



File No.: GL-RZ-2014.1 (Crystal Mountain)

DATE OF REPORT: October 31, 2016
TO: Galiano Island Local Trust Committee for the meeting of November 7, 2016
FROM: Kim Stockdill, Island Planner
Victoria Office
SUBJECT: Application Update

RECOMMENDATION

Staff are not providing a recommendation at this time. Options are included at the end of the staff report for the Galiano Island Local Trust Committee's (LTC) consideration.

REPORT SUMMARY

The purpose of this staff report is to provide comments on the community benefits document drafted by the applicant and to summarize the legal opinion regarding restricting the use of the land for non-profit societies only.

BACKGROUND

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

"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)"

Previous to this, at the May 2, 2016 regular LTC meeting, the LTC passed the following resolutions:

"GL-2016-031

It was MOVED and SECONDED,

THAT, the Galiano Island Local Trust Committee requests the applicant explore additional community benefit options."

ANALYSIS

Community Benefit Applicant Document

The applicant has provided a document outlining options that they are proposing or willing to consider as a community benefits as part of their rezoning application. The following is a breakdown of a few of the options listed in the document with staff comments:

Community Benefit as Outlined by Applicant	Staff Comments
Funds for Affordable Housing	<p>If this option is acceptable, a LTC resolution would be required. As the applicant has not explicitly included the exact amount they are will to donate, staff recommend requiring this information prior to a LTC resolution.</p> <p>It has been suggested that the applicant provide land for affordable housing. This option is not supported by the applicant as it would require subdivision and sale of the land. Due to the sensitive ecosystems on the subject properties and topography of the land, there is no obvious portion of land that would be best for donation.</p>
Public Trails	<p>Currently there are informal trails on both properties (Lot A and Lot 9) used by the public even though the land is private property. From a zoning perspective, the Nature Protection zone permits passive recreation. Allowing public access to these trails would also need be consistent with any conservation covenant. Further discussion with the Trust Fund Board is required as the trails would be the property owner’s responsibility and liability.</p> <p>If the LTC wishes to require public trails as a condition of the rezoning, and that is agreeable to the Islands Trust Fund, staff recommend requesting the property owner explore granting a statutory right-of-way to the CRD Parks Commission to formalize the public trails.</p>
Emergency Access	<p>The Road Network Plan, Schedule C in the Galiano Island OCP, shows a proposed emergency access through Lot A from Porlier Pass Road to Devina Drive. If the LTC wishes to proceed with the bylaw amendment application, the property owner should be required to enter into a Statutory Right of Way (SROW) with the Galiano Fire Department to legalize the emergency access. The applicants have also stated they will consider taking responsibility for the construction and maintenance for the roadway to the standards required for emergency vehicle use. This condition could be added to the SROW.</p>
Environmental Assessment (Ecosystem-bases land use plan) by K. Erickson	<p>The LTC may wish to require specific recommendations within the assessment report to be conditions of the bylaw amendment approval or as conditions in a s.219 covenant that may be considered a community benefit. Specifically, there are recommendations in the assessment report for the reduction of fire hazard. A supplementary report can be drafted by staff outlining recommendations from the assessment report in order to reduce fire hazard on the subject properties. These recommendations can be then considered conditions of rezoning approval or conditions in a covenant.</p>
Conservation Covenant	<p>The applicants are proposing a conservation covenant on 75% of the land as a community benefit, the owners are in the process of reviewing a draft conservation covenant with the Trust Fund Board and being reviewed by the applicant’s legal counsel and the final draft will be completed shortly. If the application proceeds with the requirement for a conservation covenant, staff recommend obtaining a copy of the draft covenant prior to the Public Hearing.</p>
Observation Well	<p>The Galiano Island LTC has a standing resolution form April 7, 2014 (Resolution # GL-20104-029) that the Galiano Island Local Trust Committee will consider as a community benefit for all rezoning applications where there is an increase in</p>

	density, the establishment of an instrumented observation well. Although this application is not deemed by staff to be an increase in residential density, an observation well as a condition of rezoning could be considered to be a community benefit.
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The LTC should consider whether or not the proposed benefits are sufficient to warrant proceeding with the application, the LTC has the discretion to proceed or not with the rezoning.

