

Precedent-setting should be the overriding line of questioning on the rezoning proposal. In our opinion, the rezoning proposal is incompatible with the Official Community Plan and (dangerous) precedent-setting in nine key areas. This leaves the LTC/Trust open to multiple legal challenges in the future.

Potential questions are **bolded**; explanatory notes are provided; text from Islands Trust documents is in *italics*

1. **Community Facility**

There is no existing category in the OCP that can accommodate this proposed retreat: assigning it to "Community Facility" is inappropriate as it does not fit the criteria for this zone.

1.1 Why is putting this zoning under the title of community facilities being proposed when it does not fit with the definition of community facilities in our OCP? The LUB states: *"In the Community Facility zone, the following uses are permitted...: public and non-profit schools not including overnight accommodation or dormitories; community halls, libraries, museums, churches, cemeteries, recycling facilities; parks, playgrounds and sports fields; affordable and special needs housing; community gardens; farmers' markets; community orchards; community nurseries."* None of these are even remotely related to a private spiritual retreat centre.

This matter was addressed in a staff report (2May16). *"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 CMS proposal"*.

While under the Community Facilities and Utilities Zones Header in the LUB, the zoning being proposed is not under 8.2 community facility but rather would be a unique 8.7 Spiritual Education Retreat Zone. As such this statement does not apply to the discussion as this is not the zoning being proposed: "

In the Community Facility zone, the following uses are permitted...: public and non-profit schools not including overnight accommodation or dormitories; community halls, libraries, museums, churches, cemeteries, recycling facilities; parks, playgrounds and sports fields; affordable and special needs housing; community gardens; farmers' markets; community orchards; community nurseries."

Note that *community facilities shall not be considered in advance of demonstrated need.*

Same as above – the proposed land use designation would be a unique 4.4 under the Community Facilities and Utilities Header in the OCP and as such policies under 4.1 would not apply. The LTC could consider making amendments to proposed 4.4 policies to add additional policy considerations

- 1.2 Where is the demonstrated community need for this facility?** This policy does not apply as per above
- 1.3 The proposed zoning refers to people's 'spiritual education', but we are not zoning people. What is the actual land use and its impact? Doesn't the land use proposed fit best into the OCP definition of commercial visitor accommodation?** Staff have reviewed and the Community Facility designation would be appropriate – LTC could direct otherwise
- 1.4 It should be commercial visitor accommodation as it fits that definition in the OCP. This is not allowed on forest lands. What was the thought process to develop new definitions and zoning that are outside the provisions of the OCP?** Current direction to amend OCP and LUB to create new zone and designation is based on it being a unique application and land use similar to other lands which are designated under community facilities and utilities section
- 1.5 What's the process planners use to craft an application that's outside the provisions of the OCP?** This is an application proceeding based on the applicant's proposal and direction

from LTC

1.6 A previous CMS application contravened OCP transportation objective 4) and policy f). **Was the reason the draft bylaws propose this zone as a Community Facility? No.** (OCP Transportation objective 4) strives to see land use managed to limit traffic generation through quiet safe neighbourhoods. Policy f) land that is rezoned to any Economic Activity zone should have direct frontage and suitable access on a highway classified as main rural or minor rural).

2 Density

Deciding on a **density** based on single occupancy when there is no legislative tool to enforce occupancy limits seems strange. In 2018 the trust was advised:

'The option to cap occupancy rates through a legal mechanisms such as a restrictive covenant is not recommended because Islands Trust does not have a legislative tool to enforce occupancy. That is, occupancy cannot be enforced through the land use bylaw'. (report to Islands Trust Executive Committee from Susan Palmer MCIP, RPP, SLP Consulting, Salt Spring Island Team, Jan. 11, 2018 https://bowenland.civicweb.net/document/156403/Islands%20Trust%20Executive%20Committee%20re%20Aapproval%20proc.pdf?handle=81F1_AB1A42FA4807BDD4665FEA473CDE

2.1 Can the planner comment on if or how the single occupancy of the small dwellings can be enforced?

The statement above from 2018 is in reference to a different circumstance.

