

Date: October 4, 2011

File No.: GL-OCP-2009.1

To: Galiano Island Local Trust Committee
For the meeting of October 14, 2011

From: Robert Kojima
Regional Planning Manager

Re: Potential amendments to Forest designation and F1 zone

BACKGROUND: At the meeting of September 12, 2011 the LTC passed the following resolution:

Resolution GL-LTC-190-11

It was Moved and Seconded that the Galiano Island Local Trust Committee directs staff to report back on the feasibility, options and recommendations of proceeding with amendments to the Official Community Plan Bylaws and Land Use Bylaws that would implement the recommendations of the Forest Policy Advisory Committee for Forest lots with an area greater than twenty (20) hectares and which do not have Managed Forest status.

The Forest Policy Advisory Committee's relevant recommendation supported a density of one accessory dwelling per 50 acres (20 hectares) on Forest lots over 100 acres with road access. The LTC's subsequent draft OCP forest policies would have supported a maximum of one accessory dwelling outright on lots 20 hectares or greater, subject to regulations, including unobstructed access, reservation of future highway and emergency access routes, a residential home plate, a maximum floor area and installation of cisterns for water storage. These draft OCP provisions affecting the Forest designation and policies did not proceed as amendments because of a lack of support for other elements of the draft forest policies from the Land Tenures Branch of the Ministry of Forests, Lands and Natural Resource Operations. The LTC has now requested staff to report on the feasibility of proceeding with similar policies, but applicable only to lots over 20 hectares which do not have Managed Forest status.

DISCUSSION: Because the draft Forest policies considered as part of the OCP review were comprehensive in nature and would have applied to all lands currently designated Forest, they could not have proceeded without some form of protection from the provisions of s. 21 of the Private Managed Forest Land Act (PMFLA) as they would have resulted in direct or indirect restrictions on forest management activities. However, not all lots within the Forest land use designation have Managed Forest status. Consequently, it is conceivable that the LTC could adopt bylaws affecting only those lots that are not private managed forest land and not be contrary to s. 21 of the PMFLA.

The LTC could consider the following general approach:

1. Amending the OCP to create a new land use category that would contain draft Forest policies supported by the LTC.
2. Amending the OCP Land Use Schedule to re-designate those lands currently designated Forest that meet the LTC's criteria and do not have Managed Forest status.
3. Amending the LUB to create a new zone that would implement the relevant OCP policies.
4. Amending the zoning map to rezone those lands to the new zone

Section 21 of PMFLA precludes a local government from adopting a bylaw in respect of land that is private managed forest land that would have the effect of restricting, directly or indirectly, a forest management activity. It goes on to state that this restriction would apply to a bylaw that have that effect even if it does not directly apply to private managed forest land. Staff have discussed the issue with legal counsel, and staff are of the opinion that amendments of the type suggested above would not normally be considered bylaws "in respect of land that is private managed forest land". That said, there is the possibility that a court could find that such amendments would have the effect of indirectly restricting forest management activities even though they don't apply specifically to private managed forest land. However, if the LTC did adopt such amendments, anyone objecting would have to persuade a court that it restricted forest management activities, and if successful the outcome would likely be that the amending bylaws are severed and the lands revert to the current zoning.

Staff have also considered the effect of a landowner obtaining Managed Forest status subsequent to the adoption of such zoning. Staff believe that any restriction on forest management activities, such as a residential home plate, would continue to apply to land regardless of its subsequent Managed Forest status. The PMFLA restricts the adoption of bylaws and does not apply retrospectively to lands. So a building permit consistent with zoning and issued for lands that subsequently obtained Managed Forest status would not in itself be a permit restricting a Forest Management activity; that restriction was established in the zoning bylaw that was adopted prior to the land becoming private managed forest land.

Finally, if the LTC were to proceed with considering such amendments, objections from the relevant provincial ministries may be an issue.

In summary: the suggested amendments appear, in the opinion of staff, to be feasible with respect to s. 21 of the PMFLA; however, because of the broad and largely untested scope of that section there are risks that the bylaws could be challenged. There is also the possibility that such bylaws could face objections from provincial ministries.

There are also practical or administrative considerations prior to the LTC deciding to proceed with such amendments:

1. This has not been identified as a Top Priority on the Work Program.

2. The LTC should avoid initiating new Work Program items at the end of its term.
3. The LTC would need time to consider options relating to policy wording, the number of lots affected, the specific criteria for lands to include in such amendments, and the potential regulations.

At this point, the LTC could:

1. Decide to proceed no further with consideration of this option.
2. Direct staff to place the report back on an agenda early in the term of the next LTC.
3. Identify the project on its Work Program and request that funding be provided in the 2012-13 budget.
4. Direct staff to report back with specific policy and regulatory options on proceeding with amendments for Forest lands without private managed forest land status.

A significant amount of work was undertaken over the past year in developing draft policies for the Forest lands as part of the OCP review. The policy approach to the larger Forest lots has merit and it would be valuable to see if this approach can be applied to at least some of the lands. However, because it is the end of the term and Trust Council has recommended not initiating significant new work after September, staff do not recommend proceeding immediately, but rather identifying it as a top priority of the Work Program for consideration beginning in the next term.

RECOMMENDATIONS

1. THAT the Galiano Island Local Trust Committee amend its Work Program to include potential amendments to Forest Lands without Managed Forest status as a Top Priority item.
2. THAT the Galiano Island Local Trust Committee direct staff to revise its 2012-13 OCP budget submission to include funding for potential amendments to the OCP and LUB for Forest lands.

Prepared and Submitted by:



October 5, 2011

Date