

DATE OF MEETING: December 12, 2023

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: (McElhanney Ltd.) on behalf of DL 85 property owners

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), and Nature Protection (NP) or Park (P)**. The proposal would also require an Official Community Plan (OCP) amendment for changes to land use designation.

At the July 11, 2023 staff presented a preliminary staff report to the Galiano LTC. The LTC at the meeting passed the following resolution:

GL-2023-49

It was Moved and Seconded,

that Galiano Island Local Trust Committee direct staff to proceed with application GL-RZ-2023.2 (McElhanney) including preliminary engagement with First Nations.

CARRIED

Figure 1 - Preliminary Layout Plan

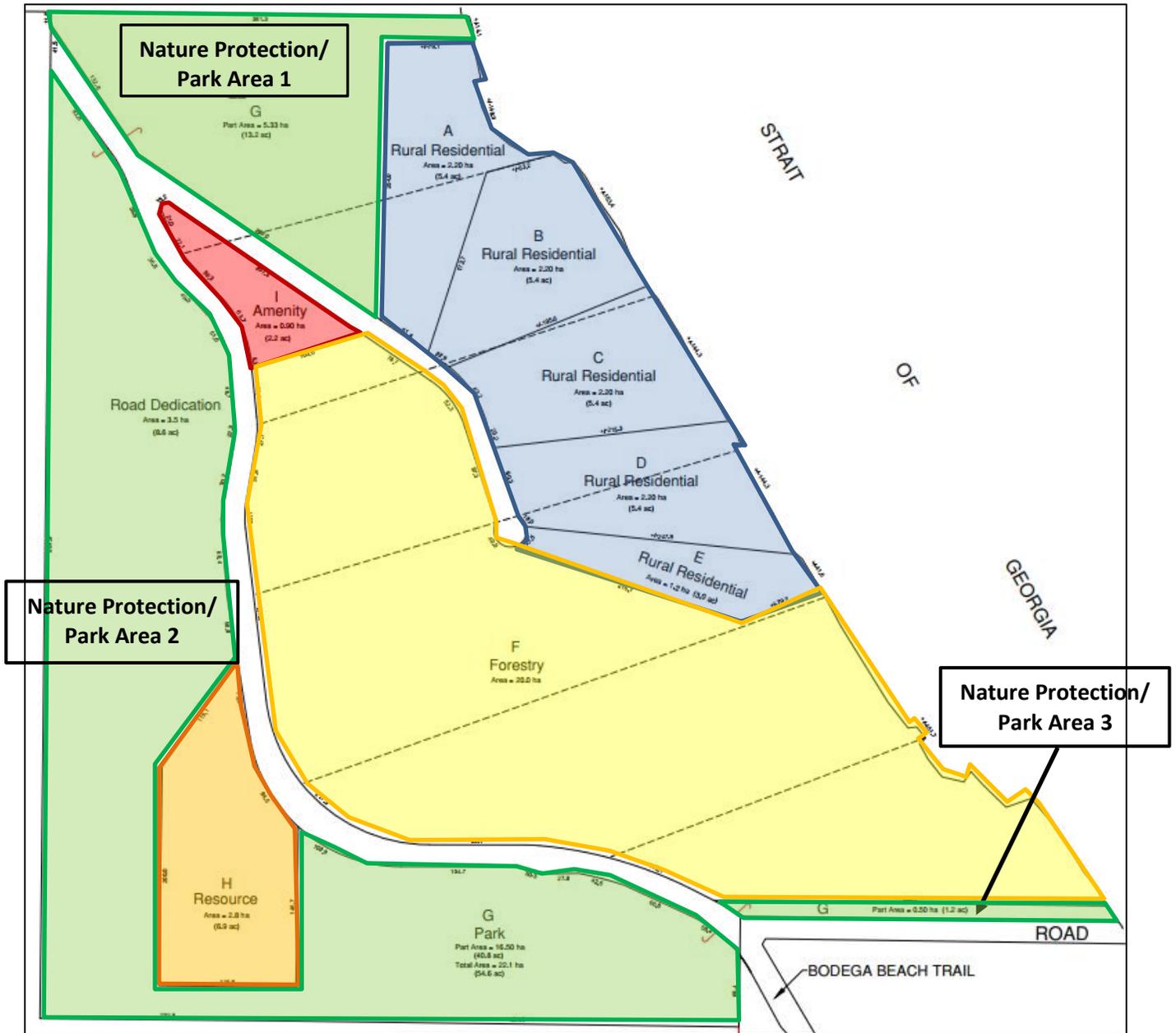


TABLE 1 - LEGEND

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	Applicant to determine who will receive this land. 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/Park	Applicant to determine who will receive Nature Protection lot(s). Applicant should discuss with the Ministry of Transportation and Infrastructure (MOTI) if the 'Nature Protection/Park Area 3' should be transfer to MOTI to satisfy Section 75(d) of the <i>Land Title Act</i> .

