

Date: March 27, 2014

File No.: GL-RZ-2004.6
Crystal Mountain

To: Galiano Island Local Trust Committee

From: Kim Farris, Planner 1

CC: Robert Kojima, Regional Planning Manager
Kris Nichols, Island Planner

Re: Preliminary Report - Bylaw Amendment Application

Owner: Crystal Mountain – A Society for Eastern and Western Studies

Applicant: Stephen and Helen Foster

Location: Lot A, Districts Lots 88 and 89, Galiano Island, Cowichan District, Plan VIP68079 AND Lot 9, District Lot 90, Galiano Island, Cowichan District, Plan 31200

PURPOSE OF REPORT:

The purpose of this report is to provide a brief background and to seek direction from the Galiano Local Trust Committee (LTC) on application GL-RZ-2004.6 Crystal Mountain and whether to proceed.

BACKGROUND:

A bylaw enforcement file associated with Lot A (See Figure 1) was opened in 2002 as there were numerous buildings located on the property (outdoor kitchen, tent platforms, and sleeping huts) and uses that were not permitted in the Forestry zoning. Subsequently, the applicants applied for a bylaw amendment application in 2004. The 2004 proposal included an amendment to the Galiano Island Official Community Plan and Land Use Bylaw in order to permit a retreat centre/forest retreat on Lot A and Lot 9. The proposal also included a list of buildings (existing and proposed) to be included in the rezoning in order to support the forest retreat centre.

The following timeline provides a brief overview of the application's history. Specific details on the application are not provided:

July 2004 – Preliminary staff report at Galiano LTC meeting. The LTC asked staff to report back on the various issues and options identified as part of that review.

March 2005 – Applicant amended the proposal by amending the number and floor area of the proposed buildings and to concentrate the buildings in two geographic clusters

June 2005 – LTC Special Meeting - The discussion focused on the physical limitations of the site, the draft OCP amendment bylaw and concepts for a proposed LUB amendment bylaw.

July 2005 – Draft OCP and LUB amendments presented at Galiano Island LTC meeting. The draft bylaws were forwarded to the APC for comment.

January 2006 – LTC Special Meeting – General consensus that the applicants would wait until an OCP Forest Lands Review was complete. If policy developed that addressed Forest Retreats, then the applicants would consider coming forward with a rezoning proposal consistent with that policy framework.

December 2007 to 2012 – Numerous letters sent from Islands Trust staff to close application due to inactivity.

2013 – Applicant provided an updated proposal and site plan. Three new huts were constructed on the property. These structures are currently not permitted by zoning and therefore are illegal.

THE PROPOSAL:

This is a preliminary report to re-review a decade old application involving two subject properties (Lot A and Lot 9). Lot A is zoned Forest 1 (F1) and Lot 9 is zoned Rural 2 (R2) in the Galiano Island Land use Bylaw (LUB).

The applicant wishes to proceed with the application to rezone the two subject properties to permit a forest retreat centre on the lots. The proposed forest retreat use would permit the construction and legalization of existing non-conforming structures on the properties.

As part of the use, the application is proposing approximately 25 meditation huts, tent platforms, a caretakers cabin, a meditation hall, bath house, summer kitchen structure, utility buildings, outhouses, and parking. Some of these structures already exist on Lot A. The majority of the buildings and structures would be located on Lot A within two buildable site areas (as indicated in Figure 3 – Area Polygon).

The applicant would also like to amalgamate the two lots (Lot A and Lot 9) together. This can be completed through a subdivision application if the bylaw amendments are successful.

SITE CONTEXT:

The rezoning application includes two subject properties: Lot A and Lot 9. Both properties are located on the northwestern end of Galiano Island. Lot A is currently designated Forest (F) in the Official Community Plan (OCP) and zoned Forest 1 (F1) in the Land Use Bylaw (LUB). It is approximately 20.5 ha (50.7 acre) in area. There are a number of structures located on Lot A: outdoor kitchen, sleeping/meditation huts, and multiple accessory structures (eg. tent platforms, etc.). Lot A has two road accesses: Porlier Pass Drive and Devina Drive. The main vehicle access to Lot A is from Porlier Pass Drive. There is a roughed-in access from Devina Drive which is currently blocked. Access to both lots can be achieved through lot 9.

Lot 9 is designated Rural (R) in the OCP and is zoned Rural 2 (R2). It is approximately 4 ha (10 acre) in area. Lot 9 is largely undeveloped except for a small structure (a pagoda) located on the northern edge of the property. Lot 9 can be accessed through Devina Drive.