Land donation has been a reoccurring suggestion at recent LTC meetings. At the February 1, 2016 the following motion was put forward and defeated:

“GL-2016-004
 It was MOVED AND SECONDED,
 that the LTC resolves to proceed no further with the application in the absence of a land donation.”

Defeated

If the Galiano Island LTC wishes to reconsider land donation as a community benefit, a new resolution is required. As mentioned in previous staff reports the issues with land donation are that there must be a willing agency to receive the donated lands, and land donation would involve a subdivision application.

If the LTC wishes to proceed with the application, staff recommend formalizing any conditions of rezoning by resolution to satisfy the LTC’s requirement for community benefits.

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 challenged.

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.

Draft Bylaws

The draft bylaws were reviewed by legal counsel for suggested wording. Amendments were made to reflect the recommendations from legal counsel and also from suggestions by the applicant. The draft bylaws are attached for the LTC’s consideration, and if desired, for First Reading, although staff does not recommend giving First Reading until the community benefits have been finalized. The LTC also has the option to recommend revisions to the draft bylaws.

Consultation:

No formal Galiano Island LTC 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. Staff recommend scheduling a CIM once the community benefits have been finalized.

Rationale for Recommendation:

Although staff are not providing a recommendation, staff does suggest the LTC consider the community benefits being proposed. A resolution is required for any community benefits deemed to be conditions of final bylaw approval.

OPTIONS

The following are options for the LTC’s consideration:

1. Request further information

The LTC may request further information be provided prior to making a decision. If selecting this alternative, the LTC should describe the specific information needed and the rationale for this request.

2. Receive for information

The LTC may receive the report for information and defer decision on the next steps of the application until the December 2016 LTC meeting.

3. Formalize community benefit

The LTC may formalize the requirement for community benefit in order for the application to proceed, and draft bylaws to be finalized. The applicant is proposing the following as community benefits: conservation covenant, affordable housing donation, public trails, emergency access, implementation of environment assessment report, and an observation well.

4. Schedule Community Information Meeting

The LTC has the option to schedule a Community Information Meeting (CIM) to provide an opportunity to discuss the draft bylaws, draft conservation covenant, and the application proposal. The CIM could be scheduled as a Special Meeting or as part of a regular LTC meeting.

5. Amend draft bylaws

The LTC may request revisions to the draft bylaws. As no readings have been given to the bylaws, a formal resolution to amend to the bylaw is not required.

6. Give First Reading to draft bylaws

Staff recommends only giving First Reading to draft bylaws if the LTC wishes to continue with a conservation covenant as a community benefit and condition of rezoning.

7. Close the application

The LTC may close the application. This option would require the applicant to comply with current bylaws and further bylaw enforcement would pursue.

Submitted By:	Kim Stockdill, Island Planner	October 31, 2016
Concurrence:	Robert Kojima, Regional Planning Manager	October 31, 2016

ATTACHMENT

- 1. Community Benefit document from applicant
- 2. Draft OCP Amendment Bylaw No. 256
- 3. Draft LUB Amendment Bylaw No. 257

COMMUNITY BENEFITS

for Crystal Mountain Society Forest Retreat Meditation Centre Rezoning Proposal

October, 2016

The Galiano LTC has requested that Crystal Mountain Society (CMS) consider further community benefits as part of its rezoning proposal. In response, we are pleased to present our list:

Affordable housing is critically needed on Galiano. CMS recognizes this need in the community and is looking at significant ways to contribute. Rather than going the route of subdivision and the sale of a parcel of land, which would add density to our proposal, we commit to raising funds towards a meaningful donation to affordable housing.

CMS is interested in creating a public Loop Trail on Lot 9. This trail would be available for public use, year-round, regardless of retreat activity. The forest on lot 9 is beautiful, mature woodland and rich wetland, edged by dramatic cliff faces. The land is home to a diverse mix of local flora and fauna and would be protected under covenant, with no future development.