ANALYSIS

Application Proposal

The applicant is proposing the creation of five new Rural Residential (RR) zoned properties, averaging 2.0 hectares, with the remainder of the subject property being zoned Nature Protection or Park, and public roads. 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). 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/Park Area 1	5.33 ha	Yes		13.5%
Nature Protection/Park Area 2	16.5 ha	Yes		41.7%
Nature Protection/Park Area 3	0.5 ha	Yes		1.3%
Road	3.5 ha	Yes		8.8%
TOTAL	39.53 ha		25.3%	74.7%
Forest 3	20. ha	N/A	Not included in 75/25 calculation	
TOTAL AREA	59.53 ha		25.3%	74.7%

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/or **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** and/or **Park**
- Rezoning a portion of the property to a new **Resource** zone or a site-specific **Forest Industrial** zone.

Staff recommends 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.

First Nations Considerations

Staff engaged with BC Parks to discuss the potential transfer of lands to BC Parks to expand Dionisio Park and to provide public road access to the park, which is currently designated a marine access only park. At that time, BC Parks was reluctant to consider a land transfer given local First Nations (specifically Penelakut Tribe) interests.

Staff met with the Penelakut Tribe Chief and Council to introduce the application and propose the following questions:

- Are the lot lines as proposed reasonable and in line with the views of your Nation?
- Do you have capacity to receive the lands through a subdivision should it proceed to that point?
- The proposed zoning of a majority of the lands to be transferred is Nature Protection, are you comfortable with this zoning being retained on the 75% portion should land transfer occur?
- What is your understanding of other local First Nations views on a potential land transfer?
- Are there any other concerns, issues or information gaps that we should be aware of with respect to these two rezoning applications?

Penelakut Tribe Chief and Council received the questions and will discuss these questions internally. Staff hope to continue the discussion with Penelakut Tribe early in 2024.

As part of the initial step with this application, staff are now in the process of notifying other local First Nations and agencies of the application with early referral letters to be sent out prior to the LTC's meeting on December 12, 2023. Staff are aware that discussions are required between Nations to determine which Nation(s) may receive the land for this application, and future potential applications.

Terms of Reference

The terms of reference includes specific guidance on application requirements that are consistent with the Galiano Island Development Approval Information Bylaw No. 148 (DAI Bylaw). The terms of reference requests the following information from the applicant:

- Developable areas site plan
- Hydrogeologist Groundwater Assessment (to be determined by Senior Freshwater Specialist)
- Septic servicing information
- Details on land transfer recipients
- Ecological Overview Report (to be completed after land recipients are determined)
- Sustainable forestry covenant
- Road dedication

The terms of reference is attached to the staff report. The LTC has the ability to request further information or conditions to be included in the terms of reference.

Remaining Questions for Applicant

The following information is still required from the applicant as identified in this staff report and the attached draft Terms of Reference:

1. Which agency/First Nation will receive the following portions of land:
 - a. Nature Protection/Park Area 1
 - b. Nature Protection/Park Area 2
 - c. Nature Protection/Park Area 3 – Applicant should contact MOTI to determine if this portion must be dedicated to comply with Section 75(d) of the *Land Title Act*.
 - d. Resource/Site-specific Forest Industrial Zone – MOTI or other agency/First Nation
 - e. Small Lot Residential Lot (Amenity Lot) – if the land will be donated or the proceeds of the sale of land.
2. Is there a more suitable location for the Small Lot Residential Lot? The applicant should provide a rationale to the proposed location. The LTC may wish to request the applicant prepare a new layout that locates the SLR lot in more desirable location.

The information above will be gathered as this application proceeds.

