

From: Sandy Pottle <[REDACTED]>

Sent: Monday, June 14, 2021 10:49 AM

To: Dan Rogers <drogers@islandstrust.bc.ca>; Jane Wolverton <jwolverton@islandstrust.bc.ca>; Tahirih Rockafella <trockafella@islandstrust.bc.ca>

Cc: Brad Smith <bsmith@islandstrust.bc.ca>

Subject: CIM

Dear Dan Jane and Tahirih:

It is recommended in the Staff report of October 5 2020 that the CMS proposed spiritual Retreat be included under the Community Facilities Zone. This matter was addressed in a staff report May 2 2016 which concluded that "this designation is not recommended to be amended for the CM proposal".

The following is excerpted from the staff report of May 2 2016:

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.

From the OCP:

Galiano's community facilities for social and cultural services currently include a recycling centre, fire halls, ambulance station, a health care centre, a church, a school, a cemetery, community halls.

The objective of this subsection is: to promote the establishment of community facilities that 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.

Community facility zones shall be developed for such uses as community orchards, nurseries, gardens and woodlots, farmers markets, arts facilities recycling centre, ambulance station, R.C.M.P. facilities, emergency evacuation services and fire halls.

Zoning for a community facility shall be considered on a site-specific basis.

As a plan for a local trust area designated under the Islands Trust Act and placing priority on the preservation and protection of unique amenities and environment of the area, rezoning for new community facility uses should not be considered in advance of demonstrated need.

From the Galiano Land Use Bylaw (LUB):

8.2.1 In the Community Facility 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.

8.2.1.1 public and non-profit schools not including overnight accommodation or dormitories

8.2.1.2 community halls, libraries, museums, churches, cemeteries, recycling facilities

8.2.1.3 parks, playgrounds and sports fields

8.2.1.4 affordable and special needs housing

8.2.1.5 community gardens

8.2.1.6 farmers' markets

8.2.1.7 community orchards

8.2.1.8 community nurseries

I do not feel that that the application has changed significantly since 2016 and agree with the conclusion of the May 2016 staff report that this is not an appropriate zone for the proposed spiritual retreat as it does not meet the objectives of the Community Facility zone.

At the July 4, 2016 staff provided draft OCP and LUB bylaws (256 and 257 respectively) for the LTC's review and consideration. No decisions were made regarding the draft bylaws at that meeting and the Galiano Island LTC passed the following resolution:

***"GL-2016-063
It was MOVED and SECONDED,***

that the Galiano Island Local Trust Committee requests staff to explore and report on: legalities of using a s.219 covenant restricting the use of land to non-profit societies only; identification of community benefits; and the legality of including the clause on package page 35 (Schedule 1, A.1., 1) c, i)”

clause referenced:

***1. c) Zoning for comprehensive spiritual retreat use:
i) shall only be permitted for non-profit organizations.***

This provision was removed from the draft bylaw based on the legal opinion received from Islands Trust Legal Counsel.

This part of the legal opinion as interpreted by staff was included in the staff report of October 31 2016:

Legal Opinion

A legal opinion was received to address restricting the use of the land specific to non-profit societies by OCP amendment or a s.219 covenant. The following is based on staff’s review and understanding of the legal opinion recently received. Although the legal opinion has been circulated to the LTC members, all legal opinions are confidential and not publicly available unless released by resolution of the Executive Committee.

Land use bylaws must regulate the use rather than the user. If the characteristics of the land use would be different if a non-profit society owned the land compared to a for-profit- society then the regulations can legitimately draw a distinction. For example, a for-profit society may have more intensive use of the land and therefore the LUB amendment could potentially restrict the use to non-profit societies only. However, this is not a clear and certain basis for proceeding and could risk a future legal challenge

The above interpretation is also the same for OCP policies and s.219 covenants. The difference between use and user, and furthermore the distinction between non-profit and for-profit societies, is not evidently clear. By including a restriction to non-profit society use only would leave the LUB amendment, OCP amendment, and even a s.219 covenant vulnerable to be challenged in court, however remote a possibility.

A clearer approach would be to consider the intent of restricting the use, which is to ensure the use is not used for commercial purposes (for example, visitor accommodation, short term vacation, restaurants, etc.). In order to achieve the goal of restricting the retreat use, the definition of 'comprehensive spiritual retreat' can be refined to not permit commercial uses, and restrict the period of time visiting residents can stay. The definition currently reads:

““comprehensive spiritual retreat” means a facility that provides contemplative, spiritual or meditative opportunities for visiting residents, who typically stay at the facility for a period of at least 3 days, but in no case for more than 6 months, and are accommodated in sleeping huts, but does not include, offer, or provide any form of short term or temporary accommodation for the travelling public, or any restaurant or other forms of food service to the general public.”