2.2 Is there any precedent on the island for a non-commercial zoning of this density?

Yes

8.5 Environmental Education and Nature Protection Zone – EE/NP

▪ **8.5.2.1 In association with research and education facilities:**

◦ [4] sleeping quarters for staff and program participants, not to exceed 76 persons, which may include up to 12 structures and up to 18 tent platforms with floor areas not to exceed 10m²

What are the safeguards against large day-use retreats at this site, with the associated impact (sewage and waste) on community resources (water)? The applicant is not contemplating large day use. Septic and water license approval will be required to operate – along with all necessary building permits. Any unlawful uses would be enforced upon complaint

- The proponent's representative stated at the APC meeting that there would be no limits on day-use. **Could this be confirmed?** This would depend on the permitted uses
- We note that caps on day-use as discussed by CM with neighbours have been dropped from this draft LUB. **Why?** overnight accommodation would be limited as would be the permitted uses on the property – enforcement would be on contravention of the uses
- **Are the proponents required to take all of their waste off island?** Same rules would apply as for any property owner with respect to waste management.

2.3 If the maximum at a retreat has never exceeded 16, **why do the applicants need accommodation numbers that exceed that allowed for commercial establishments?**

CMS data shows up to 29 people in attendance in past – original density request 30 now down to 22 – accommodation proposed by CMS far more rudimentary (ie. no hydro/water/kitchens/bathrooms in cabins) than traditional commercial facility and less resource intensive

- 3.1** Looking at retreats that are similar on Saltspring Island they almost always have double occupancy in each unit and often triple occupancy. **What are the safeguards to prevent double occupancy or triple occupancy in these facilities and hence double the density?** The definition of sleeping huts and tent platforms would require them to be single occupancy overnight guests would be capped at 22 retreat users

Zoning definitions on visitor accommodation

- 4** Is it not precedent setting by creating a new type of what is essentially visitor accommodation? How is this not visitor accommodation – allowing this level of density when it vastly exceeds visitor accommodation density for any commercial visitor accommodation on the island.
- 4.1** How does the proposed retreat differ from a commercial spiritual retreat? Proposed activities are not for profit . The permitted accommodation would be rudimentary and bylaw/covenants will restrict development to what is agreed at time of rezoning – LTC could decide otherwise
- 4.2** The Galiano OCP Section II Land Use policy a) states: “ Land use decisions for all zones shall be directed by the following criteria where relevant:” and lists 24 criteria. **How has this proposal been assessed against each of these criteria and what are the outcomes?** Staff deem the proposal consistent with the OCP as proposed to be amended
- 4.3** For visitor accommodation some rules are outlined in Galiano’s OCP.
- For example, where there is a significant number of units proposed development should incorporate a variety of building types, including multi-unit buildings, in order to minimize the development footprint on the site and minimize impacts on adjacent properties. **Visitor accommodation policies currently do not apply in this case**
 - **Considering the activity planned for the site, why isn't this being zoned as visitor accommodation?** As above, the proposed use would not be commercial visitor accommodation – see Sep 7 staff report for rationale -LTC could decide otherwise
 - **Since it provides stays for up to six months, why isn't this being zoned as residential?** It is not a residential land use being proposed and retreat users would not be residents but rather program participants
 - Why do these draft bylaws not face up to what this land use actually IS? **Bylaws and associated covenants will provide strict limits on development to what is being proposed at time of rezoning**
- 4.4** Why does this draft bylaw allow a greater density than is allowed for any commercial visitor accommodation on Galiano, as defined in the OCP? Up to LTC to decide
- 4.5** Remember we are zoning land, not people. In the OCP commercial zoning is required for: resorts with 8 to 12 rooms or cabins, a central building and a restaurant – all of which are in this proposal. **How is this not a commercial operation?** Question answered above and in Sep 7 staff report **Note: There is no restaurant proposed.**
- A comprehensive resort is limited to up to 10 visitor accommodation units, 10 visitor accommodation sleeping rooms, a central building for accessory uses, a dwelling for the owner or operator, a restaurant and comprehensive resort accessory use.
- 4.6** Why should this development be larger than is allowed for a commercial visitor accommodation? That would limit number the of cabins/sleeping rooms, no tent pads, a food building, an accessory building and an operator building. Note that commercial campgrounds are not permitted outside provincial parks. **Each application is assessed on its own merits. It is up to LTC to decide if the proposed density is appropriate or not.**
- 4.7** The current owner is registered under the CRA as having the purpose of “promotion of religion”. **Since the CRA does not have a category of ‘spiritual education does this not mean that the designation in the bylaw is not compatible with their CRA purpose?** There is no direct link

