

**Date:** April 22, 2016

**File No.:** GL-RZ-2014.1  
Crystal Mountain

**To:** Galiano Island Local Trust Committee  
For the meeting of May 2, 2016

**From:** Kim Stockdill  
A/Planner 2

**CC:** Robert Kojima  
Regional Planning Manager

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**Re: LUB and OCP Bylaw Amendments 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 & Lot 9, District Lot 90, Galiano Island, Cowichan District, Plan 31200

**PURPOSE OF REPORT:**

This staff report will provide an update on the status of this application, comment on the *Private Managed Forest Land (PMFL) Act*, and provide options for draft bylaws. Background information on the property, the proposal, correspondence, and previous staff reports are available on the LTC webpage under [Current Applications](#).

**BACKGROUND:**

At the March 7, 2016 regular meeting the Galiano Island Local Trust Committee (LTC) passed the following resolution:

**GL-2016-015**

**It was MOVED and SECONDED,**

that the Galiano Island Local Trust Committee proceed with the application and request staff to draft bylaws on the basis that 75 percent of the land be protected with a conservation covenant.

**GL-2016-016**

**It was MOVED and SECONDED,**

that the Galiano Island Local Trust Committee requests staff to research Private Managed Forest Land Act implications for potential Official Community Plan and Land Use Bylaw amendments relevant to application GL-RZ-2014.1 (Crystal Mountain) and to seek legal opinion.

## STAFF COMMENTS:

### PMFL:

At the March 7, 2015 the LTC requested staff to seek legal advice regarding potential implications with the *PMFL Act* and bylaw amendments (OCP and LUB) associated with the Crystal Mountain rezoning. Section 21 of the *PMFL Act* outlines restrictions on local government authority regarding uses of private managed forest land:

“21 (1) A local government must not do any of the following in respect of land that is private managed forest land if doing so would have the effect of restricting, directly or indirectly, a forest management activity:

- (a) adopt a bylaw under any enactment;
- (b) issue a permit under section 8 (3) (l) [*authority in relation to buildings and other structures*] of the *Community Charter* or Division 1 [*Building Regulation*] of Part 9 [*Regional Districts: Specific Service Powers*] of the *Local Government Act*;
- (c) issue a permit under Part 14 [*Planning and Land Use Management*] of the *Local Government Act*.

(2) For certainty, this section applies if the bylaw or permit would have the effect described in subsection (1) even though the bylaw or permit does not directly apply to land referred to in that subsection.”

The *Private Managed Forest Land Regulation* outlines the following as being ‘forest management activity’:

- (a) silviculture and timber harvesting activities;
- (b) transportation, delivery, handling and sale;
- (c) dryland sorting and scaling;
- (d) road, bridge and trail construction and maintenance;
- (e) drilling and blasting;
- (f) aggregate production and processing;
- (g) storage and repair of equipment and vehicles;
- (h) slash and prescribed burning;
- (i) treatment of noxious weeds, introduced plants, competing vegetation, other pests and damaging agents;
- (j) protection of forest crops including but not limited to fire protection and suppression and wildlife management;
- (k) safety and security measures;
- (l) water storage, including reservoirs for providing water for fire protection purposes or other use;
- (m) agroforestry and silvopasture systems;
- (n) soil production, improvement or processing;
- (o) site rehabilitation and improvement;
- (p) disposal of wood waste;
- (q) harvesting and sale of botanical forest products;
- (r) portable processing of forest resources;
- (s) one dwelling per registered parcel unless additional dwellings are permitted under applicable local bylaws;
- (t) forest management administration, including accommodation of personnel.

Over the years, Islands Trust has received numerous legal opinions regarding the *PMFL Act* and bylaw amendments. Staff have reviewed these opinions and believe that a new legal opinion is not required because the legal opinions received in the past provide sufficient information to assess if Crystal Mountain amendment bylaws would potentially be restricted under the *PMFL Act*. The following is based staff's review and understanding of legal opinions received from 2004 to 2011. Although the legal opinions have been circulated to the LTC members, all legal opinions are confidential and not publicly available unless released by resolution of the Executive Committee.

The subject properties associated with the Crystal Mountain rezoning application (Lot 9, Plan 31200 & Lot A, Plan VIP68079) are not classified as Managed Forest. Similarly, lots directly surrounding the subject properties are also not classified as Managed Forest (see Map 1 below).