Figure 1: Subject Property Map

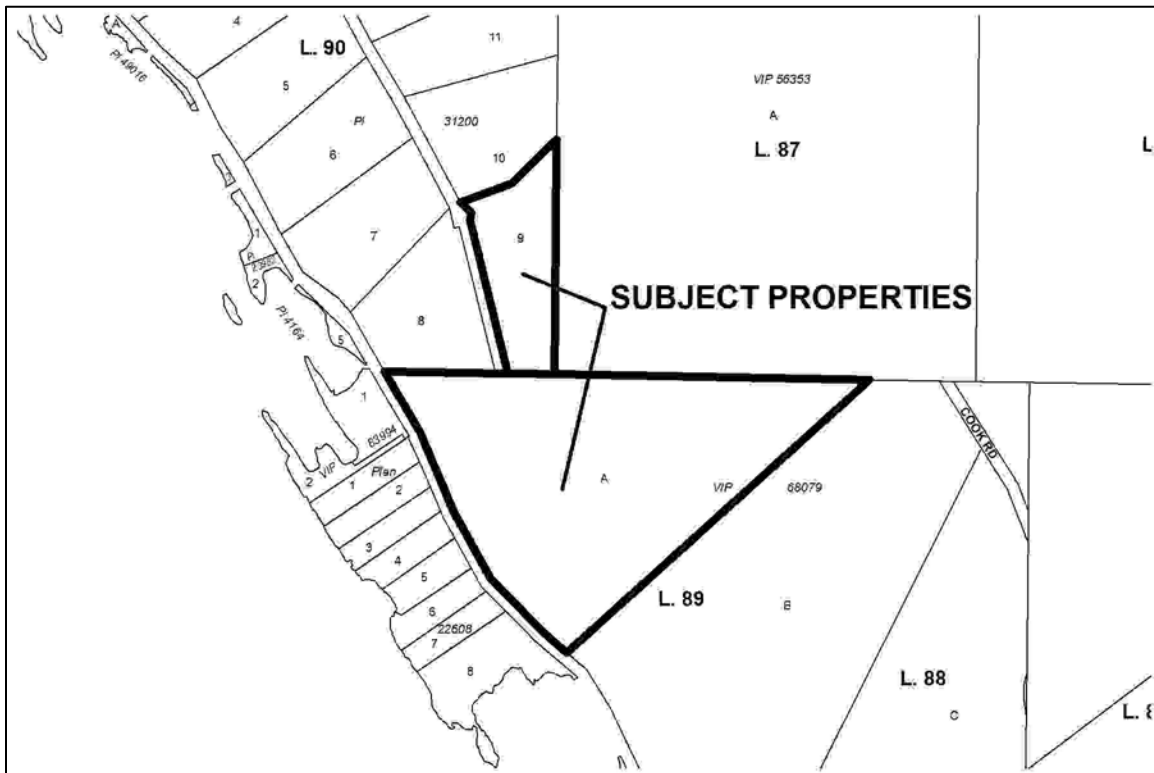
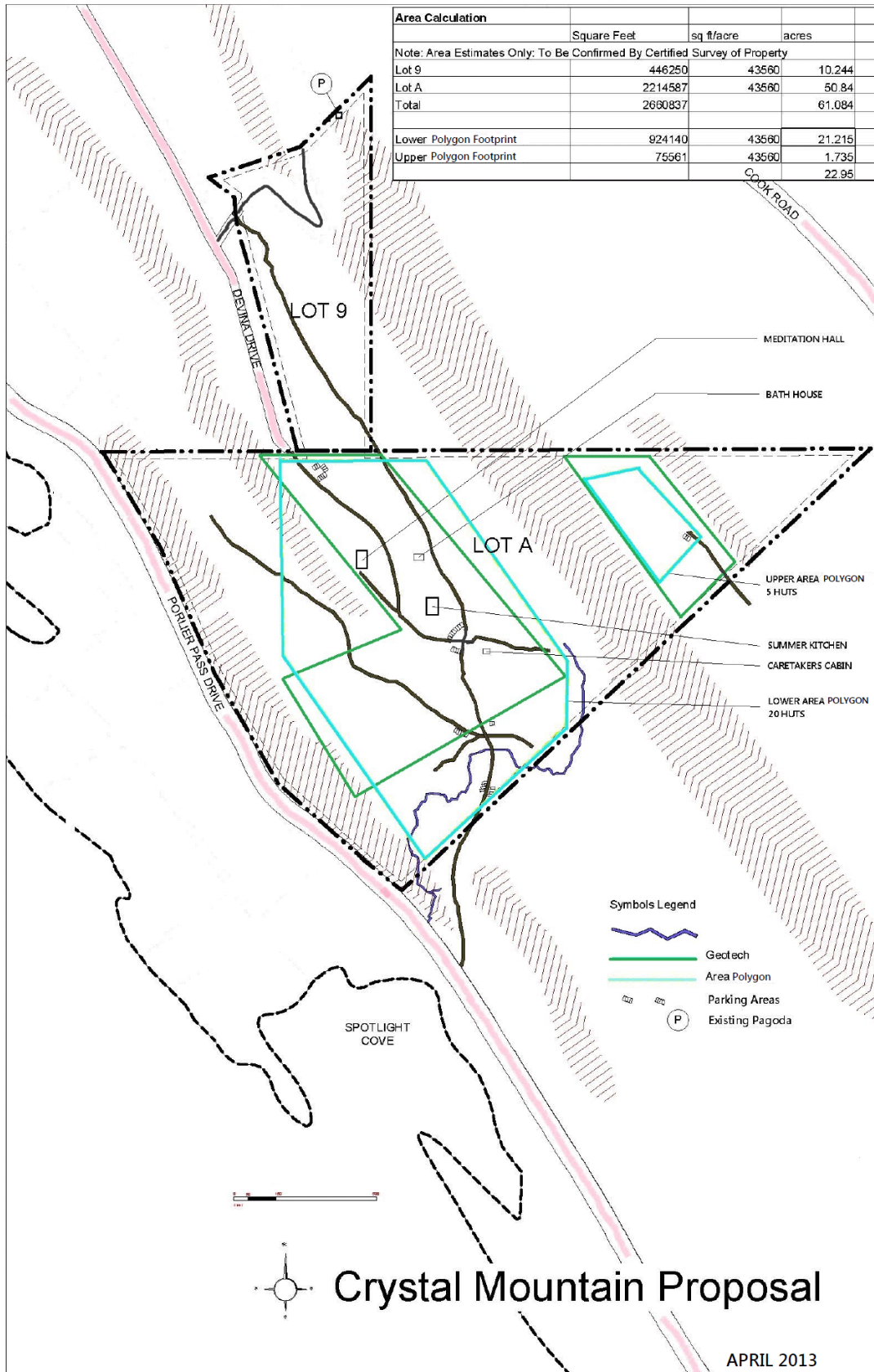