between the bylaws and the applicants CRA stated purpose.

- 4.8** The length of stay of these 'retreat users' (referred to in the previous draft bylaws as 'visiting residents') would fit into definitions of residents – not visitors – as they are staying for more than 30 days. **How do the bylaws resolve this incompatibility?** Bylaw and OCP does not define resident in terms of # of days – in this case the participants would be part of a program similar to Galiano conservancy – bylaw wording amended to change 'residents' to retreat users – bylaw does limit program stays to maximum of 6 months
- 4.9** During the community's OCP review in 2008-2011, forest retreats were not included in the OCP and this use was not recommended by the Forest Policy Advisory committee. **Since the basic application** (apart from ever increasing density) the CMS application has not changed in principle since, why did the trust proceed with processing something that runs counter to the OCP? **There is no direct collision with the OCP and the rezoning proposal based on it being a "forest retreat" – as such it is at the discretion of LTC to consider proceeding with application or not**

5 Transfer of title/fragmentation

- 5.1** Is it not precedent setting to accept or allow a transfer of title with the degree of fragmentation that fails to follow ecological principles and is seen by the CM project manager as 'not ideal', but designed to accommodate the needs of the applicant? **Each application is assessed on its own merits – trade off for 75% transfer is to allow development to occur in 25% portion**
- 5.2** Owners come and go, but the land remains. Where is the need of the ecosystem reflected in this rezoning? **The applicants have been diligent in seeking a land transfer that considers protecting ecosystem values and sensitive habitats**
- 5.3** The Galiano OCP Section II Land Use policy a) states: "*Land use decisions for all zones shall be directed by the following criteria where relevant*" and lists 24 criteria. Number xii) refers to the importance of forest cover and the retention of unfragmented forest ecosystems. In other places OCP says that the *lot size for subdivision of Forest land shall be at least 20 ha (49.4 acres) and that it shall protect biodiversity, riparian zones and other sensitive ecosystems*
How does this proposal meet ecological principles or OCP provisions for retention of unfragmented ecosystems?
- 5.4** **How can the proposed fragmented protected areas be justified?** **It will be the LTC's decision, however, while there is some degree of habitat fragmentation based on the application proposal the large majority of most sensitive habitats would be transferred to ITC in the 75% split and protected in perpetuity and the 75% transferred lot is now contiguous (ie. not a hooked lot parcel as it was in previous proposal).**

5.5 The Sensitive Ecosystem Development Permit Guidelines state:

- no development can happen in a sensitive ecosystem or a Development Permit Area (DPA) and that a professional has to certify the absence of a sensitive ecosystems or DPA – yet the CM ecosystem map clearly identifies that the upper development infringes on a sensitive ecosystem and steep slope DPA. **Why is this development on the upper ridge considered at all?** **At time of upper ridge development a development permit may be required.**
- Retain large, connected undisturbed areas, with connections and corridors providing continuity between sensitive ecosystem and important habitat - **Where are the connections and corridors between the sections of this subdivision and particularly the middle fragment and the land to be given to the ITC?** **75% parcel is contiguous – connectivity remains in upper and lower portions** Avoid removal of mature and old trees – **How is the proponent building three cabins, a wash house, showers, toilets a septic tank, sump and a septic field without removing trees on the upper ridge?** **At time of upper ridge development a development permit may be required.**