If the rezoning goes forward, CMS will be granting a statutory right of way from Porlier Pass to Devina Drive for emergency vehicle access and as a public evacuation route.

The OCP does not assign responsibility for the maintenance of an emergency access. **CMS will consider taking responsibility for the construction and maintenance of the roadway, to the standards required for emergency vehicle use.** As indicated to us by the North Galiano Fire Chief, establishing the precedent of an emergency road maintenance agreement would constitute a further community benefit.

CMS is investigating the possibility of contributing a water supply standpipe in the wetland of lot 9, for firefighting purposes. The North Galiano Fire Chief has identified this as a useful contribution to fire protection in the local neighbourhood.

CMS is committed to implementing the recommendations in our Ecosystem-Based Land-Use Plan. This plan recognizes the importance of preservation of the mature forest, wetlands and steep slopes. **The management plan also provides for forest fire risk mitigation strategies.** CMS fully supports the Islands Trust Preserve and Protect directive as expressed in Galiano OCP land use policy c. *'The forested landscape is integral to Galiano's character and that ecosystem-based sustainable forest management is critical for maintaining and restoring Galiano's forest ecosystem.'*

CMS remains committed to registering a conservation covenant on the land title as a community benefit. A conservation covenant is being developed with the Islands Trust Fund for the preservation of ecosystems in their natural states and to preclude any future subdivision. If the land is sold to a new owner with plans to rezone, the covenant will continue to remain on title, prohibiting any future subdivision, development, or separate sale of lots, thereby eliminating unforeseen changes to the character of North Galiano.

No subdivision of the land is proposed. All development rights will be forfeited from residentially zoned Lot 9. The amalgamation of Lot 9 and Forest Lot A provides increased forest, steep slope and

wetland protection, contiguous with BC Ministry of Environment's DL 87. The retreat centre would be sited entirely in the impacted areas of Lot A caused by the clearcutting of previous owners.

Of the 60 acres owned by CMS, 45 acres will be rezoned to Nature Protection.

Observation Well: The Groundwater Protection Section of the Ministry of Forests, Lands and Natural Resource Operations manages a groundwater monitoring program. Two wells in South Galiano participate but there is currently no well in the North Island. CMS continues to investigate designating a capped well that may qualify as a donation to this program.

Crystal Mountain supports the local economy. An example - In 2014, CMS rented houses in North Galiano to conduct a six-month silent retreat. From September 2014 to March 2015, CMS spent over \$59,000 at island businesses, as well as \$23,000 in local housing rentals. CMS will continue to rent houses for those needing accommodation that offer more residential comforts due to physical disability or age-related concerns.

Health benefits of Meditation and Quiet Contemplation. Recent studies conducted on the benefits of meditation offers evidence that meditative/contemplative practice alleviates symptoms of a variety of mental and physical disorders; that multiple negative dimensions of psychological stress are reduced; and that there can be a reduction in symptoms of depression with younger folks.

In addition to these community benefits, CMS will continue to engage with, and respond to, the concerns of our north end neighbours. The following list represents some initial solutions (and presumed 'benefits') to concerns we have heard:

The main entrance to CMS can be designated over to Porlier Pass, to accommodate concerns about increased traffic on Devina Drive.

The Society commits to transparency and accountability in well-water use on our property. CMS will join the Provincial water monitoring program that has developed through the BC Sustainable Water Act. We propose monitoring of water quality and rationing through water metering, to meet the limits stated in the Groundwater Assessment Report. Important data on water use can then be gathered and shared island-wide, contributing to better understanding watershed management in North Galiano.

CMS proposes creating a Community Liaison Committee, to facilitate ongoing dialogue with our neighbours.

Trails: Our neighbours often walk the Crystal Mountain lands and we are exploring how this could continue, given the liability constraints.

Please check us out! All our programs are run by volunteers and open to the public. No membership or religious affiliation is required. While fees are charged where needed to cover food or rental fees, all teachings are supported by donation only.