Figure 2: Orthophoto with 2 metre Contour Intervals



Figure 3: Site Plan



Picture 1: Outdoor Kitchen (on Lot A)



Picture 2: A trail on Lot A



Picture 3: Old meditation hut on Lot 9



Picture 4: Newly constructed meditation hut on Lot A



Picture 5: Pagoda (on Lot 9)



CURRENT PLANNING STATUS OF SUBJECT LANDS:

Islands Trust Policy Statement:

Directive policies relevant to this application include:

Local trust committees and island municipalities shall, in their official community plans and regulatory bylaws, address:

- 3.1.3 - the identification and protection of the environmentally sensitive areas and significant natural sites, features and landforms in their planning area.
- 3.2.2 - the protection of unfragmented forest ecosystems within their local planning areas from potentially adverse impacts of growth, development, and land-use.
- 3.3.2 - means to prevent further loss or degradation of freshwater bodies or watercourses, wetlands and riparian zones and to protect aquatic wildlife.
- 4.2.6 - to protect the ecological integrity on a scale of forest stands and landscapes.

- 4.2.7 - address the retention of large land holdings and parcel sizes for sustainable forestry use, and the location and construction of roads, and utility and communication corridors to minimize the fragmentation of forests.
- 4.2.8 - the designation of forest ecosystem reserves where no extraction will take place to ensure the preservation of native biological diversity.
- 4.4.2 - measures that ensure neither the density nor intensity of land use is increased in areas which are known to have a problem with the quality or quantity of the supply of freshwater.
- 5.1.3 – the protection of views, scenic areas and distinctive features contributing to the overall visual quality and scenic values of the Trust Area.
- 5.2.3 - the aesthetic, environmental and social impacts of development.
- 5.2.4 - potential growth rate and strategies for growth management that ensure that land use is compatible with preservation and protection of the environment, natural amenities, resources and community character.
- 5.2.5 – to achieve efficient use of the land base without exceeding any density limits defined in their official community plans.
- 5.2.6 - address the identification of areas hazardous to development, including areas subject to flooding, erosion or slope instability, and strategies to direct development away from such hazards.
- 5.3.5 - address the impacts of road location, design, construction and systems.
- 5.6.2 - the identification, protection, preservation and enhancement of local heritage.
- 5.6.3 – the preservation and protection of the heritage value and character of historic coastal settlement patterns and remains.
- 5.7.2 - economic opportunities that are compatible with conservation of resources and protection of community character.
- 5.8.6 - address their community's current and projected housing requirements and the long-term needs for educational, institutional, community and health-related facilities and services, as well as the cultural and recreational facilities and services.