This definition would restrict the use of the land to non-commercial purposes without defining the status of the user.

This legal opinion as interpreted by Islands Trust Staff raises several questions such as:

(1) how would the impact on the land be any different if this was a for profit enterprise rather than a not-for-profit enterprise?

(2) Wouldn't using a definition that would restrict the use of the land to non - commercial purposes without defining the status of the user be the same as saying it is only available to non-profits?

(3) Doesn't a 6 month stay constitute residential use?

(4) Issues of land use have been quite contentious and litigation or threats of same have been used on Galiano many times. Why is it said to be a remote possibility?

(5) What is the definition of a "visiting resident"?

CMS currently has a 10 Acre Residentially zoned lot and a 50 Acre Forest 1 zoned lot. They are entitled to one house and one cottage on the Residential lot already and they could be entitled to one house on the 50 Acre F1 Lot if they were to rezone to the only option currently available

(F3) in our OCP and Land use bylaws. The F3 option also requires a Sustainable Forestry Covenant.

The addition of 2 houses and one cottage plus a Sustainable Forestry Covenant would have less impact on the land than what is currently being considered in the proposed Crystal Mountain Spiritual Retreat (SE1) Zone. Details of the proposal are included below:

8.7 Crystal Mountain Spiritual Education Retreat (SE1) Zone Permitted Uses

8.6.1 The following uses and no others are permitted in the SE1 Zone:

- 1. 8.6.1.1 contemplative, spiritual or meditative education retreat uses***
- 2. 8.6.1.2 contemplative, spiritual or meditative educational activities and facilities with accessory overnight accommodation and camping***
- 3. 8.6.1.3 accessory dwelling unit for a person or persons acting as a caretaker for the spiritual education retreat.***

4. Permitted Density

8.6.2 The following buildings and structures and no others are permitted in Area A on Schedule D – Plan 6:

- 1. 8.6.2.1 2 sleeping huts, each with a maximum floor area of 21 square metres (226sq.ft.) ;***
- 2. 8.6.2.2 17 sleeping huts, each with a maximum floor area of 15 square metres (161 sq.ft.);***
- 3. 8.6.2.3 one meditation hall restricted to contemplative, spiritual or meditative education uses only with a maximum floor area of 125 square metres (1345 sq.ft.);***
- 4. 8.6.2.4 one dining/kitchen building with a maximum floor area of 125 square metres (1345 sq.ft.);***
- 5. 8.6.2.5 one communal bathroom and laundry building with a maximum floor area of 70 square metres (753 sq.ft.);***
- 6. 8.6.2.6 one storage/workshop structure with a maximum floor area of 80 square metres (861 sq. ft.);***
- 7. 8.6.2.7 one office with a maximum floor area of 70 square metres (753 sq. ft.);***
- 8. 8.6.2.8 one accessory dwelling unit with a maximum floor area of 80 square metres, 861 sq.ft.) and***
- 9. 8.6.2.9 six tent platforms, each with a maximum floor area of 14 square metres (150 sq.ft)..***

8.6.3 The following buildings and structures and no others are permitted in Area B on Schedule D – Plan 6:

- 10. 8.6.3.1 three sleeping huts, each with a maximum floor area of 21 square metres (226 sq.ft.);***
- 11. 8.6.3.2 one communal kitchen/bathroom/laundry building with a maximum floor area of 36 square metres (387sq.ft.); and***

12. 8.6.3.3 one storage building with a maximum floor area of 10 square metres (108sq.ft)..

8.6.4 Lot coverage must not exceed 1,479 square metres.

Which do you think would have a greater impact on the land? Should you approve this application? Do not let the fact that this application has been on the books for so long be an excuse for approval. I realize that there is much pressure from planners to approve.

You must consider the long - term effects this application's approval may have on the future of Forest Land development.

It was noted by one member of your Advisory planning Committee that: “ Everything is a precedent for something but it doesn’t mean that if one gets it the other will as well” . As you know applicants should be treated equally as stated in our OCP and as you also are well aware comparisons are always made to past successful applications.

As a community we have worked long and hard to develop bylaws. We have battled it out in the courts and our bylaws have stood the test of time. We have been able to exercise what powers we have to control what happens to the Forest zoned lands on our island against the odds. The LTC does not have the power to control forestry practises but we do have the power to control land use and approval of this application will set a precedent for Forest land rezoning into the future.

Forest retreats were considered by the Forest Policy Advisory Committee through a year of gruelling meetings and it was not recommended as an option for rezoning forest lands.

Please take the time you need to consider next steps and Thank you for the opportunity to express my concerns regarding this application.

Yours Sincerely,

Sandy Pottle

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Galiano Island BC

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