

2 July 2016



To: The Galiano Island Local Trust Committee
Chair Laura Busheikin – email: lbusheikin@islandstrust.bc.ca
Trustee George Harris – email: gharris@islandstrust.bc.ca
Trustee Sandy Pottle – email: spottle@islandstrust.bc.ca
Cc: Planner Kim Stockdill – email: kstockdill@islandstrust.bc.ca
Re: CRYSTAL MOUNTAIN SOCIETY's REZONING – PROCESS

COPIED TO

PLANNER

LTC

G.L.R. 2014.1
web / dep sec

Crystal Mountain Society has impacted their neighbourhood for many years yet much of Galiano is unaware of the neighbours' concerns. There is a real problem with process when development continues despite clear requirements to rezone and despite bylaw enforcement actions. So much staff time and resources has been focused on CMS over many years, yet so little information about CMS's actual plans has reached the community. Please see Page 4 for more detail.

The current effort to legalize the development is to re-engineer a site-specific zone called Health and Wellness that was designed to accommodate the specific needs the Woodstone Eating Disorders Clinic and to overlay this zoning on both of CMS's properties - their 50 acre Forest 1 property and their adjacent residential property (Lot 9). The result would be that these two distinct properties become one 60 acre Health and Wellness-zoned lot.

Transposing a Health and Wellness zone on a Forest lot sidesteps current OCP and LUB rezoning requirements for CMS's Forest 1 property. A clear process already exists, but CMS chooses to not fulfill the community's expectations, including providing community benefits. Draft bylaws for the redesigned Health and Wellness zone have been prepared and were to be unveiled at a Community Information meeting without first being presented at an LTC meeting for our Trustees' review and input. This would have bypassed one step in a public process. A community information meeting doesn't meet criteria for legitimizing significant changes to OCP Forest policies – broad public consultation is equally significant, as in an OCP Review.

Most importantly, in terms of process: neither of our current Trustees was elected to change Forest land policies. Not too long ago, this community went through a long and very thoughtful OCP review of Forest Policies. See page 5 for the details – note the bold section.

COMMUNITY BENEFIT and COVENANTS

The covenant proposed for CMS is not unique. All Trust area private property owners are invited to enter into covenants with the Islands Trust Fund to protect their land. The covenant program is incentive-based (tax relief) and aims to gently encourage private property stewardship in the Trust area.

Covenants are often lightly enforced.

"While the holder of a covenant has the right to enforce the terms of the covenant, it does not have an obligation to do so. Members of the public who are of the view that a covenant holder is not adequately enforcing compliance with the covenant generally will not have a legal remedy against the holder."

(source: Greening your Title - A Guide to Best Practices for Conservation Covenants, Third Revised and Updated Edition, West Coast Environmental law. P. 128)

Covenants can be discharged. An example of grounds for removing a restrictive covenant:

Perhaps “the reasonable use of the land will be impeded, without practical benefit to others, if the registered charge or interest [covenant] is not modified or cancelled. The property Law Act provides that a person may ... modify or cancel a charge against the land, including a restrictive covenant or other covenant burdening the land” (source: Western Canada Business Litigation – Real Estate – How to Remove a Restrictive Covenant”)

Crystal Mountain Society wants to retain title to the combined 60 acres (including 50 acres of Forestlands) in exchange for a promise to care for the forest through a covenant held by the Islands Trust Fund. This arrangement protects their private use of the entire property for their material benefit (retaining title and tax relief) instead of ensuring the public interest in perpetuity by Transfer of Title to an organization that qualifies as a third-party covenant-holder. The Islands Trust Fund can and does accept Transfer of Title for conservation, yet this option is not pursued.

The applicants also state the existence and activities of its meditation centre and its meditators provide a community benefit that is material and warrants special consideration. Community benefit, in the context of Forest land rezoning, is a benefit to the public in exchange for an owner gaining extra property rights that benefit the owner. What CMS is offering is a benefit that is actually private - a covenant to steward the forest with tax benefits that accrue to CMS and an offer that the community enjoy benefits generated by the existence of the Meditation centre and its meditators.

There’s no doubt that meditation practices provide great benefits to society. Meditators everywhere create those benefits ... benefits that don’t emanate exclusively from this Meditation Centre, its meditators or this particular form of meditation.

If this organization’s meditation benefits were to be considered a community benefit for material purposes so that it receives special rezoning considerations, it would follow that all other Galiano service organizations could be considered to be offering material community benefits which would exempt them from whatever Land Use regulations they’d like to be exempt from. The Galiano community benefits greatly from The Health Care Centre, Fire Departments, Ambulance Services, The Food Bank and those groups that offer spiritual and complementary services like church services, yoga practice, counselling and even hiking.

Hiking Mt. Galiano produces real benefits of “passive contemplation, spiritual connection, and low-impact recreational and educational access to the forest” - Principle m) of our OCP. CMS applicants quote this Principle as the main reason their development in the forest should be permitted. If the LTC agreed to this logic, the owners of Mt. Galiano, for example, could ask for and have the legal right to receive equivalent development opportunities in the forests of Mt. Galiano. There could be any number of applications for rezoning to development densities not envisioned by the OCP, citing community benefits that are really private benefits.

WHY TRANSFER OF TITLE instead of COVENANT?

Accepting the proposed covenant in exchange for CMS’s development on forestlands permanently removes forest-zoned land from the public interest.

Transfer of title to an organization with a specific mandate to protect the forest from public use or to provide access to a forest landscape is in the public interest. There can be landbanking for future needs

whether those needs are forest ecosystem services (like freshwater), future economic needs like sustainable forestry, or fulfilling legal obligations to First Nations - access to their traditional, unceded lands. Organizations that are qualified to hold lands through transfer of title can only discharge their responsibilities and covenants through a public process.