Official Community Plan:

Lot A is designated 'Forest' and Lot 9 is designated 'Rural' in the Galiano Island Official Community Plan (OCP).

The Rural policies relevant, but not limited, to this application include:

- a) The principal uses shall be residential and agriculture.

The Forest policies relevant, but not limited, to this application include:

- a) The principal use shall be forestry. All structures including dwellings (except dwellings on land rezoned to RR or CF) must be accessory to the principal forestry use and no uses should impair the long-term natural processes of forest growth and regeneration. Unplanned proliferation of residential uses throughout the forest would be contrary to many of the objectives and policies in this plan, including particularly those dealing with the integrity of forest ecosystems and surface water and groundwater supplies and the impact of residential services such as roads. Instead, in order to preserve and protect the forest resource, the plan favours the clustering of residential uses on sites within the forest, carefully selected as the basis of sound planning principles, with the balance of the lands being set aside for forest uses in perpetuity.
- c) The lot size for subdivision of Forest land shall be at least 20 hectares (49.4 acres).

- d) The protection of biodiversity shall be encouraged through appropriate forestry practices and the protection of riparian zones and other sensitive ecosystems.
- g) Appropriate small scale forest related activities such as the sustainable gathering of greenery products, food crops, hiking, bird watching and wildlife viewing, education and value added industry shall be encouraged.
- j) The siting, size, number and character of buildings for forest uses permitted on Forest-designated land shall be regulated, and buildings shall be located on the least productive portions of the land except where the site is a sensitive ecosystem, and in accordance with development approval information if it has been provided.
- k) The fragmentation of Forest-designated lands by roads or other service or communication corridors shall be minimized.
- l) A citizen association to provide information, education and advice on local forest practices shall be encouraged.
- n) Landowners are encouraged to protect the natural systems, biological sustainability, ecological services, and natural aesthetics of forest lands.
- o) Landowners are encouraged to protect riparian areas, marine shoreline areas, sensitive ecosystems, endangered habitat, soils, watersheds, biodiversity, old or large individual trees, and old growth stands.
- p) Landowners are encouraged to protect culturally modified trees and other heritage features.
- r) The Local Trust Committee encourages local economic opportunities for small-scale sustainable forestry through supporting:
- i) the establishment of a non-profit community-owned forest that is consistent with ecosystem-based sustainable forest practices, and the lands so acquired are preserved for forestry use in perpetuity for future generations;
 - ii) the development of co-operative ecosystem-based sustainable forest management and value-added ventures;
 - iii) initiatives to provide tax incentives for maintaining ecosystem-based sustainable forest management activities;
 - iv) appropriate small scale forest related activities such as the sustainable gathering of non-timber forest products, food crops, hiking, bird watching and wildlife viewing, education and value added industry.

The current proposal is direct conflict with a number of the OCP policies. If the application proceeds as is, an amendment to the OCP is required.

Development Permit Areas:

The subject properties are located within the following Development Permit Areas (DPAs):

- DPA 1 – Riparian Areas
- DPA 3 – Tree Cutting and Removal (applies to all properties on Galiano Island)
- DPA 5 – Sensitive Ecosystems
- DPA 7 – Steep Slope Hazard Areas

Generally zoning amendment applications do not initiate DPAs. Staff are aware of existing buildings and structures located on the property although their exact location has not been

surveyed; therefore, it is not clear if any of these buildings are located in the DPA. To date the property owner/applicant has not applied for any development permits for the buildings and structures located on the property.