Rationale for Recommendation

Based on the foregoing, the recommendation on page 1 is supported as:

- The proposal as written is consistent with Galiano Island Official Community Plan No. 108 (OCP) policies
- 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

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 _____.

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:

- Issue a TOR to applicant
- Continue engagement with First Nations and First Nation agencies
- Proceed to draft bylaws

Submitted By:	Kim Stockdill, Island Planner	November 30, 2023
Concurrence:	Robert Kojima, Regional Planning Manager	November 30, 2023

ATTACHMENTS

1. Terms of Reference



200-1627 Fort Street, Victoria, BC V8R 1H8
Telephone 250 405-5151 Fax 250 405-5155
Toll Free via Enquiry BC in Vancouver 660-2421. Elsewhere in BC
1.800.663.7867
Email information@islandstrust.bc.ca
Web www.islandstrust.bc.ca

December 12, 2023

File Number: GL-RZ-2023.2 (McElhanney)

Attn: Makayla Berger, McElhanney Ltd.
Via email: mberger@mcelhanney.com

Dear Makayla Berger:

Re: Rezoning Application GL-RZ-2023.2 (McElhanney) - Terms of Reference - District Lot 85, Galiano Island, Cowichan District (PID 009-625-259).

The Islands Trust has completed a preliminary review of the rezoning application for District Lot 85 on Galiano Island submitted by you on behalf of your clients.

The purpose of this letter is to identify information that is required from the applicant pursuant to the Galiano Island Development Approval Information Bylaw No. 148 (DAI Bylaw). Under the DAI bylaw, a zoning amendment application uses a 'terms of reference' (TOR) approach to information collection. The objective of this TOR is to identify and request any anticipated information from the applicant in a timely manner, and as early as possible in the process.

The information received by Islands Trust in your application package includes:

1. Completed application form
2. Statement of Title Certificate & Charges
3. Statement of Intent dated March 22, 2022
4. Preliminary concept plan
5. Site Disclosure Statement
6. Preliminary on-site Groundwater Supply/Sewage Discharge Suitability Assessments dated February 4, 2022

As per this TOR, additional information that is required to proceed with your application for consideration by the Galiano Island Local Trust Committee (LTC) includes:

1) Site Plan – Developable Areas

A site plan professionally prepared at an appropriate scale, based on a legal survey, delineating all proposed lot lines along with the '**developable area**' and associated features for each of the six (6) proposed residential lots and the one (1) proposed Forest 3 lot, the applicable development permit area boundaries, existing buildings and structures, roads and driveways, topographic features, and any significant sensitive habitat features.

- a. The **developable area** for each residential lot includes the portion identified for the dwelling, accessory buildings and structures, along with the associated location of the well, septic field, driveways and parking areas.

2) Hydrologist's Report

<Requirement to be reviewed by Islands Trust Senior Freshwater Specialist>

3) Septic Servicing

A septic disposal report, prepared by a registered onsite wastewater practitioner, confirming septic viability and proposed siting for the seven (7) proposed lots (six residential lots and one Forest 3 lot).

4) Land Transfer

While the Galiano Island Official Community Plan No. 108 (OCP) does not have a specific policy enabling rezoning from Forest 1 to Rural Residential zoning (RR), the LTC has considered applications based on the approach that the applicant transfer title to at least 75% of their land base in exchange for the remaining 25% that would then allow for a house and accessory cottage per a minimum of each two hectares.

As a portion of the property (20.0 ha) is proposed to be rezoned to Forest 3, that portion of land is not included in the 75/25 calculation. The remainder of the property is approximately 39 has. Based on the 75/25 calculation, approximately 29.5 hectares must be transferred as a community benefit. In order to achieve this, the proposed park/conservation lots, amenity lot, resource lot and road must be transferred to applicable agencies or Nations.

An agreement between the property owner and a new title holder will be required based on terms amenable to all parties (including the LTC). While staff can provide some technical guidance, it is largely the responsibility of the applicant to negotiate this land transfer agreement.

Staff request the applicant identify the new title holder for the following lots:

- Road Dedication – See Item No. 8 below
- Park/Conservation Areas
- Resource Lot
- Amenity Lot – Staff suggest funds from sale of the property be donated to a local non-profit housing society.

Covenant(s) will be required as a condition of rezoning to ensure land is properly transferred to new title holder at time of registration of subdivision with the BC Land Title & Survey office. In addition, a Section 219 covenant will be required to restrict the density of the amenity lot.