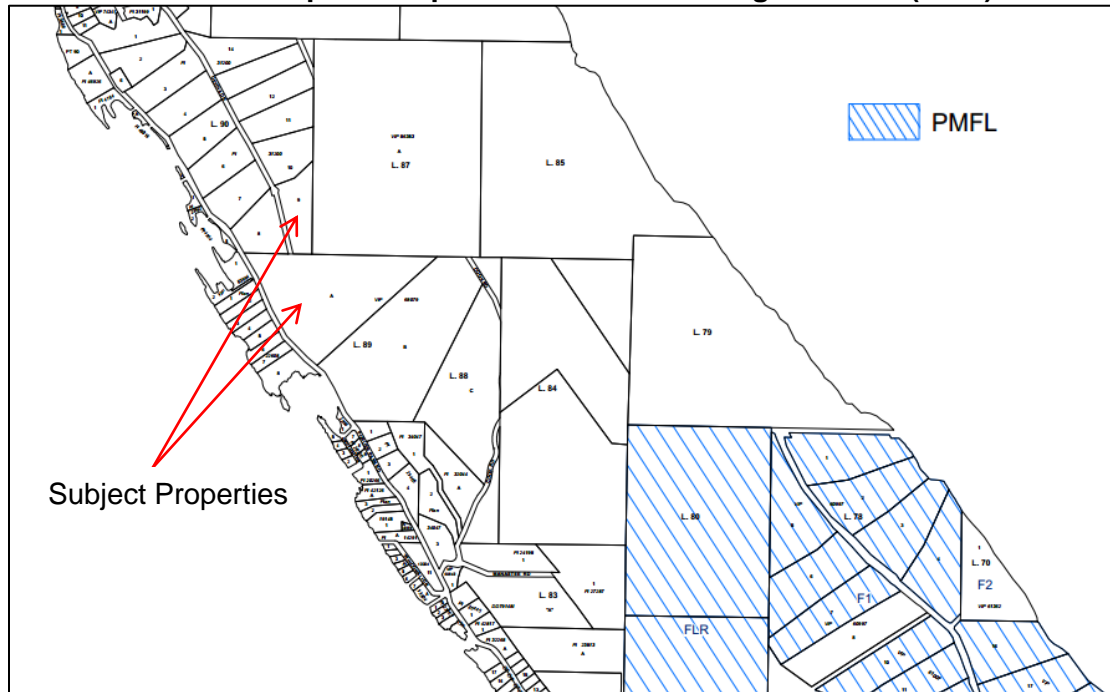
Section 21 of the *PMFL Act* states that local governments may not adopt a bylaw that would directly or indirectly restrict a forest management activity on land that is classified as private managed forest land, and this could include a bylaw that does not directly apply to land with managed forest classification. It is abundantly clear that if a property subject to a rezoning application is classified as managed forest, there is the potential that the amendment bylaws could contravene Section 21 of the *PMFL Act*. Less clear is under what circumstances a bylaw rezoning property that is not classified as managed forest would run afoul of Section 21 of the *PMFL Act*? Staff have reviewed a legal opinion that discusses this specific situation. One example could be where a property without managed forest classification, but which directly borders a PMFL lot, was rezoned to an intensive industrial use could contravene Section 21 if the industrial use had such an effect on the neighbouring managed forest lot that it interfered with the ability of the owner of the managed forest lot to conduct forestry management activities. In the case of Crystal Mountain, the subject properties are not classified as managed forest, nor are the surrounding properties as seen in Map 1, so it is difficult to see any circumstances where the potential bylaw amendments would contravene Section 21 of the *PMFL Act*.

Second, would the re-designation of the property be precluded by Section 21 of the *PMFL Act*? The potential OCP bylaw amendment for Crystal Mountain would involve changing the OCP designations on the subject properties from their current designations (Rural and Forestry) to another OCP designation(s). Staff are not proposing any policy amendments to the Forest designation section of the OCP therefore there will be no implications under s. 21 of the *PMFL Act*.

Staff have also reviewed a legal option that expresses the importance of timing of bylaw adoption. If an OCP bylaw amendment was subsequently found by the courts to contravene Section 21 of the *PMFL Act*, it does not contaminate the entire OCP (in other words, the entire OCP cannot be challenged), rather the amending bylaw would likely be found invalid, or a portion of it severed by the courts, and the preceding regulations and policies would be reinstated. Bylaws that were adopted prior to the *PMFL Act* are not subject to Section 21, only bylaws that are adopted after the *PMFL Act*.