Figure 4: Sensitive Ecosystems DPA

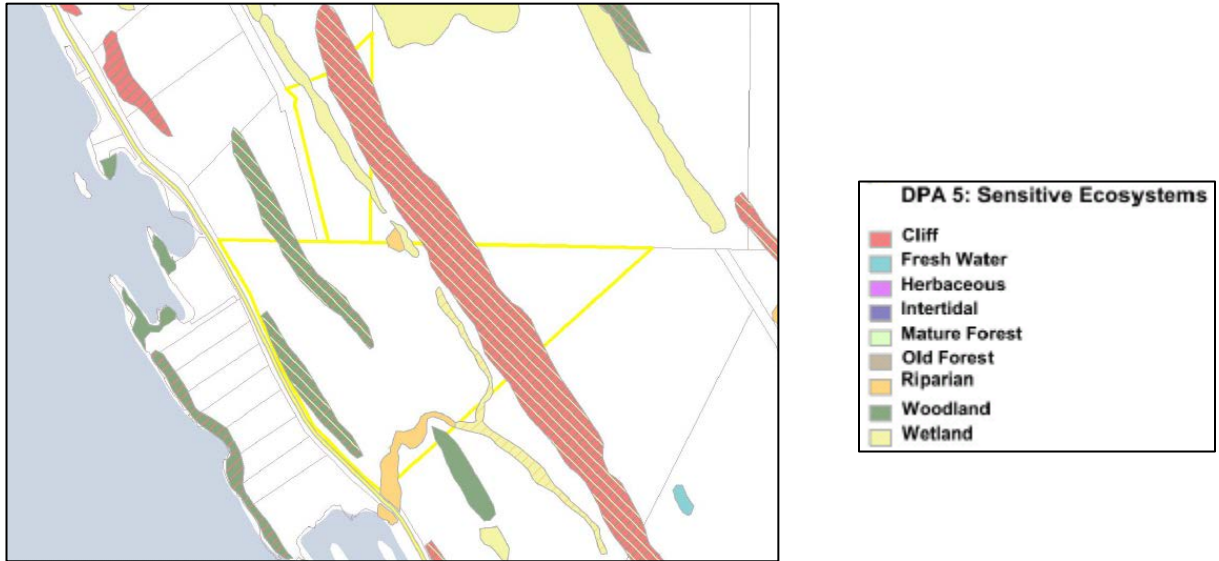
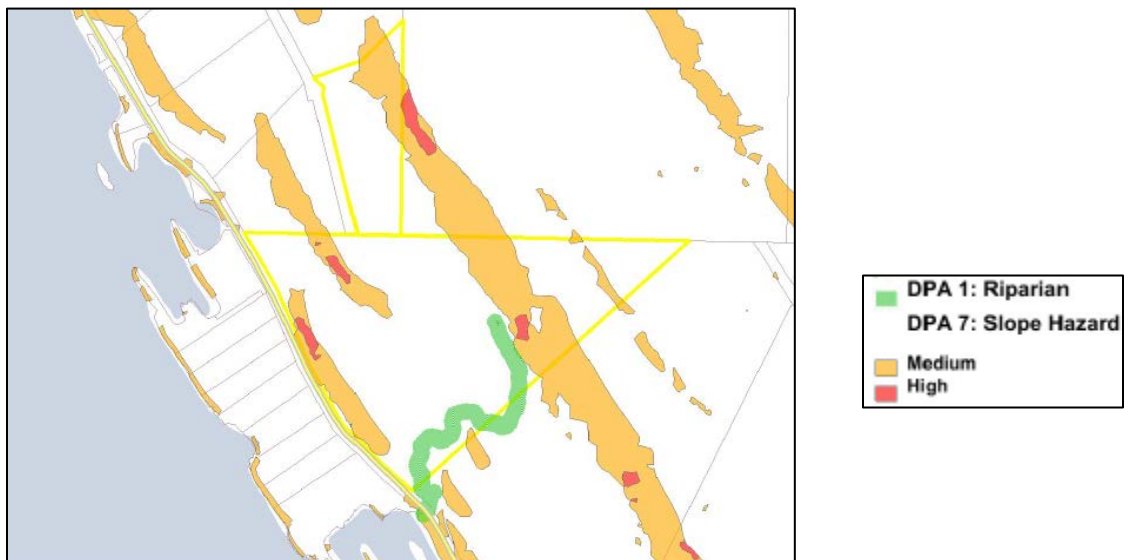


Figure 5: Steep Slope Hazard and Riparian Area DPAs



Land Use Bylaw:

Lot A is zoned Forest 1 (F1) and Lot 9 is zoned Rural 2 (R2) in the Galiano Island Land Use Bylaw, No. 127, 1999. The relevant regulations for the F1 zone are included below:

7.1.1 In the Forest 1 zone the following uses are permitted, subject to the regulations set out in this section and the general regulations set out in Parts 2 and 3, and all other uses including residential uses are prohibited.