Over the past few years, we have continued to refine our proposal in ways that address the concerns of our community. This will not change. Nor will our commitment to protect both the integrity of the forest lands and the quiet, rural atmosphere of our shared neighbourhood.

For further updates or more information on the Crystal Mountain Forest Retreat Meditation Centre rezoning proposal, please visit the Islands Trust website at:

<http://www.islandstrust.bc.ca/islands/local-trust-areas/galiano/current-applications/>

or call Elizabeth McClelland at 250-539-4000, Janice Oakley at 250-539-3389,

or email Helen Foster at helenfay108@gmail.com.

DRAFT

GALIANO ISLAND LOCAL TRUST COMMITTEE

BYLAW NO. 256

**A BYLAW TO AMEND THE GALIANO ISLAND
OFFICIAL COMMUNITY PLAN BYLAW NO. 108, 1995**

WHEREAS the Galiano Island Local Trust Committee is the Local Trust Committee having jurisdiction on and in respect of the Galiano Island Local Trust Area, pursuant to the Islands Trust Act;

AND WHEREAS Section 29 of the *Islands Trust Act* gives the Galiano Island Local Trust Committee the same power and authority of a Regional District under Part 14, except sections 558 to 570 and 507 to 508, of the *Local Government Act*;

AND WHEREAS the Galiano Island Local Trust Committee wishes to amend the Galiano Island Official Community Plan Bylaw No. 108, 1995;

AND WHEREAS the Galiano Island Local Trust Committee has held a Public Hearing;

NOW THEREFORE the Galiano Island Local Trust Committee enacts in open meeting assembled as follows:

1. CITATION

This Bylaw may be cited for all purposes as "Galiano Island Official Community Plan Bylaw No. 108, 1995, Amendment No. 1, 2016".

2. SCHEDULES

Galiano Island Official Community Plan No. 108, 1995 is amended as shown on Schedule 1, attached to and forming part of this bylaw.

3. SEVERABILITY

If any provision of this Bylaw is for any reason held to be invalid by a decision of any Court of competent jurisdiction, the invalid provision must be severed from the Bylaw and the decision that such provision is invalid must not affect the validity of the remaining provisions of the Bylaw.