To summarize, based on staff's review and understanding of the legal opinions, the bylaw amendments regarding the Crystal Mountain rezoning application could not contravene Section 21 of the *PMFL Act* as the potential bylaws would not directly or indirectly restrict a forest management activity on land that is classified as private managed forest land. During the bylaw referral process, the bylaws will be forwarded to the Managed Forest Council for comment.

**Map 1 – Properties classified Managed Forest (2012)**



**Draft Bylaw Options:**

Official Community Plan (OCP) Amendment:

The OCP bylaw amendment would have two goals: amending the land use designation map and creating policies to enable the proposed spiritual retreat use. Staff recommend redesignating the portion of the subject properties proposed to be subject to a conservation covenant (75 percent) to Nature Protection. The Nature Protection objective and policies are as follows:

*“The objective of this subsection is:*

- 1) to preserve natural values,*
- 2) to create connections establishing a network of protected areas,*
- 3) to protect and enhance the island’s capacity for carbon storage,*

*Nature Protection Policies*

- a) A separate zone for conservation shall be applied to new and existing Nature Protection areas.*
- b) Lands covenanted against further development or subdivision shall be identified through appropriate zoning designation.*
- c) Zoning for Nature Protection areas may permit trails, ecological restoration, and low impact recreation.*
- d) Where Nature Protection areas meet the high tide line, the water and foreshore shall be zoned for protection.”*

The remaining 25 percent of land must be redesignated as the proposal does not meet the policies in either the current Rural and Forest designations. The LTC should consider if a new designation should be created or amend an existing designation.

### *Creation of New Designation*

The Crystal Mountain proposal is currently not consistent with any of the existing land use designation policies in the OCP therefore an OCP amendment is required to redesignate the subject properties. This can be done be achieved in two ways: creating a new OCP designation or amend an existing OCP designation.

The intent of an Official Community Plan is to establish broad land use designations that provide objectives and policies and that is applicable to multiple properties. Creating a new site specific designation would involve drafting specific objectives and policies for only the Crystal Mountain proposal. Where possible, staff encourage retaining broad land use designations and avoid creating new site specific designations in the OCP. The Land Use Bylaw should establish specific land use regulations for individual properties.

### *Amend Existing Designation*

There are a number of existing OCP designations that could be amended for this application: Community Facilities and Utilities; Visitor Accommodation; or Health and Wellness Facilities.

#### Community Facilities and Utilities

The objective of this designation is to enhance the social, economic, educational, environmental, and cultural aspects of life on the island and in a manner that minimizes impacts on the natural environment. Generally community facilities are to provide a benefit and service to the entire community. Providing a very specific service (spiritual retreat) would only service the interest of a limited portion of the community therefore, this designation is not recommended to be amended for the Crystal Mountain proposal.

#### Visitor Accommodation

The objective of the Visitor Accommodation designation is to provide for a variety of visitor accommodations and to ensure they do not adversely affect the natural environment. Visitor accommodation is a commercial-based use as it has a pay-for-service function intended to generate a profit. Although retreat participants may pay to use the Crystal Mountain retreat facilities, the money generated from participants is used to cover retreat operations and not to make a profit. Amending this designation is not recommended as Crystal Mountain is not proposing a commercially-based use.

#### Health and Wellness Facilities

The objectives and policies of the Health and Wellness Facilities designation are similar to the intent of the Crystal Mountain proposal. The Health and Wellness Facilities objective and policies are as follows:

*“The objective of this subsection is:*

- 1) to encourage facilities that enhance the economy of the island, the health of its residents and visitors, and that do not adversely affect the natural environment.*

#### *Health and Wellness Facilities Policies*

- a) The principal use shall be health facilities.*
- b) Zoning for a health and wellness facility shall be considered on a site specific basis.”*

The Health & Wellness Facilities designation can be amended to include objectives and policies regarding spiritual health and if required, specific policies for Crystal Mountain. Reusing an existing OCP designation also reduces administrative and technical amendments (renumber sections and references to sections).

Staff recommend amending the HW Facilities designation as it is similar to the intent of the proposal, limits further administrative amendments, and would retain broad land use designations.

