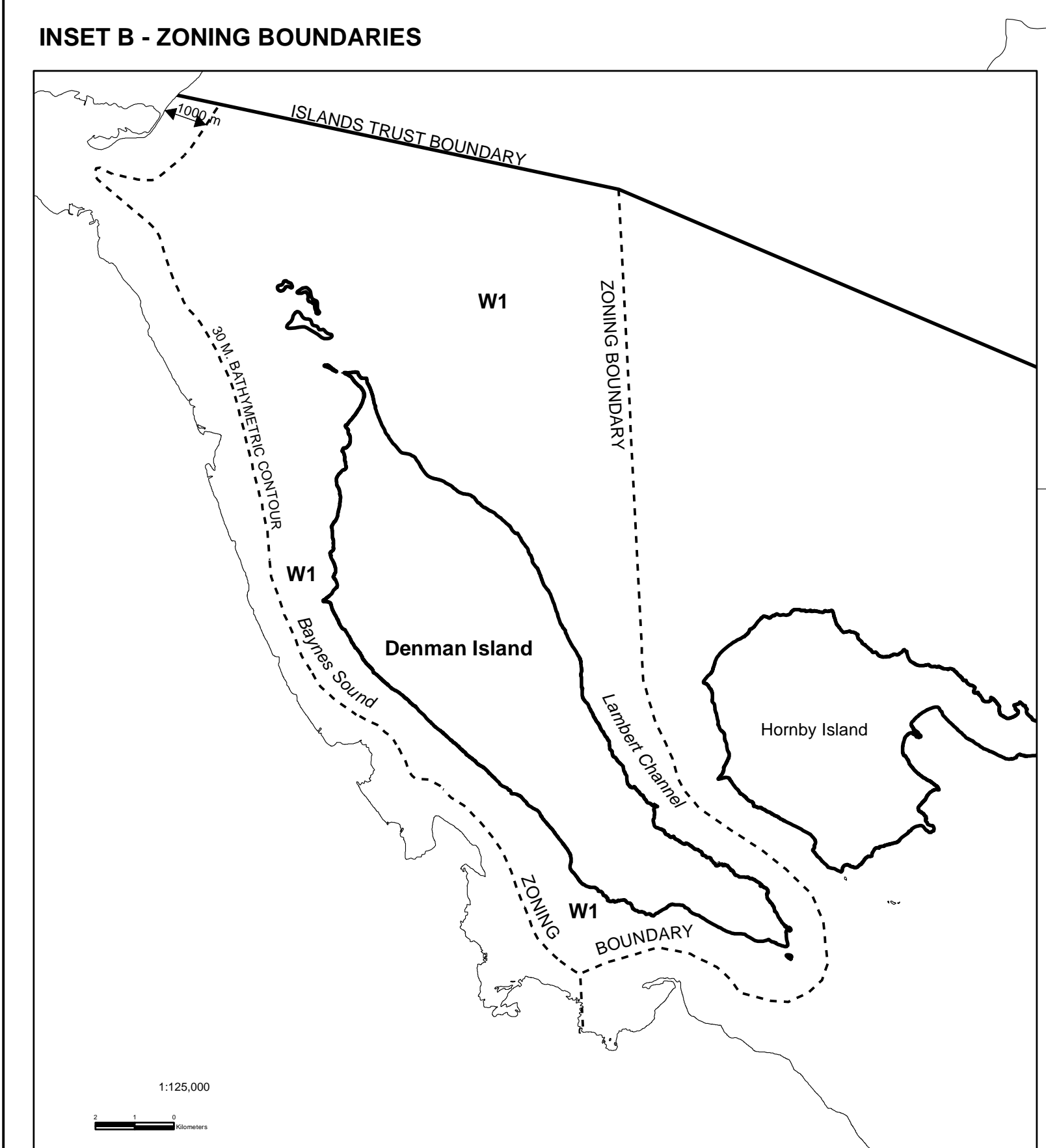
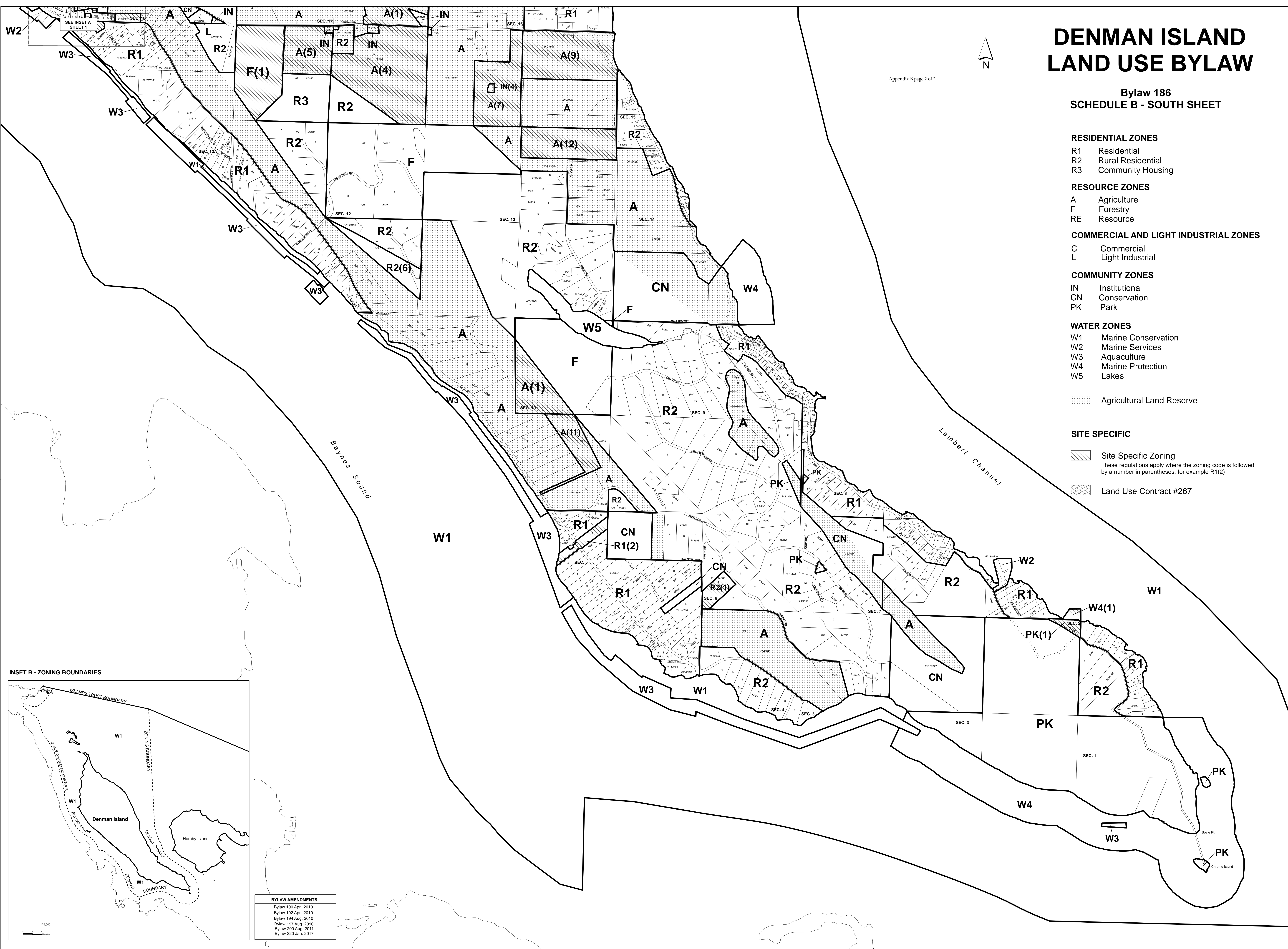
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- W4 Marine Protection
- W5 Lakes