GALIANO ISLAND LOCAL TRUST COMMITTEE
BYLAW No. 256
SCHEDULE 1

A. Bylaw No. 108, cited as “Galiano Island Official Community Plan Bylaw No. 108, 1995” is amended as follows:

1. Section II, Subsection 4.3 (Health and Wellness Facilities) is deleted and replaced with:

“4.3 Health and Wellness

Health and Wellness Objective

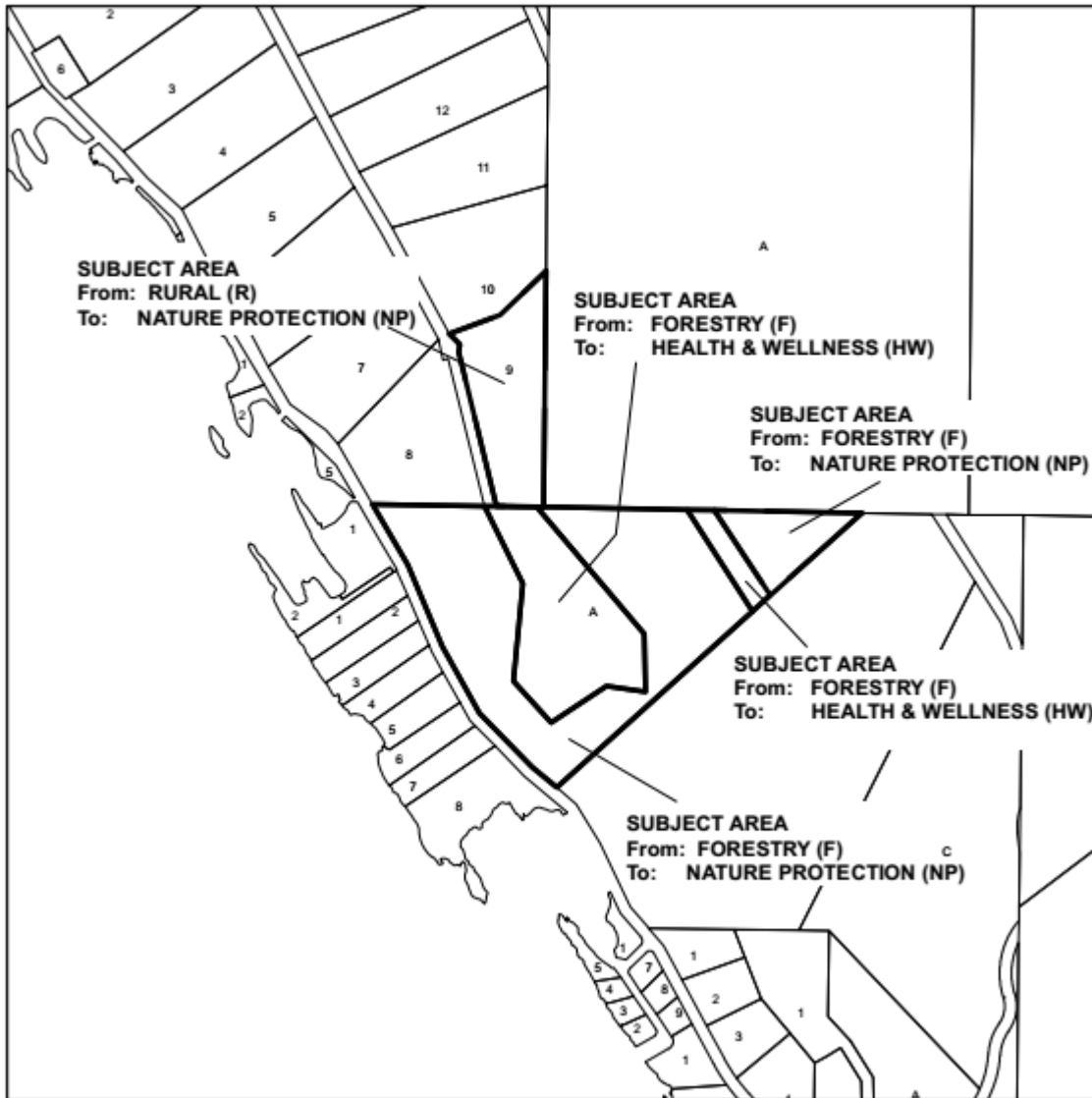
The objective of this subsection is:

1) to encourage health and wellness facilities that enhance the health of residents and visitors and that do not adversely affect the natural environment.

Health and Wellness Policies

- a) The principal use shall be health and wellness including comprehensive spiritual retreat use.
- b) Zoning for any health and wellness use, including comprehensive spiritual retreat, shall be considered on a site specific basis.
- c) Zoning for comprehensive spiritual retreat use:
 - i) shall not support, provide, or permit any tourism-oriented use, including nature related tourism, or visitor accommodation.
 - ii) shall restrict the number of buildings and structures and maximum floor area to minimize their impact on sensitive ecosystems.

2) Schedule B (Land Use Designation) is amended for the lands legally described as Lot 9, District Lot 90, Galiano Island, Cowichan District, Plan 31200 and Lot A, District Lots 88 and 89, Galiano Island, Cowichan District, Plan VIP68079 as depicted in the map below.



DRAFT

GALIANO ISLAND LOCAL TRUST COMMITTEE BYLAW NO. 257

A BYLAW TO AMEND GALIANO ISLAND LAND USE BYLAW 127, 1999

The Galiano Island Local Trust Committee, being the Trust Committee having jurisdiction in respect of the Galiano Island Local Trust Area under the *Islands Trust Act*, enacts as follows:

1. Citation

This bylaw may be cited for all purposes as “Galiano Island Land Use Bylaw 127, 1999, Amendment No. 1, 2016”.