Land Use Bylaw Amendment (75/25):

The LTC has requested staff to draft a LUB amendment bylaw based on the applicant protecting 75 percent of the land with a conservation covenant. Consistent with the approach recommended for the OCP amendment, staff recommend drafting a LUB amendment bylaw that would rezone 75 percent of the land to the Nature Protection (NP) zone. The NP zone permits the following uses:

- 11.1.1.1 *ecological reserves and nature conservancies*
- 11.1.1.2 *research and educational activities*
- 11.1.1.3 *groundwater retention and recharge*
- 11.1.1.4 *ecological restoration*
- 11.1.1.5 *passive recreation*

The comprehensive ecosystem-based land use plan (environmental assessment) prepared by Keith Erickson (R.P. Bio) made recommendations for forest restoration practices for the entire property in order to reduce wildfire risk, increase resilience to climate change and provide wood products for Crystal Mountain use. Staff are of the opinion that any forest restoration activities (tree thinning, planting native vegetation, dispersal of slash piles) would be considered ecological restoration.

The NP zone does not permit any buildings or structures of any kind, other than signs. There is currently a pagoda located on Lot 9. Although this structure is not permitted in the NP zone, it will be protected as a pre-existing non-conforming structure under Section 529 of the *Local Government Act*.

The other 25 percent of the subject property is where the development areas are located (see site plan on LTC Current Applications website - [www.islandstrust.bc.ca/galiano/current-applications](http://www.islandstrust.bc.ca/galiano/current-applications)). Staff are proposing to create a new zone (Crystal Mountain Comprehensive Development Zone (CD) – Area 1 and Area 2) which includes specific regulations for the Crystal Mountain property. Area 1 and Area 2 would be associated with the northern and southern developable areas. The site specific zone would limit the potential to use the property for any other use.

The Crystal Mountain CD – Area 1 and Area 2 zone would include the following:

- Permitted uses;
- Definitions;
- Maximum number of buildings and structures;
- Maximum floor area for each building and structure;
- Setbacks; and
- Height Restrictions.

The following are potential permitted uses and definitions:

- comprehensive spiritual retreat - means a facility that provides contemplative, spiritual or meditative opportunities for visitors and for certainty a comprehensive spiritual retreat shall not be used as a comprehensive resort, resort, inn, visitor accommodation cottage, visitor accommodation room, visitor accommodation unit, short term vacation rentals,

bed and breakfast, or any other form of commercial accommodation for the travelling public and shall not provide for restaurant or other forms of food supply to the general public.

- sleeping hut - means a hut that provides for the sleeping, shelter and contemplative, spiritual or meditative opportunities of a visitor to a comprehensive spiritual retreat.
- triple sleeping hut - means a maximum of three sleeping huts connected together.
- dwelling unit accessory to the spiritual retreat use for the use of a caretaker.
- ecological restoration.

The following are examples of restricting the number of units and maximum floor area:

Area 1 (southern developable area)

- X number of sleeping huts with a maximum floor area of 15 square metres each;
- X number triple sleeping huts with a total maximum floor area of 45 square metres for all three connected sleeping huts;
- one meditation hall restricted to meditation use only with a maximum floor area of 125 square metres;
- two dining/kitchen buildings with one having a maximum floor area of 125 square metres and one having a maximum floor area of 35 square metres;
- one bathing and laundry building not exceeding a floor area of 70 square metres;
- accessory structures not exceeding a total maximum floor area of 20 square metres;
- one workshop not exceeding a floor area of 130 square metres;
- accessory storage structure with a maximum floor area 70 square metres; and
- one accessory dwelling with a maximum floor area of 100 square metres;

Area 2 (northern developable area)

- X number of sleeping hut with a maximum floor area of 15 square metres;

*Number of Sleep Huts*

The applicant has requested sleeping huts to provide sleeping accommodation for up to 30 participants. Staff recommend limiting the maximum number of sleeping huts for the southern developable area (Area 1) and the northern developable area (Area 2) in the LUB amendment. Staff will continue to work with the applicant to refine the maximum number of sleeping huts that's agreeable to both parties in order to achieve the retreat's objective and to lessen the buildable footprint. Determining the sufficient number of sleeping huts is crucial at the land use bylaw amendment stage as after final adoption of bylaws, if the applicant wishes to increase the number of sleeping huts, a rezoning would be required (a Development Variance Permit cannot vary use or density).