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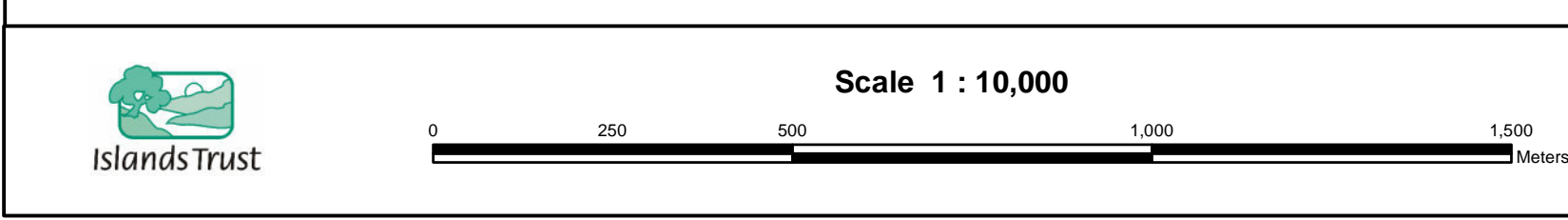
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 Bylaw 220 Jan. 2017



DENMAN ISLAND

DENMAN ISLAND
LOCAL TRUST COMMITTEE

LAND USE BYLAW
SHEET 2 OF 2

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