2. Galiano Island Land Use Bylaw 127, 1999, is amended as follows:

2.1 The following text is inserted after section 8.5, as a new section to be numbered Section 8.6:

“8.6 Crystal Mountain Comprehensive Development One (CD1) Zone

Permitted Uses

8.6.1 The following uses and no others are permitted in the CD1 Zone:

8.6.1.1 comprehensive spiritual retreat

8.6.1.2 accessory dwelling unit accessory for a person or persons acting as a caretaker for the spiritual retreat.

Permitted Density

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

8.6.2.1 26 sleeping huts, each with a maximum floor area of 15 square metres;

8.6.2.2 one meditation hall restricted to meditation use only with a maximum floor area of 125 square metres;

8.6.2.3 one dining/kitchen building with a maximum floor area of 125 square metres;

8.6.2.4 one bathing and laundry building with a maximum floor area of 70 square metres;

8.6.2.5 one storage structure with a maximum floor area of 70 square metres; and

8.6.2.6 Composting outhouse facilities not exceeding a total maximum floor area of 20 square metres;

8.6.2.7 one accessory dwelling unit with a maximum floor area of 100 square metres.

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

- 8.6.3.1 4 sleeping huts, each with a maximum floor area of 15 square metres;
- 8.6.3.2 one dining/kitchen building with a maximum floor area of 35 square metres; and
- 8.6.3.3 Composting outhouse facilities not exceeding a total maximum floor area of 10 square metres.

Permitted Height

- 8.6.4 The maximum height of an accessory dwelling unit is 9 metres.
- 8.6.5 The maximum height of a sleeping hut, or a building or structure other than an accessory dwelling unit, is 5 metres in height.

Minimum Setbacks

- 8.6.6 All buildings and structures must be sited
 - 8.6.6.1 at least 7.5 metres from front and rear lot lines; and
 - 8.6.6.2 at least 6.0 metres from an interior and exterior side lot lines.

Minimum Lot Size

- 8.6.7 No lot having an area less than 20 hectares may be created by subdivision.

Parking

- 8.6.8 Despite Section 14.1, the minimum number of off-street parking spaces is as follows:
 - 8.6.8.1 1 parking space per 3 sleeping huts. “

- 2.2 Section 17 (Definitions) is amended by inserting the following as new definitions in alphabetical order and re-numbering subsequent subsections accordingly:

“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.

“sleeping hut” means a hut for sleeping, shelter and contemplative, spiritual or meditative opportunities for a participant in a comprehensive spiritual retreat, but does not include a kitchen or any cooking or food preparation facilities, or any plumbing fixtures.

- 2.3 Schedule “A” – Zoning Map, is amended by changing the zoning classification of Lot 9, District Lot 90, Galiano Island, Cowichan District, Plan 31200 from Rural 2 (R2) to Nature Protection (NP), as shown on Plan No. 1 attached to and forming

part of this bylaw, and by making such alterations to Schedule "1" to Bylaw No. 257 as are required to effect this change.

2.4 Schedule "A" – Zoning Map, is amended by changing the zoning classification of Lot A, Districts Lots 88 and 89, Galiano Island, Plan VIP68079 from Forest 1 (F1) to Crystal Mountain Comprehensive Development One (CD1) and to Nature Protection (NP), as shown on Plan No. 1 attached to and forming part of this bylaw, and by making such alterations to Schedule "1" to Bylaw No. 257 as are required to effect this change.

2.5 Schedule D is amended by inserting the plan attached to and forming part of this bylaw as Plan No. 2 as a new "Plan 6".