*Parking*

The applicants have included 12 off street parking spaces (2 in Area 2, 10 next to Devina Drive in Area 1) within their proposal. A review of current parking standards would suggest that the following standards could apply:

Use	Standard	# of Parking Spaces
1 Dwelling	2 per dwelling	2
30 Sleeping huts	1 per cottage	30
Meditation Hall - 125 m <sup>2</sup>	1 per 3.25m <sup>2</sup>	38
<b>TOTAL</b>		<b>70</b>

The use of this site may not generate parking demands as calculated if the users come from off island, car pool to minimize costs, or if the retreat is not at full capacity. Furthermore, the meditation hall will generally be used by retreat participants. Given the proposed use of this property, it may not be necessary to create formal parking areas for 70 spaces, but it may be necessary to identify capacity for up to 20 vehicles on the property in a combination of assigned parking spaces and a parking overflow area.

#### Covenants:

The conservation covenant between the applicant and the Trust Fund Board is still in progress. In order to eliminate delays with registering the conservation covenant as a condition of rezoning, staff recommend requiring an executable version of the conservation covenant at the time of Public Hearing.

In addition, the LTC may wish to consider registering a covenant on the property that would limit the use of the land for non-profit societies only.

#### Required Applicant Information:

The following is information still required from the applicant:

- Updated site plan;
- Finalized number of individual sleeping huts;
- Finalized number of triple sleeping huts; and
- Finalized number of accessory buildings (outhouses, bathroom structures, rainwater collection systems with cisterns).

#### Land Donation:

Comments were made at the March 7, 2016 LTC meeting suggesting the applicant, in conjunction with registering a conservation covenant, donate a residential lot for affordable housing. After completing a site visit in early April 2016 with Trust Fund Board staff, it was apparent that there was not a suitable portion of the Lot A or Lot 9 for donation. Trust Fund Board staff encouraged retaining Lot 9 as it has the highest ecological value. Donating a portion of Lot 9 bordering Porlier Pass Road was also discussed although certain factors (slope, sensitive ecosystems, etc.) make this area also unsuitable for creation of a residential lot.

This application is not similar to other forest lot rezoning applications – it does not include creating residential lots, no subdivision is proposed, and the applicants are a non-profit society. Based on this information and that there is no apparent suitable land for donation, staff are of the opinion that donation is not a viable option.

The Galiano OCP does not have a policy that outlines options for cash donations in lieu of land donations for affordable housing. Furthermore, cash donations cannot be made a condition of rezoning approvals – it must be donated on a voluntary basis.

#### **Correspondence:**

All correspondence received by the LTC will be posted on the LTC's [Current Applications - correspondence](#) webpage.

#### **Community Information Meeting:**

No formal community consultation for this application has taken place at this time. A Community Information Meeting (CIM) often takes place in advance of a public hearing in order to provide



the public with an opportunity to ask questions regarding the application and for any changes to be incorporated in the proposed bylaws. The LTC may wish to consider scheduling a CIM once draft bylaws are prepared otherwise a CIM can be scheduled later in the process when a Public Hearing is schedule and held. Further direction from the LTC will be required if any additional community consultation or special meetings above and beyond the standard process are desired.

**Options:**

The LTC should consider the following options:

1. amend the OCP by re-designating the portion of the land to protected by conservation covenant to Nature Protection and creating a new land use designation for 25 percent of the land where the retreat activities would occur; OR
2. amend the OCP by re-designating the portion of the land to protected by conservation covenant to Nature Protection and by amending the existing Health and Wellness Facilities designation for 25 percent of the land where the retreat activities would occur; OR
3. request staff to schedule a community information meeting once draft bylaws are prepared; OR
4. resolve to proceed no further with application;

Staff recommends drafting the OCP amendment bylaw to amend the existing Health and Wellness Facilities designation and to draft a comprehensive development zone for the Crystal Mountain application. The site specific zone would limit the potential to use the property for any other use.

**RECOMMENDATIONS:**

1. THAT the Galiano Island Local Trust Committee request staff to amend Health and Wellness Facilities OCP designation and to draft a comprehensive development zone for the Crystal Mountain rezoning application (GL-RZ-2014.1).

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Prepared and Submitted by:



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April 22, 2016

Date

Concurred in by:



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Robert Kojima  
Regional Planning Manager

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April 25, 2016

Date