In trying to understand this application, I strongly feel there's been a real problem with process. Many issues need to be addressed before the application can go forward.

- Neighbours have been deeply affected by lack of transparency as CMS continues to develop a Meditation centre in the forest despite enforcement actions and clear guidelines for Forest zoned lands.
- Our Trustees don't have a mandate to change Forest Policies without broad public consultation. A community information meeting to introduce a new mechanism for achieving increased density on F1 lands in order to legalize CMS's development is subverting the guidelines of the OCP Forest policies.
- Transfer of Title is essential to ensure the public interest in perpetuity. In addition to fragmenting the forest lot, the proposed covenant doesn't achieve the necessary community benefit.

Like everyone affected by this application, I'd love to see peaceful, harmonious resolution of these many concerns. It's important to be sure that CMS's plans meet the neighbourhood's expectations. At the same time, whatever the resolution, it has to be supported - in substance and intent - by our Official Community Plan's Forest land policies.

Please slow down. Please consult widely. Please make sure you have a legitimate mandate for what you propose and support in CMS's rezoning application.

Sincerely,

Akasha Forest

██████████ Galiano Island

DEVELOPMENT OF THE FOREST LANDS – different treatment for different owners?

Friends and neighbours ask: Why can't Crystal Mountain - a non-profit, charitable meditation society - continue to quietly do what they're doing on their forest lot? In fact, supporters say, their meditation centre and teachings are a community benefit.

Crystal Mountain has been offering meditation courses and events for about 20 years on their F1 land. Bylaw enforcement action on the non-complying buildings and structures and the density of use began in 2002. More structures and increased use resulted in another enforcement action in 2013.

This development is a small village of meditation hall, dining/washing facilities, caretaker's cottage, outhouses, a small collection of meditators' huts on an upper ridge and a large group of huts and camping spaces in a lower section of the property bordered by wetland and a creek. Much effort has been made by a succession of 4 LTC committees over 16 years to bring this development into compliance.

Access roads are complicated – either entering from Porlier Pass Road through an easement over an adjoining property that borders a riparian area, or through Cook road on an easement bordering several neighbours' properties and designed for the use of the area's 4 residential properties but often used by CMS participants. This application to rezone would locate access to the Meditation centre's main development area at the end of Devina Road that currently has no parking infrastructure. A neighbourhood emergency evacuation route needs to be designated through the development. Access to the upper Meditation centre's development area is through another easement that is unclear.

The wetland, the riparian areas bordering the stream, the cliff area are all Development Permit Areas subject to set-backs, restrictions on building or use, and in the case of the hazardous cliff area, geotechnical reporting before construction occurs. However, structures are located throughout the property.

The total number of structures, their exact location and easement roads are not all mapped. Clear information has not been widely available to the community or the neighbours of CMS.

FOREST ZONED LANDS AND OTHER LAND ZONES – why the different treatment?

Unlike most islands in the Trust area, Galiano Island has large tracts of forestlands zoned for forestry. Yes, there are different Land Use bylaws for Forest zoned lands than for other zoned lands on Galiano Island. There are good reasons for that.

The island's residentially-zoned and commercially-zoned lands were established in relation to lands held for forestry that covered roughly half the island. Development was clustered and reflects the past and present planning and costs of infrastructure and services – roads to Ministry standards, utility corridors, parking requirements, driveway rules related to safety and emergency services access/egress, regulations around sewage systems, potable water and community water systems. And there's taxation for community services - schools, fire departments, medical and emergency services. All of this is reflected in the purchase and selling price of residentially-zoned and commercially-zoned properties.

Forest 1 land are mostly large tracts of forest, zoned for forestry. They have none of these infrastructure costs reflected their purchase and selling price. Their non-residential status is reflected in their tax rate.

When the forestlands, specifically zoned for Forestry transitioned 'en masse' to the real estate market, much thought was put into creating and updating the Community Plan to find ways for residential use to occur while ensuring that enough intact, unfragmented forest remained. There was much compromise; present guidelines aim to accommodate both sets of needs - development and the public benefit - through rezoning.

The working model that has been used by all Forest 1 owners wanting extra density beyond 1 house per 50 acres is to provide a "community benefit" by transferring title on the remaining undeveloped F1 land to an organization that has as its principal mandate the protection of forest in perpetuity or to an organization engaged in ecosystem-based, sustainable forestry. Donation of land for affordable housing is another valued community benefit.

In 2010, during the Official Community Plan (OCP) Review, the Forest Policies Advisory Committee made these recommendations:

"We believe the LTC should do what it can to preserve as much of the forest as unfragmented forest ecosystems as possible."

"The Committee also recommends that any increase in density beyond 1 accessory dwelling to 20 hectares (50 acres) must involve a rezoning process linked to community benefit. There was a clear majority that the greatest community benefit would involve an exchange of density for land.

Motion Oct. 25, 2010 – "The Committee considered density increases in The forest zone linked to community benefit. Minimizing fragmentation of The forest was a primary concern as was the need to ensure no future Subdivision" 8 approved, 1 against, 1 abstained.*

**Members of the committee: Geoff Gaylor (Chair), Art Moses (Co-Chair), Bowie Keefer, Libby McLelland, Marek Czuma, Kiyo Okuda, Tom Hennessy, Kendall Kyle, Gary Coward, Glenna Mattin, Brad Lockett, Ken Millard.*

This was and still is the expressed wish of the community.