READ A FIRST TIME THIS _____ DAY OF _____ 20____

PUBLIC HEARING HELD THIS _____ DAY OF _____ 20____

READ A SECOND TIME THIS _____ DAY OF _____ 20____

READ A THIRD TIME THIS _____ DAY OF _____ 20____

APPROVED BY THE EXECUTIVE COMMITTEE OF THE ISLANDS TRUST THIS
_____ DAY OF _____ 20____

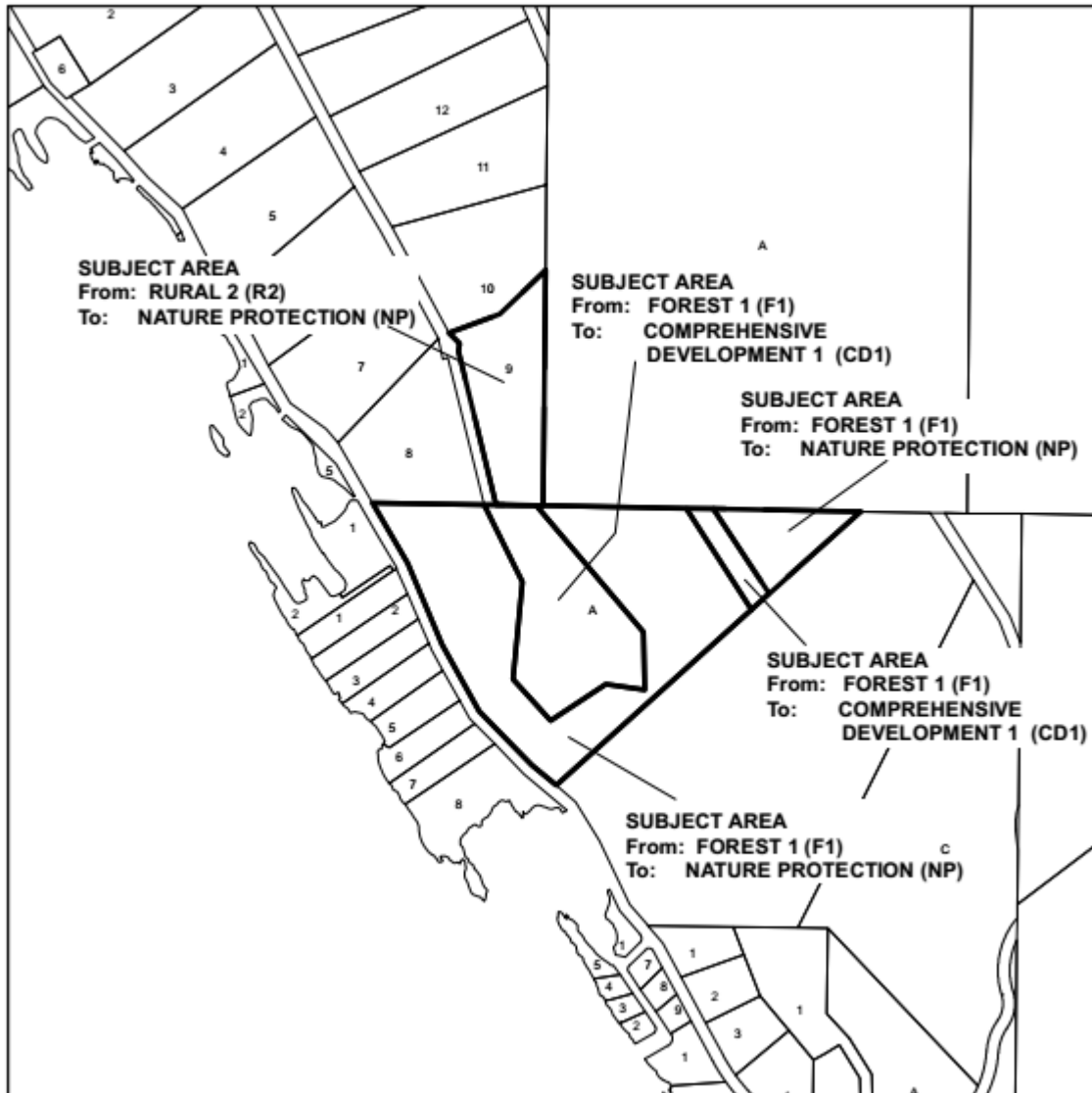
ADOPTED THIS _____ DAY OF _____ 20____

Chair

Secretary

GALIANO ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 257

Plan No. 1



GALIANO ISLAND LOCAL TRUST COMMITTEE
BYLAW NO. 257

Plan No. 2