7.1.1.1 timber production and harvesting

7.1.1.2 accessory forestry uses including the sawmilling and planting of timber harvested on the same lot and the growing of seedlings in nurseries
Buildings and Structures for Forestry Uses.

7.1.2 A single non-residential unenclosed building or structure with a floor area not exceeding 93 square metres is permitted in each lot and every such building or structure must be screened by a landscape screen not less than 9 metres in height and complying with the requirements of subsection 15.1.1 of this bylaw.

7.1.6 No lot having an area less than 65 hectares may be created by subdivision.

The relevant regulations for the R2 zone are included below:

5.5.1 In the Rural 2 (R2) zone the following uses are permitted, subject to the regulations set out in this section and the general regulations set out in Parts 2 and 3, and all other uses are prohibited.

5.5.1.1 dwellings

5.5.1.2 cottages

5.5.1.3 home occupations

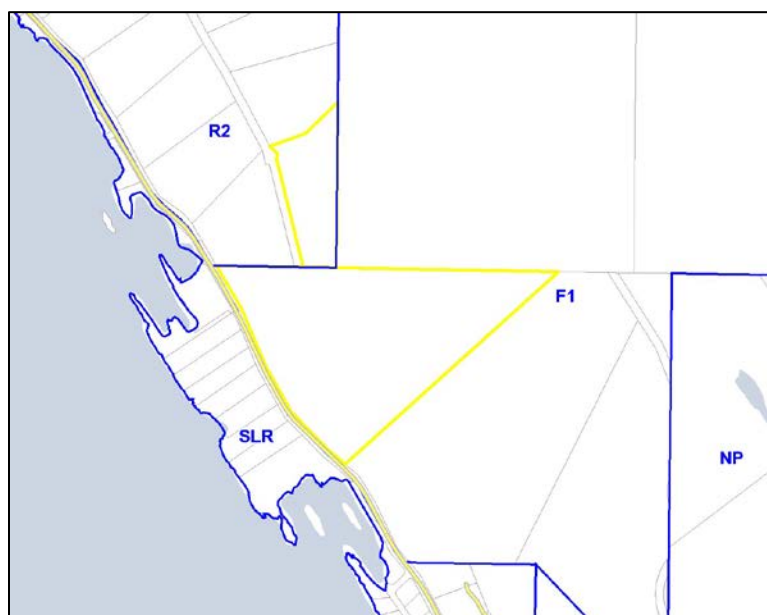
5.5.1.4 farm use

5.5.2 One dwelling is permitted on each lot, and one additional dwelling is permitted in respect of each 4 hectares of lot area over 4 hectares.

5.5.3 One cottage is permitted on each lot having an area of 0.4 hectares or more, in respect of each permitted dwelling.

5.5.4 Lot coverage must not exceed 25% of any lot.

Figure 6: Zoning Map



Islands Trust Fund:

There are no Trust Fund Board properties or covenants in the vicinity of the subject property.

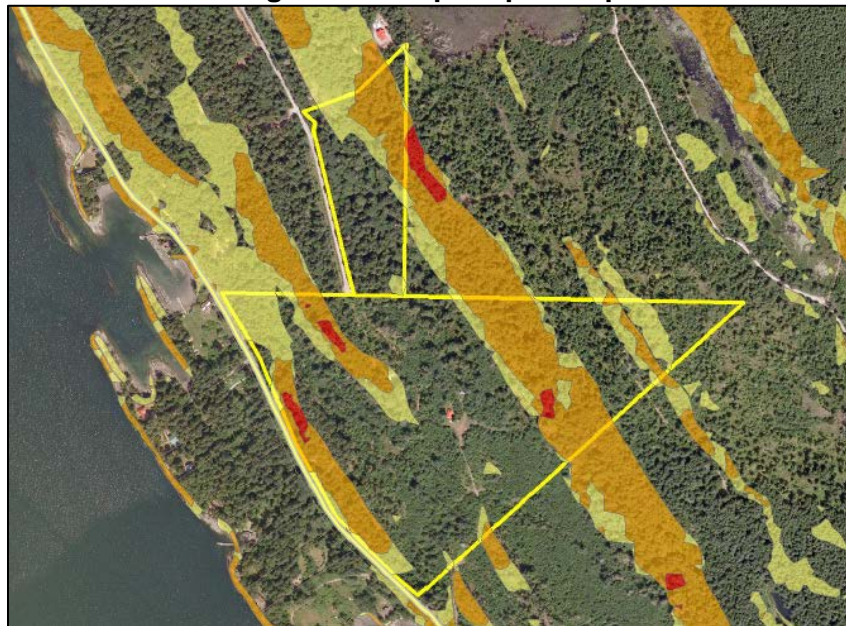
Sensitive Ecosystems and Hazard Areas:

There are similar, linear areas of both sensitive ecosystems and hazard areas located on the subject properties. The subject properties contain cliff, woodland, riparian, and wetland sensitive ecosystems areas as noted in Figure 7. There are also areas of low, moderate, and high slope hazards.

