



STAFF REPORT

File: Crystal Mountain Society
Conservation Proposal

DATE OF MEETING: November 21, 2017

TO: Trust Fund Board

FROM: Jennifer Eliason, Islands Trust Fund Manager

SUBJECT: Conservation Proposal – Development related: Crystal Mountain Society, Galiano Island

Applicant: Crystal Mountain Society - A Society for Eastern and Western Studies (CMS)

Location: Lot 9, District Lot 90, Galiano Island, Cowichan District, Plan 31200, PID # 000-851-035; and part of Lot A, District Lots 88 and 89, Galiano Island, Cowichan District, Plan VIP68079, PID # 024-351-041.

RECOMMENDATION

That the Trust Fund Board accept the updated Conservation Proposal from the Crystal Mountain Society, agreeing to accept transfer of approximately 18.3 hectares of Lot 9, District Lot 90, Galiano Island, Cowichan District, Plan 31200, (PID 000-851-035) and part of Lot A, District Lots 88 and 89, Galiano Island, Cowichan District, Plan VIP68079, (PID 024-351-041), subject to:

- a. **The release of the rent charge and related easements on the title of Lot A and any other charges determined, through legal review, to be problematic for the Trust Fund Board;**
- b. **Establishing legal access for the Trust Fund Board to the most eastern part of Lot A;**
- c. **Receipt of \$30,000 upon transfer of the land, with at least \$15,000 to be held in a pooled Nature Reserve Management Fund, and \$10,000 to \$15,000 to be put towards the development of a management plan and management activities for the nature reserve;**
- d. **Staff reaching mutual agreement with the water licence holders to limit the impact of accessing and maintaining the permitted water works;**
- e. **Agreement with the Society that the portion of the proposed Emergency Access over the nature reserve would be used only in the case of emergency;**
- f. **Written agreement with the Society about the use and maintenance of the pagoda;**
- g. **Installation of boundary and corner pin markers at the time of survey at the expense of the applicant (locations to be determined in consultation with ITF staff); and**
- h. **Final approval of the Trust Fund Board of the final survey plan, transfer agreement and all other associated agreements.**

REPORT SUMMARY

The Crystal Mountain Society – A Society for Eastern and Western Studies (CMS) wishes to rezone two subject properties to permit a year-round not-for-profit forest retreat centre. The proposal is to locate the buildable areas on 25% of the subject properties (~6 ha) and protect the other 75% of the properties (~18.3 ha) as a community benefit by transferring the land to the Trust Fund Board. The proposed nature reserve would be

further protected with a conservation covenant held by TLC The Land Conservancy of BC. The Trust Fund Board has previously considered a conservation proposal to register a conservation covenant on 75% of the lands, but CMS is no longer interested in a covenant. The TFB also considered this land transfer at its July 2017 meeting, and did not approve the proposal.

PROPERTY INFORMATION

Property Description: Lot 9, District Lot 90, Galiano Island, Cowichan District, Plan 31200, PID # 000-851-035; and part of Lot A, District Lots 88 and 89, Galiano Island, Cowichan District, Plan VIP68079, PID # 024-351-041.

Property size: 24.3 hectares

Proposed protected area size: 18.3 hectares

Partners: TLC The Land Conservancy of BC propped as covenant holder

Property notes: According to the biologist report submitted by the applicant, and confirmed during a site visit in April 2016:

“The majority of **Lot A** is recovering from an intense clearcut which took place in 1993. The land is currently in the pioneering seral stage characterized by patchy and diverse pole / sapling forest of varied vegetative composition depending on slope position, aspect, slope and soil depth. The moist depression sites are generally dominated by red alder (*Alnus rubra*) with sword fern (*Polystichum munitum*) and patches of salmonberry (*Rubus spectabilis*) in the understory. The drier, gently sloping logged areas are characterized by dense patches of Douglas-fir (*Pseudotsuga menziesii*) and grand fir (*Abies grandis*) poles with very little understory vegetation scattered within a more open mix of Douglas-fir, red alder, bitter cherry (*Prunus emarginata*), big-leaf maple (*Acer macrophyllum*), grand fir and arbutus with salal (*Gaultheria shallon*), Oregon-grape (*Mahonia nervosa*) and sword fern dominant in the understory.

