



DATE OF MEETING: September 10, 2024  
TO: Galiano Island Local Trust Committee  
FROM: Kim Stockdill, Island Planner  
Southern Team  
COPY: Robert Kojima, Regional Planning Manager  
SUBJECT: District Lot 85 Rezoning Application – Preliminary Report  
Applicant: TBD  
Location: District Lot 85 Galiano Island Cowichan District

## RECOMMENDATION

- 1. That the Galiano Island Local Trust Committee direct staff to prepare draft bylaws for rezoning application GL-RZ-2023.2 (McElhanney).**

## REPORT SUMMARY

The purpose of this staff report is to provide the Galiano Island Local Trust Committee (LTC) with further information regarding the rezoning application, to present a draft Terms of Reference for the applicant, and request the LTC to give direction to staff to proceed with draft bylaws.

## BACKGROUND

The application as proposed would amend the Galiano Island Land Use Bylaw No. 127, 1999 (LUB) by rezoning the subject property from **Forest 1 (F1)** to a combination of **Forest 3 (F3), Rural Residential (RR), Small Lot Residential (SLR), Resource (R), Nature Protection (NP), and Park (P)**. The proposal would also require an Official Community Plan (OCP) amendment for changes to land use designation.

At the December 12, 2023 meeting staff presented a preliminary staff report to the Galiano LTC. Although the LTC did not pass a motion regarding this application, the LTC expressed a preference to receive information from the Penelakut Tribe before requiring conditions or requesting draft bylaws.

Penelakut Tribe Chief Jack and Penelakut Tribe Council members and staff members attended the July 9, 2024 regular LTC meeting. During that meeting, Penelakut Tribe Chief Jack declared the unwavering interest of the Penelakut people in accepting the return of land to the Penelakut Tribe.