5) Ecological Overview Report

To ensure that LTC and staff understand the entire scope and ecological significance of park/conservation lands proposed for transfer and those to be retained by the applicant, an **ecological overview report** is required that considers the entire property. The **ecological overview report** should include at a minimum:

- a. Property location and description including existing legal encumbrances and history of use
- b. Identification of existing structures, roadways and other development features
- c. A desktop GIS inventory that includes:
 - i. Identification of habitat by type and calculation of percentage of each type in relation to proposed 75/25% lot lines (e.g. of total parcel, XX % consists of YY habitat type, of which XX percentage is located within the 75% transfer portion)
 - ii. Identification of significant or sensitive terrestrial and aquatic ecosystem features
- d. Identification of development permit areas (DPAs) and an assessment of ecological impacts of any proposed **developable areas** within those DPAs
- e. Ground-truthing of desktop inventory findings as required
- f. Maps, Photos and other relevant materials

The Ecological Overview Report should only be initiated until the applicants have confirmed the agency or First Nation to receive the land, and the intended use of this land by the agency or First Nation.

6) Forestry Covenant Baseline Report

The OCP policy enabling rezoning from F1 to F3 requires the granting of a sustainable forest management covenant with a 3rd party covenant holder. An agreement between the property owner and a 3rd party sustainable forestry covenant holder for the proposed F3 lot will be required based on terms amenable to all parties (including the LTC). Staff can provide a template for the sustainable forest management covenant.

While staff can provide some technical guidance, it is largely the responsibility of the applicant to negotiate this agreement with a 3rd party covenant holder. This typically involves providing a **baseline report** and an endowment for monitoring.

The covenant will restrict forest activities based on an approved Sustainable Forestry Management Plan that includes consideration of sensitive species and habitats identified in the **baseline report**.

The **baseline report** for the proposed F3 lot should include at a minimum:

- a. Biological Inventory by Ecosystem Type including:
 - i. Plant and Tree Inventory
 - ii. Wildlife and Wildlife Habitat
 - iii. Soil Type
 - iv. Disturbance History
 - v. Succession
 - vi. Restoration Recommendations
 - vii. Potential threats
- b. Maps, Photos and other relevant materials

A separate report can be prepared, or this baseline information specific to the F3 lot may be incorporated into the same **ecological overview report** as required in item #5 above.

7) Development Permit Areas

DPA 2 – Shoreline and Marine

DPA 2 includes all land 15 m upland of the natural boundary of the sea. The OCP states that a development permit is required for all subdivision of land where DPA 2 is present (Attachment 1). This is dealt with through a separate application process (and separate fee). The application guide is located here: <https://islandstrust.bc.ca/document/schedule-b-development-permits-application-form/>

The preliminary concept plan identifies building sites that may be located within DPA 2. Any proposed development within DPA 2 would also need to be considered in a development permit.

The development permit may be issued at the same time as rezoning. It could also be deferred to subdivision stage.

DPA 5 – Sensitive Ecosystems

A small portion of District Lot 85 is located within the DPA 5 – Cliff Sensitive Ecosystems. This sensitive ecosystem should be identified in the Ecological Overview Report. The development permit may be issued at the same time as rezoning. It could also be deferred to subdivision stage.

DPA 7 – Steep Slope (moderate)

The preliminary concept plan identifies building sites that may be located within DPA 7 (Attachment 1). The applicant will need to either verify that the proposed **developable area** for each lot does not fall within DPA 7, or provide a **geotechnical assessment** confirming a suitable building site(s) for the proposed use within the proposed **developable areas** that contains DPA 7. The assessment should be undertaken by a certified Geotechnical Engineer (P.Eng.) and delineate:

- a. 'safe' buildable areas within the proposed developable area without mitigative measures;
- b. areas that could be built upon with mitigative measures (if applicable); and/or
- c. areas where building is unsafe (if applicable)

8) Road Dedication

As a condition of rezoning, a covenant must be registered stating that the road portion will be transferred to the Ministry of Transportation and Infrastructure (MOTI) at time of subdivision registration. After subdivision approval, MOTI would require the land and be legally responsible for future road maintenance. It is the applicant's responsibility to work collaboratively with MOTI to determine the necessary road standards in order to transfer the land.