Remnant patches of healthy mature forest are located in thin strips along the ridge tops and down the associated southwest facing steep slopes where logging was not practical. The majority of **Lot 9** is also characterized by mature forest growing under a variety of ecological conditions. Ecosystem types range from western redcedar (*Thuja plicata*), Douglas-fir, big-leaf maple dominated northeast facing, moderate slopes to red alder, salmonberry dominated seasonally flooded wetland depression to Douglas-fir, arbutus dry rocky ridge top.” A road easement to adjacent properties runs through Lot 9. A cement pad and pagoda can be found near the north-east corner of Lot 9.

BACKGROUND

In November 2014, the Trust Fund Board considered a Conservation Proposal from CMS and passed the following resolution:

That the Trust Fund Board approve the Crystal Mountain proposal to covenant approximately 18.3 ha of the lands described as: a) Lot 9, District Lot 90, Galiano Island, Cowichan District, Plan 31200, PID # 000-851-035; and, b) Lot A, District Lots 88 and 89, Galiano Island, Cowichan District, Plan VIP68079, PID # 024-351-041, subject to the successful negotiation of an endowment.

Staff worked with CMS to develop a conservation covenant. However, the CMS has experienced significant resistance from the neighbouring community to their proposal and are no longer interested in pursuing a conservation covenant.

At the April 2017 TFB Meeting, the TFB considered a request from CMS to consider a transfer of land instead of a conservation covenant, and passed the following resolution:

That the Trust Fund Board reconfirms its agreement to hold a covenant on approximately 18 hectares of the lands owned by Crystal Mountain Society (PIDs: 000-851-035 & 024-351-041), but indicates a willingness to consider a proposal to accept a transfer of some or all of the 18 hectares and suggests the applicant bring forward a complete Conservation Proposal that includes an assessment of the charges on title, the final subdivision layout and a significantly increased offer of endowment.

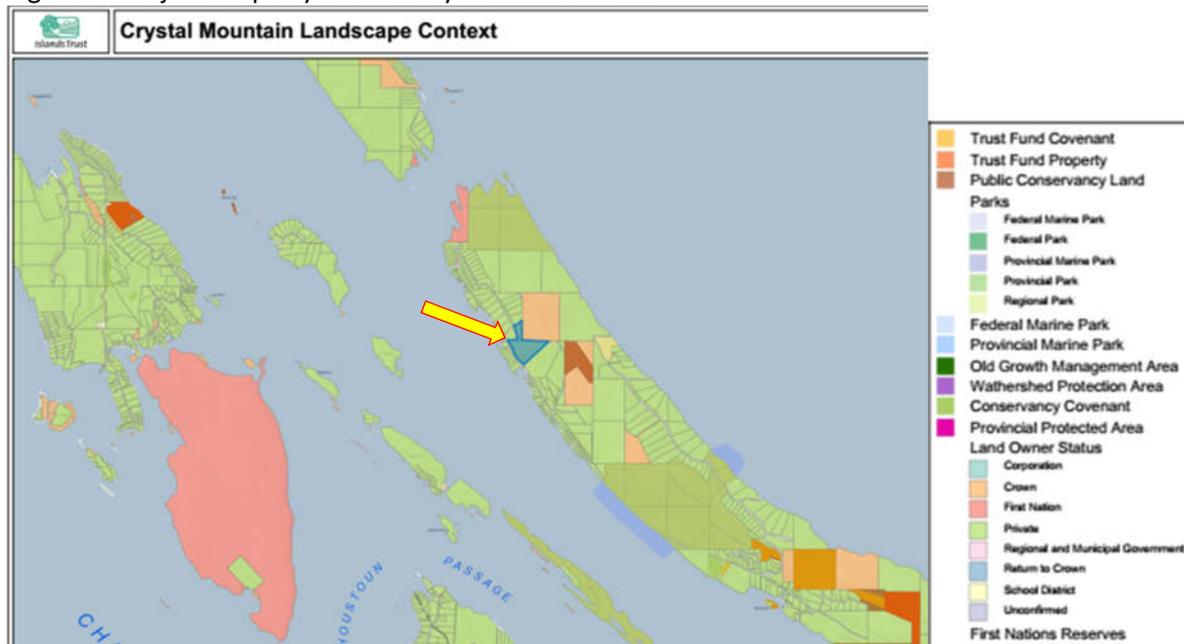
A full Conservation Proposal outlining transfer of land was then considered at the July 2017 TFB meeting. The proposal included an overview of the charges on title, proposed public and “meditational” trails, and offered a \$15,000 endowment. The TFB passed the following resolution:

That the Trust Fund Board reiterate its willingness to proceed with registering a conservation covenant as the preferred option for protecting the conservation values of the land on Lot 9, District Lot 90, Galiano Island, Cowichan District, Plan 31200, PID # 000-851-035 and part of Lot A, District Lots 88 and 89, Galiano Island, Cowichan District, Plan VIP68079, PID # 024-351-041 but would be willing to consider a new conservation proposal for transfer of the land subject to a larger endowment and other issues being resolved that present challenges for the Trust Fund Board in accepting ownership of this land.