Figure 1 - Preliminary Layout Plan

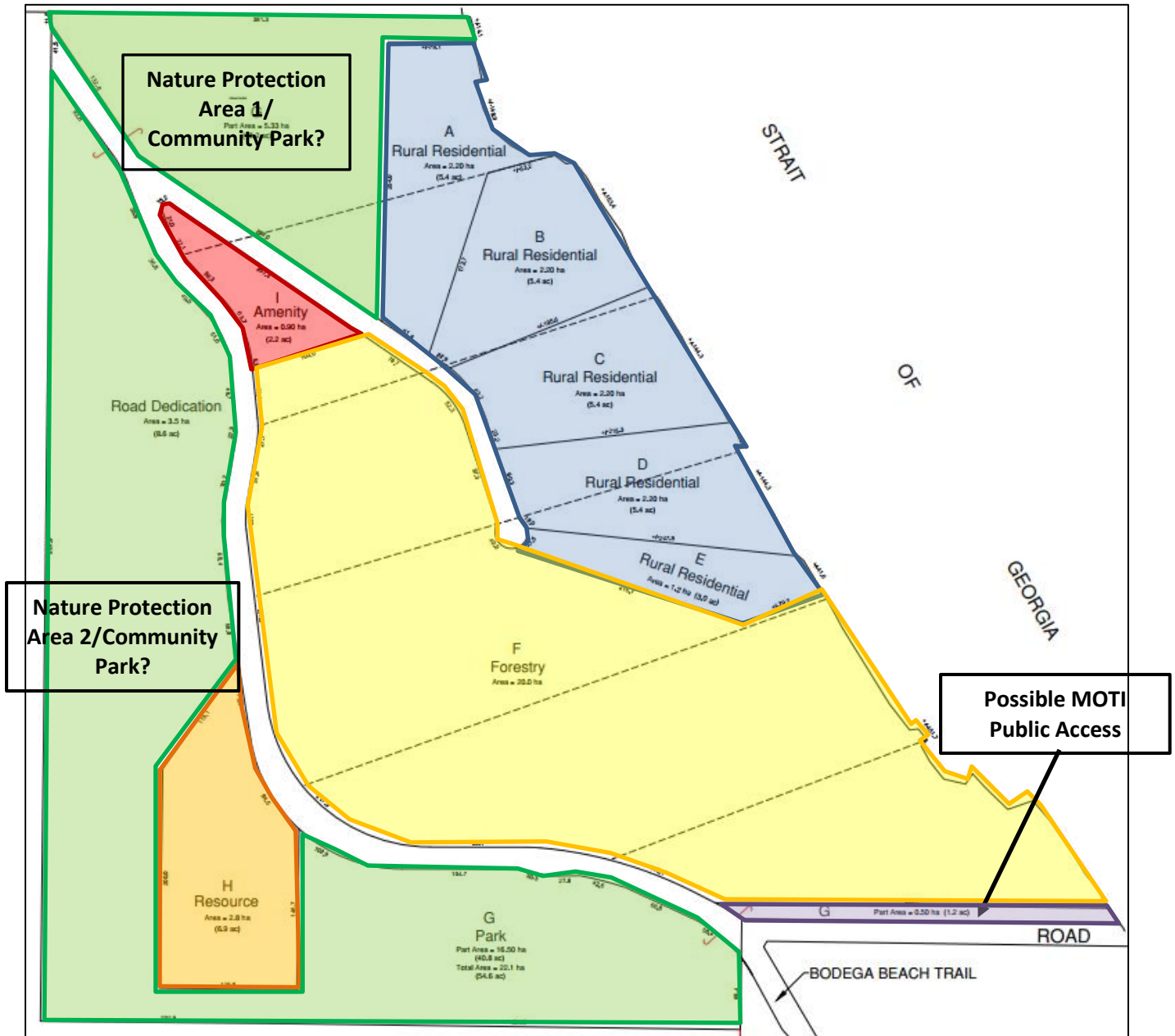


TABLE 1 - LEGEND

COLOUR	PROPOSED ZONING	COMMENTS
Blue	Rural Residential	Lots A, B, C, D, and E
Red	Small Lot Residential	Lot or cash from sale of lot to be donated to affordable housing society. LTC could consider requesting applicants to amend the proposed layout for this amenity lot to be in a more desirable area.

Yellow	Forest 3	Registration of a sustainable forestry covenant is required for this lot.
Orange	Resource zone or site-specific Forest Industrial zone	<b>Applicant to determine who will receive this land.</b> Proposed zoning could be a new resource zone or a site-specific Forest Industrial zone that would only permit certain uses (quarry use).
Green	Nature Protection/Community Park	Nature Protection zoned lots to be transferred to the Penelakut Tribe. A portion of this land will be required to be zoned Park to be donated to the Capital Regional District (Parks and Recreation).
Purple	N/A	Applicant should discuss with the Ministry of Transportation and Infrastructure (MOTI) if the location of this water access would satisfy Section 75(d) of the <i>Land Title Act</i> or should it be moved to another portion of the land (between proposed Lot E and the F3 lot).

## ANALYSIS

### *Application Proposal*

The applicant is proposing the creation of five new Rural Residential (RR) zoned properties, averaging 2.0 hectares. The proposal also includes a 0.9 hectare amenity lot (proposed zoning to Small Lot Residential) for the purpose of affordable housing, and a 2.3 hectare resource lot (ie. An existing gravel quarry), a Nature Protection lot and dedicated roads. Figure 2, as provided by the applicant, provides a breakdown of the approximate total area of land proposed to be included.

**Figure 2. Approximate Total Area Proposed per Zone Type (from applicant)**

Proposed Zone	Area (ha) *approximate	Community Benefit?	25%	75%
Rural Residential lots	10.0 ha	No	25.3%	
Small Lot Residential Lot	0.9 ha	Yes		2.3%
Resource	2.8 ha	Yes		7.1%
Nature Protection Area 1/Park	5.33 ha	Yes		13.5%
Nature Protection Area 2/Park	16.5 ha	Yes		41.7%
MOTI Water Access	0.5 ha	Yes		1.3%
Road	3.5 ha	Yes		8.8%
<b>TOTAL</b>	<b>39.53 ha</b>		<b>25.3%</b>	<b>74.7%</b>
Forest 3	20. ha	Registration of Sustainable Forestry Covenant	Not included in 75/25 calculation	
<b>TOTAL AREA</b>	<b>59.53 ha</b>		<b>25.3%</b>	<b>74.7%</b>

## **Draft Bylaws**

The Galiano Island Official Community Plan (OCP) land use designation for the subject property is currently **Forest**. Rezoning as proposed would result in the proposed following changes to the OCP schedule B for the newly configured lots: **Small Lot Residential, Rural Residential, Forest, Forest Industrial** or **Light Industrial, Nature Protection** and **Parks & Recreation** designations.