MOTI is the provincial agency that authorizes subdivision approval on Galiano Island. Staff direct the applicant to contact MOTI to determine if the proposed subdivision layout is viable. In addition, the applicant must determine if the subdivision proposal must comply with Section 75(d) of the *Land Title Act*.

The applicant will need to consider other sections of Part 13 of the LUB in relation to lot layout (Subdivision and Development Regulations). Islands Trust is a referral agency in the MOTI subdivision process. Once directed by MOTI, the applicant will need to apply again through a separate process (with a separate fee) for Islands Trust to review the proposed subdivision against Part 13 of the LUB. Islands Trust will then respond to MOTI and the applicant with proposed conditions of approval that MOTI typically includes in a preliminary layout review letter to the applicant.

9)

10) Archaeological Material

Regarding the potential for archaeological material to be found on the property, Islands Trust reviews all applications/permits using Remote Access to Archaeological Data (RAAD) mapping to ensure the preservation and protection of cultural heritage, archaeological sites, and ancestral places. Further to that review, staff direct the applicant to contact the BC Archaeology Branch to determine if an archaeological permit would be required prior to commencing development.

Reporting Requirements

With respect to any reporting requirements listed above, the applicant and/or professional must, in accordance with generally accepted impact assessment methodology, ensure the reports:

- (a) identify relevant baseline information and document the nature of the resource or other matter on which the proposed activity or development may have an impact;
- (b) identify and describe the potential and likely impacts of the activity or development including any cumulative effects when combined with other projects proposed or under development;
- (c) evaluate the impacts in terms of their significance and the extent to which and how they might be mitigated; and
- (d) make recommendations as to conditions of approval that may be appropriate to ensure that undesirable impacts are minimized or avoided, and
- (e) make recommendations as to measures that may restore or enhance natural functions or features that have been damaged or degraded prior to development or that would be impacted by the proposed development.

This information must be prepared by a professional or professionals in good standing with his/her professional organization within British Columbia, acting within his/her area of expertise, and with demonstrated and pertinent experience and/or training.

Please also note that the Islands Trust reserves the right to require additional information or clarification in response to the project reports. Any additional requirements will be provided in writing and will identify the additional information required in as clear and specific manner as possible.

If you have any questions concerning the application or TOR requirements stated above, please do not hesitate to contact me.