- **How will the proponent drill wells, clear land for parking and emergency vehicle turn around, install a septic tank and septic field in the upper ridge development without impacting on sensitive ecosystems or habitats?** A DP may be required if development proceeds in upper ridge
- 5.6 Restoration – the ridge trail on Lot A is currently badly damaged. **What is the restoration plan and when will this restoration happen? What are the built-in safeguards that the restoration actually happens?** Trail development/maintenance on 75% transferred portion will be responsibility of ITC – LTC could require trail restoration activities on CMS property as part of covenant conditions if deemed appropriate
- 5.7 DPA steep slopes – **Where is a statement from a registered professional engineer or geoscientist that there is less than 10% chance of a geological hazard or slope instability? Geo tech report has been completed – lower development captured within developable boundaries established by engineer – geotech also considered at building permit stage**
- The OCP contains statements about clustering of developments and ecological footprint.
- 5.8 **Why is there no reference to the recommended clustering of development and minimizing ecological footprint, since the proposed development seems to have maximized distribution of small dwellings and maximized ecological footprint of human impact?** Final site plan, layout and density up to LTC to decide – common buildings are centralized on already disturbed sites
- 5.9 **How is this bylaw not precedent setting for other potential developments that are commercial in nature, allow fragmentation, defy the recommended clustering of dwellings, ignore Climate Change, and exceed the density of all other commercial visitor accommodation on Galiano?** For LTC to decide

6 Carrying Capacity

Carrying Capacity is used by provincial and federal governments for environmental assessments and has been introduced to the Islands Trust to assist with evidence-based decision-making. It is based on the awareness of ecological limits, especially applicable to water, aquifers, forest stands and biological diversity.

- 6.1 **Was carrying capacity assessed and considered in the application?** professional reports have been required
- 6.2 **Isn't it essential to do comprehensive studies before allowing this type of unprecedented density or distributed/fragmentary land use?** professional reports have been completed – LTC could ask for additional information
- 6.3 It doesn't matter whether the cabins have showers or not, with showers available, they will be used and consume water. **When will a realistic water supply for that many people be assessed by an independent expert?** This work has been completed by Hy Geo consultants
- 6.4 An aquifer is not restricted to a specific lot, but is a common resource. When installing any commercial or heavy use property into a residential zone it is essential to assess the potential impact on surrounding properties. **When will an independent analysis be done to assess the effects of massively increased usage (CM has mentioned occasionally 60+ people during day use, and 30+ people during months-long use) of water?** This work has been completed by Hy Geo consultants
- 6.5 Small water districts or commercial users have their water and wells routinely inspected by the CRD. **Why is this requirement not included in the bylaw?** Applicant will be required to meet all Island Health requirements including annual use monitoring and reporting, well head protection etc
- 6.6 **What were the results of an independent assessment of sewage treatment capacity, sewage volume and impacts on adjacent properties and Spotlight Creek?** Island Health has issued septic approval for both upper and lower sites

7 Water. Here are some of the recommendations following the Trust's own water study (May 2012) by Waterline Resources:

Potential questions for Community Information Meeting , re : Crystal Mountain rezoning

“Hydrogeology assessments related to proposed subdivisions and developments requiring additional groundwater extraction should be clearly outlined in bylaws to include field verification of existing nearby wells, an assessment of the transmissivity and storage coefficient for the aquifer being proposed for development, and some prediction of the cumulative drawdown impact that could occur to the aquifer and existing users over a reasonable timeframe (20-30 years) ... and the hydrogeologist’s report shall investigate the site specific hydrogeological conditions for the proposed subdivision or development.