The subject property is also currently zoned **Forest 1** in the Galiano Island Land Use Bylaw (LUB). The following amendments to the LUB would be required:

- Rezoning a portion of **property to Forest 3**
- Rezoning five lots to **Rural Residential**
- Rezoning the amenity lot to **Small Lot Residential** with a restriction of only permitting one dwelling unit (a cottage would not be permitted)
- Rezoning portions of the land to **Nature Protection**
- Rezoning a portion of the property to a new **Resource** zone or a site-specific **Forest Industrial** zone

A portion of the subject property may have to be rezoned to **Park** to comply with Section 510 of *the Local Government Act* and transferred to the Capital Regional District (CRD). Alternatively the CRD may wish to receive cash-in-lieu of park land. Subsection 510(6) of the LGA states amount of land that may be required for park dedication or used for establishing the amount that may be paid as cash-in-lieu must not exceed 5% of the land being proposed for subdivision.

### **Community Benefit – Amenity Lot, Nature Protection Lots (Area 1 & 2), Quarry Lot, Park Dedication & Well Monitoring**

As a condition of rezoning a Forest 1 lot to Rural Residential lots (25 percent of land) a community benefit is requested. This has been addressed by the applicant by proposing to transfer at least 75 percent of the land not proposed to be rezoned F3 to a combination of the Penelakut Tribe, a residential lot for affordable housing, and public access. Due to the location of the subdivision at the north end of Galiano away from services and ferry access, a donation of the proceeds of the sale of a residential lot to an affordable housing society on Galiano Island would be recommended.

The Penelakut Tribe Chief declared interest in receiving the land proposed to be rezoned to Nature Protection to the west of the access road. Although Penelakut Tribe has set up a corporation in order to acquire and hold land, the British Columbia *Land Title Act* was amended in May 2024 naming First Nations to have the power and capacity in acquiring and disposing of land (Section 365.3). If this rezoning application is successful, the land will be required to be transferred to the Penelakut Tribe after the plan of subdivision has been successfully registered at the Land Title Office.

In 2014, the Galiano LTC passed the following standing resolution:

#### **2014-029 (Standing) Carried 07-Apr-2014**

*“That the Galiano Island Local Trust Committee will consider as a community benefit for all rezoning applications where there is an increase in density, the establishment of an instrumented observation well.”*

The LTC may also considered requiring the applicant to install a monitoring device on their well as a condition of bylaw adoption. At this time planning staff are looking into the feasibility of this option as there are considerations regarding how, and how often the property owner must upload the data, who processes the data, and if the data is able to be uploaded to the provincial system. Staff will report back to the LTC at a later date with further information regarding these considerations.

Parks and Recreation Policy 6 b) in the Galiano OCP states: “*Dedication of land, rather than cash-in-lieu, shall be required on lands identified on Schedule “E” of this plan where parkland dedication is required at the time of subdivision.*” A referral to the Galiano Island Parks & Recreation Commission is recommended to determine if the CRD would like to pursue land for a community park or cash-in-lieu. If the CRD and the applicant agree to donating land, the site plan must be updated to include park dedication (and that portion of land rezoned to Park).

## **Next Steps**

### Galiano LTC

As staff have engaged with the Penelakut Tribe and issued a Terms of Reference to the applicant, the next step for the LTC’s consideration is to give direction to draft bylaws. Directing staff to proceed with the application will enable staff to begin preliminary engagement with First Nations as a first step to determining the viability of the proposal or other potential options.