Figure 7: Sensitive Ecosystem Map



Figure 8: Steep Slopes Map



Archaeological Sites:

There are no archaeological sites on the property or in close vicinity registered in the provincial database.

Covenants:

The property is subject to two covenants that have been granted to the Capital Regional District: one covenant establishes areas of the lot that may have a geotechnical hazard and which require approval from a registered professional engineer before building may occur and the second covenant establishes a 15 metre setback from the natural boundary of Spotlight Creek and other measures for flood protection.

Bylaw Enforcement:

There is an active bylaw enforcement file (GL-BE-2002.109) from 2002 associated with Lot A as there were numerous buildings located on the property that were not permitted by zoning. Generally, if there is an active bylaw amendment file with the intent to legalize the non-conforming use or density, the bylaw enforcement file will be placed on hold until the bylaw amendment application is finalized. As the applicants applied for a rezoning, the bylaw enforcement file has been placed on hold.

In 2013, additional buildings (meditation huts – Figure 4) were constructed without the benefit of a building permit on Lot A and are not permitted by zoning. Even though the bylaw amendment application is still active, no new buildings are permitted to be constructed. Bylaw Enforcement have been notified of this bylaw infraction. The LTC may wish to proceed with bylaw enforcement to remove the newly constructed buildings.

Climate Change Mitigation and Adaption

The preservation of natural areas and forest ecosystems is an important factor to reduce greenhouse gas emissions. Forests act as an important carbon sink—absorbing and storing carbon that would otherwise be circulating in the atmosphere. An OCP objective in the Forest designation is to preserve a forest land base and to maintain or enhance carbon storage and sequestration.

Communications/Consultations:

The following agencies have been identified for referring draft bylaws for comment; the LTC may also direct staff to include other agencies not listed. Additionally the LTC may choose to refer the proposal to the Advisory Planning Commission.

- First Nations:
 - Cowichan Tribes
 - Halalt
 - Lake Cowichan
 - Lyackson
 - Malahat (TE'Mexw Treaty Association)
 - Pauquachin
 - Penelakut
 - Semiahmoo
 - Stz'uminus

- Tsartlip
- Tsawout
- Tsawwassen
- Tseycum
- Ministry of Transportation and Infrastructure
- Island Health
- CRD, Building Inspection Services
- CRD, Electoral Area Director
- Galiano Island Fire Rescue
- Mayne Island Local Trust Committee
- Salt Spring Island Local Trust Committee

Furthermore the public hearing notice would be circulated to all property owners and tenants within 100 m of the subject property in advance of the public hearing.

Professional Report:

The applicant to date has not provided professional reports in support of the application. Although the applicant states that an environmental assessment was completed in 2010 by an environmental professional. To date, Islands Trust staff have not received a copy of the assessment report and therefore cannot provide comments on the report.

If the rezoning application proceeds, a Development Approval Information (DAI) checklist will be provided to the applicant. The DAI checklist provides specific direction to the applicant regarding what professional reports or information will be required from them during the rezoning process. Depending upon the outcome from the preliminary staff report, staff will advise the applicant accordingly of the required information to proceed with the application through the DAI checklist.

If the applicant chooses to provide the environmental assessment report completed in 2010 as supplemental information for the rezoning application, the assessment must meet all applicable guidelines in the DAI checklist.

The LTC should advise staff if they believe any further information or professional reports that should be requested.

COMMUNITY INFORMATION MEETING(S):

At this preliminary stage in the process, there is no need for a community information meeting.

RESULTS OF CIRCULATION:

There has been no circulation associated with this application. As the application proceeds public and agency notification will be required.

STAFF COMMENTS:

There are a number of issues to be clarified and information that must be received prior to preparing draft bylaws:

Intent of Proposal:

Staff received an update to the proposal in April 2013. The proposal included a brief outline on the existing and proposed buildings/structures, an intent to amalgamate Lot A and Lot 9, and a site plan. Since that time, the applicant has suggested that changes to the proposal are forthcoming. To date, an updated proposal has not been received. If the LTC wishes the application to proceed, staff recommend asking the applicant to provide a final proposal for the application.