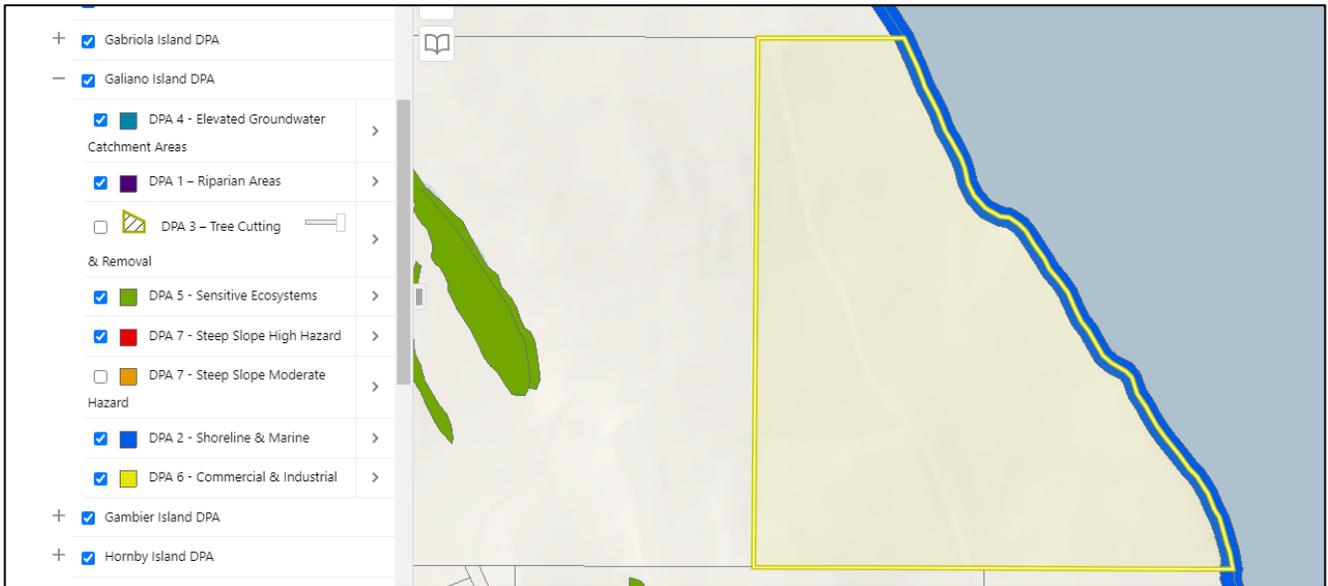
Sincerely,

Kim Stockdill
Island Planner, Galiano Island Local Trust Area

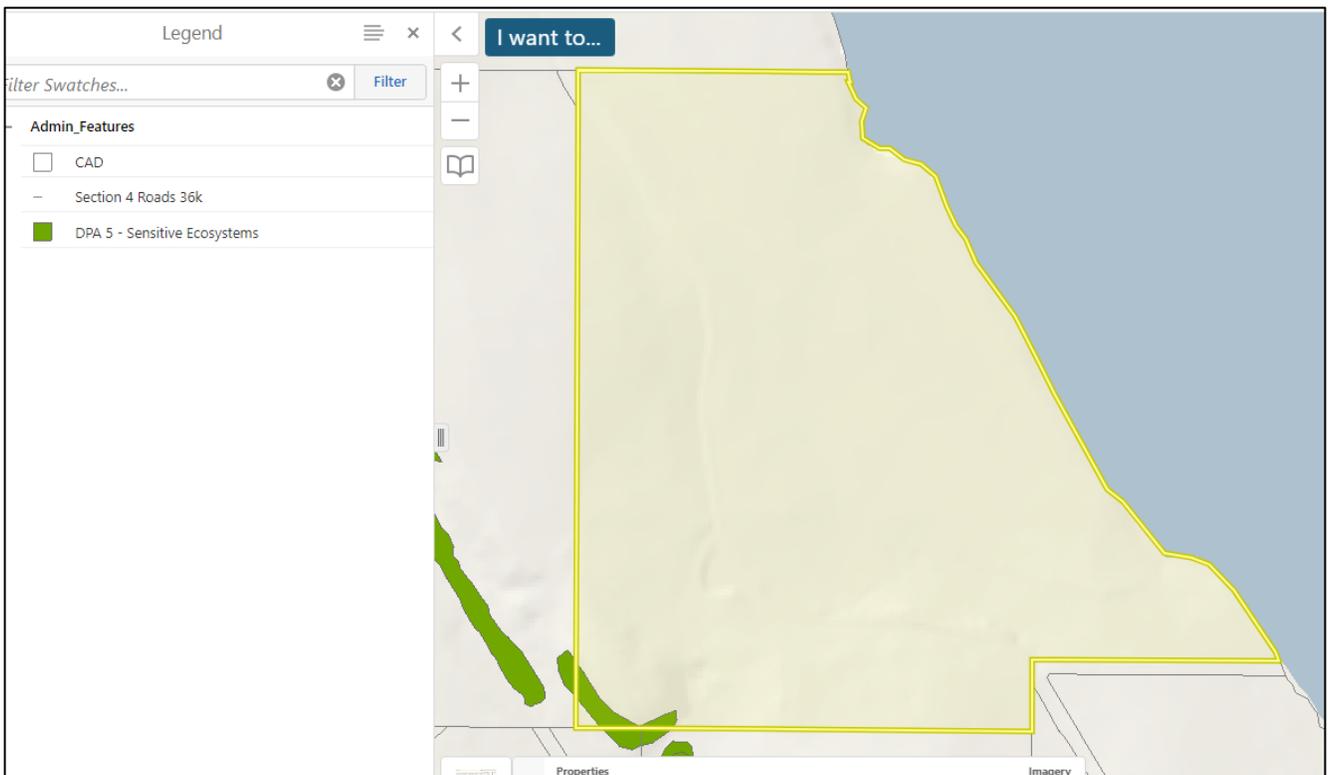
*pc: Robert Kojima, Regional Planning Manager
Galiano Island Local Trust Committee*

Attachment 1: Development Permit Area Maps

DPA 2 Shoreline and Marine



DPA 5 – Sensitive Ecosystem (Cliff)



DPA 7 – Steep Slope (Moderate and High Hazard)