7.1 Was the water study done for the proposed development done in compliance with the recommendations resulting from the Island Trust’s water study? If not, why not?

Professional consultant has assessed water supply and deems there is little risk to adjacent users

7.2 The Trust’s water study specifically mentions the aquifer and existing users. Did the water study assess the aquifer parameters and effects of large drawdowns by the proponent on existing users? Yes it considers drawdown based on calculated potential demand

7.3 The water study assumed much lower water use compared to other developments. Has this assumption been adjusted and parsed against potential water availability now that the development will be using flush toilets? Yes centralized washrooms were always part of water use calculations

7.4 Climate change exerts potential effects on precipitation, water movements and soil moisture retention. For such large development, was there any modelling done to estimate the overall impacts of climate change on future water flows in Spotlight Creek, water table and well drawdowns? Professional consultant deems there is little risk to adjacent users and spotlight creek from proposed water use at CMS

8 Climate change

8.1 The LTC is required to assess the potential GHG emissions and climate change impacts anticipated to result from the development. How was this done and where are the results? LTC has considered in earlier staff report

8.2 The use of gas or diesel-fired cooking and heating facilities is not compatible with BC’s climate plan. Just last week, Vancouver City Council confirmed the phasing-out of fracked gas for heating and hot water in new buildings in Vancouver by 1 Jan. 2022. Diesel/Propane/Butane are worse than methane (fracked gas). How is this proposed development compatible with BC’s climate plan and the Trust’s stance on emissions? LTC is aware of City of Vancouver decision

The surface area of 22 individual small dwellings would be at least 5 times larger than a single building. **How can this five-times higher energy use be justified at the time when decarbonization and energy conservation are essential? Final site plan, layout and density up to LTC to decide – difficult to quantify energy use differences from smaller structures vs one larger building**

8.3 How was the Climate Change impact of international travel to this destination considered? Unquantifiable

8.4 What are the initiatives to meet net-zero carbon requirements for the facilities? LTC could direct applicant to consider net-zero goals/strategies

9 Process

9.1 This bylaw contains many exceptions designed to accommodate an applicant who has been 17 years in non-compliance and presents an application that inconsistent with the OCP framework. How is this not precedent setting? Each application is assessed on its own merits

9.2 What are the specific criteria planners used to craft an application that’s outside the provisions of the OCP? This is an application proceeding based on the applicant’s proposal and direction from LTC

9.3 Should this rezoning go forward what are the guarantees it will not be used as a template or precedent for other retreat-type developments on F1 land? This is up LTC to decide

9.4 ‘Huts’ are not defined in the OCP. Dwelling units have well defined rules. **How do these ‘huts’ fit into the definition of dwelling units as defined in the OCP?** The amendment would include definitions for the huts and tent platforms

10 Land use

Bylaws regulate USE rather than USER in land use planning – the legal opinion:

A legal opinion was received on the legalities of restricting the use of land to non-profit societies (31Oct16).

Portions of this legal opinion that are publicly available state: *“Land use bylaws must regulate the use rather than the user. The difference between use and user, and furthermore the distinction between non-profit and for-profit societies is not evidently clear”.*

10.1 How is a distinction made, how can it be made, and how can it ever stand up to legal scrutiny that a society which receives donations to support their operations and teachers is non-profit rather than for-profit? CMS is a provincially registered non-profit society and charitable organization

10. Other: Land transfer

10.1 Has the Islands Trust Conservancy (ITC) agreed to the land transfer? Yes with conditions that still must be met

10.2 Have the proponents met the nine conditions that must be met before the transfer? On track to meet them

10.3 Is it a strict condition of this proposal that the land transfer occur? Yes

10.4 If the land transfer conditions are not met what will be the status of the application? presumably the LTC would not approve rezoning

10.5 Does the applicant then revert to an offer of a covenant? Would need to be determined at that time

10.6 Is there any tangible community benefit? At bare minimum community receives 75% land transfer to ITC