OCP Policy:

The bylaw amendment proposal to permit a forest retreat use currently does not comply with the OCP policies as the principal use for the Forest designation shall be forestry. In addition, the principal uses on Rural designated land shall be residential or agriculture. As the current proposal does not meet the guidelines or policies of the Forest or Rural designations, an amendment to the OCP will be required for both properties.

LUB – Use/Density:

The Forest 1 zone permits timber production and harvesting, and accessory forestry uses in addition to permitting only one non-residential unenclosed building or structure on each lot. Over the past 20 years, the property owners have constructed buildings and structures, and have conducted uses which are in direct conflict with the permitted zoning. The property owners have also constructed additional meditation huts (3) in the past year. Staff recommends enforcing the bylaw regulations for all buildings and structures that have been built after the date the application was received (June 2004). The applicant would then have to remove these structures from the subject properties until the bylaw amendment application has been finalized.

Access:

Staff recommend securing an emergency access through Lot A. Currently the lot can be accessed by vehicle from Porlier Pass Road but the driveway from Devina Drive is blocked. If the application proceeds, a referral to the local fire department and CRD will be required to comment on emergency access. The access from Porlier Pass Road should also be reviewed from the perspective of the existing covenant restricting development within 15 m of Spotlight Creek and that there is a Riparian Development Permit Area. It might be advisable to have the alternative entrance (Devina Drive) to be the primary entrance given this requirement to not be near the Creek.

Options:

The Local Trust Committee has generally three options at this time:

1. resolve to proceed no further with application;
2. direct staff to proceed with the application and to clarify outstanding issues with the applicant and bring forward a supplemental staff report to a subsequent Local Trust Committee meeting; or
3. direct staff to proceed with the application and to prepare draft bylaws.

Islands Trust staff considered recommending that the applicant apply for a Temporary Use Permit (TUP) as a possible option. As the use has been in place for over a decade, and the

structures are permanent in nature, a TUP would be a temporary solution for this property and in reality the applicants should be proceeding with the rezoning application.

As further information and clarification is required, there are inconsistencies with the proposal and OCP policies, and the proposal provides no identified community benefit. The applicant has stated that the area that would be developed (structures, buildings, parking, etc.) is approximately 25% of the site and the remainder is 75%. Given the dispersed nature of the development (two distinct nodes) and the nature of the use (meditation retreat) it is not straight forward as to other Forest 1 rezonings the LTC has been considering.

Staff recommend that the LTC proceed no further with this current application. The applicants would be refunded a portion of their fees and would have the option to re-apply. It has taken over a decade to get to this point of making a decision on the application and how to proceed. The applicants have been sent letters of application closure of the past number of years due to inactivity. Each letter has resulted in a renewed interest in the application. In the interim, they have continued to benefit by using the property, maintaining and constructing new buildings all in violation with the bylaws. Given this history of no progression on the application by the applicants and increasing illegal use of the property, staff are recommending that the current application be closed.

Should the application be closed, bylaw enforcement will be notified as well as CRD building to correct the violations on the property.

While this option may not be favorable with the applicants, this option would allow the applicants to:

- clarify the intent of the proposal – this should include the use and density of all existing and proposed buildings and a rationale for the application;
- update site plan with all existing and proposed buildings, structures and roads;
- address how the proposal would or would not meet the OCP policies;
- if the proposal does not meet the OCP policies, provide information for a OCP amendment; and
- how the proposal would provide a community benefit.

ALTERNATIVE OPTIONS:

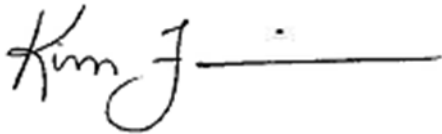
1. THAT the Galiano Island Local Trust Committee direct staff to proceed with the application GL-RZ-2004.6 (Crystal Mountain) and to bring forward a supplemental staff report to the next Local Trust Committee meeting when outstanding issues have been clarified.
2. THAT the Galiano Island Local Trust Committee direct staff to proceed with the application GL-RZ-2004.6 (Crystal Mountain) and to prepare draft bylaws.

With either of these options above staff would recommend that no further construction or use be permitted in violation of the current bylaws until such time as the rezoning is complete.

RECOMMENDATIONS:

1. THAT the Galiano Island Local Trust Committee resolve to proceed no further with application GL-RZ-2004.6 (Crystal Mountain).

Prepared and Submitted by:



Planner 1

March 28, 2014

Date

Concurred in by:

Robert Kojima

Regional Planning Manager

March 28, 2014

Date