### Applicant

As outlined in the Terms of Reference which was issued to the applicant in 2021, the applicant will continue to work on and provide to the LTC:

- Updated site plan outlining the developable areas. This site plan will be attached to the amending Land Use Bylaw (LUB). The final site plan must be completed prior to First Reading of the amending bylaw
- Updated site plan to include area for community park dedication subject to Section 510 of the *Local Government Act*
- Geotechnical Assessment – if ‘developable areas’ are located within Development Permit Area 7 – Moderate Steep Slope
- Groundwater Report – parameters of the report will be determined by the Islands Trust Senior Freshwater Specialist and planning staff. Report to be completed prior to scheduling of Public Hearing
- Septic Disposal Report – to confirm septic viability, and to provide a site plan showing the existing and proposed septic areas for those lots where zoning permits a residential use. Report to be completed prior to scheduling of Public Hearing
- Ecological Overview Report – to provide information regarding the ecological significance on the lands to be transferred. Report to be completed prior to scheduling of Public Hearing
- Sustainable Forestry Covenant – to register a Section 219 covenant on title for the proposed Forest 3 zoned portion of the lot. Covenant to be registered on title of parent parcel prior to bylaw adoption
- Section 219 Covenants:
  - Development Control Covenant(s) – covenant(s) to include recommendations of the geotechnical assessment (if required), groundwater report, well monitoring conditions, ecological overview report, Site Plan, land transfer information (road portion and west lot portion), restriction on use or occupancy of dwellings until land is successfully transferred, sale of RR1 lot to be donated to a non-profit affordable housing society, and subdivision clause (owner must subdivide in accordance to attached site plan)
  - Covenant to be registered on title of parent parcel prior to bylaw adoption
  - There may be two Development Control Covenants. One permanent covenant which stays on the property title for each lot in perpetuity, and another temporary covenant which may be discharged if all clauses in the covenant are satisfied

The following information is still required from the applicant:

- Water/Road Access - Applicant must contact with MOTI to determine if this portion must be dedicated to comply with Section 75(d) of the *Land Title Act* and if the current location (as shown in Figure 1) is agreeable to MOTI
- Resource/Site-specific Forest Industrial Zone – Applicant to determine if Penelakut Tribe (or a non-profit agency) is interested in receiving this portion of land currently used as a quarry. Future recipient of land should determine if the quarry use is adequate or if this portion of land should be rezoned to Nature Protection (and no longer used as a quarry)
- Small Lot Residential Lot (Amenity Lot) – if the land will be donated or the proceeds of the sale of land and to which non-profit affordable housing society will receive the funds
- Information regarding park dedication or cash-in-lieu in compliance with Section 510 of the *Local Government Act*

### **Rationale for Recommendation**

Based on the foregoing, the recommendation on page 1 is supported as the Penelakut Tribe has indicated their interest in the receipt of land as a condition of rezoning and the Terms of Reference has been issued to the applicant.

If the LTC agrees with the proposed layout as shown in Figure 1, staff recommend the LTC gives direction to staff to draft bylaws for this rezoning application. Proceeding with the preparation of draft bylaws would allow for next steps in the process to proceed including early referrals First Nations and agencies, referrals to potentially affected agencies, and the consideration of further input from the public including adjacent property owners.

### **ALTERNATIVES**

The LTC may consider the following alternatives to the staff recommendation:

#### **1. Request further information**

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

Resolution:

*That the Galiano Island Local Trust Committee request that the applicant submit to the Islands Trust*

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#### **2. Deny the application**

The LTC may deny the application.

Resolution:

*That the Galiano Island Local Trust Committee proceed no further with application GL-RZ-2023.2 (McElhanney).*

#### **3. Hold the application in abeyance**

The LTC may choose to hold the application in abeyance pending completion of a significant study or OCP process, etc.

Resolution:

*That the Galiano Island Local Trust Committee hold application GL-RZ-2023.2 (McElhanney) in abeyance.*

**NEXT STEPS**

If the LTC agrees with staff’s recommendation, staff will:

- Continue engagement with First Nations and First Nation agencies
- Proceed to draft bylaws

Submitted By:	Kim Stockdill, Island Planner	August 29, 2024
Concurrence:	Robert Kojima, Regional Planning Manager	August 29, 2024