The CMS has now provided an update to their July 2017 Conservation Proposal (CM Proposed Modification Nov 1 2017, attached). In summary, the key modifications include:

- agreeing to reduce the number of trails proposed, and working with ITF to limit use of or close trails that are deemed to have negative ecological impact;
- working to remove charges on title, in particular a rent charge related to access easements;
- working with neighbouring water licence holder to define permitted level of access;
- increased offer of endowment from \$15,000 to \$30,000.

Figure 1. Subject Property and nearby Protected Areas



ANALYSIS

Natural Values

Despite the industrial scale logging that has occurred on the lands in the past, there are a number of remnant patches of healthy mature and old-growth forest that have been identified along the steep slopes and ridge-tops of Lot A and over most of Lot 9. These areas are of high conservation importance. In addition, a seasonal stream, a variety of small wetlands and the associated riparian ecosystems provide important habitat for wildlife. The diversity of ecological conditions and associated vegetation communities and wildlife resulting from the remarkable topographic complexity of the properties is also of high conservation significance.

Ecosystems and Species at Risk

The properties include remnant mature examples of two provincially red-listed ecological communities recognized by the British Columbia Conservation Data Centre:

Douglas-fir - arbutus (*Pseudotsuga menziesii* - *Arbutus menziesii*)
Global Rank: Not Ranked, Provincial Rank: Red (S2) – Imperiled

Douglas-fir / dull Oregon-grape (*Pseudotsuga menziesii* / *Mahonia nervosa*)
Global Rank: G2 – Imperiled, Provincial Rank: Red (S2) – Imperiled

The properties also include a young early successional example of the following listed ecological community: red alder / skunk cabbage (*Alnus rubra* / *Lysichiton americanus*)
Global Rank: Not Ranked, Provincial Rank: Blue (S2S3) – special concern, vulnerable to extirpation or extinction

The properties are also home to a robust population of the provincially blue-listed red-legged frog (*Rana aurora*).

Sensitive Ecosystems

The following Sensitive Ecosystems are found in the proposed protected area:

- Mature Forest
- Woodland
- Cliff
- Riparian
- Wetland

Some of these ecosystems, for example the cliff area, are in good shape, while others are degraded from past logging activities.

Regional Conservation Plan Context

The properties are not identified in Islands Trust Fund mapping as being in the top 3000 priority hectares, but do rank as a moderate to high priority area for conservation. The lots contain several sensitive ecosystems (woodland, cliff, wetland, riparian and mature forest) and representative forest ecosystems which are identified in the Regional Conservation Plan as biodiversity priorities important for securement. The Crystal Mountain lands are adjacent to a Crown parcel that is intended for park designation and are in close proximity to the Galiano Ecological Reserve and Dionysio Provincial Marine Park.

Securement Strategy Assessment

Representation:	15/15	The property contains forests, sensitive ecosystems and rare ecological communities that are under-represented in protected areas on Galiano Island and throughout most of the Islands Trust area.
Site Condition:	7/15	The majority of the forest is primarily in a pole sapling stage of growth, there are several invasive species on old logging roads and landings scattered throughout the land. The area is degraded by deer browse and also has old rock quarries. Lot 9 contains some good quality forest and wetland habitat, but is fragmented by an old road and an active road easement.
Viability:	10/15	The proposed nature reserve is a reasonable size at almost 18.3 ha and is adjacent to 65 ha of proposed park. There are nearby protected areas but the land is fragmented by developed areas within the boundaries of the existing rezoning proposal and roads. The potential to join existing protected areas and proposed protected areas with the proposed nature reserve exists, but is uncertain. Restoration of old logging roads and landings would increase the viability of the natural values.
Known Rare Species:	5/15	There are known blue listed species on the land, but no red listed species have been identified. Red listed species may be identified with further surveying.
Ecological Value Subtotal:	37/60	
Management Ease:	5/10	The proposed protected area has notable amounts of invasive plants on compacted logging roads and landings. These roads and landings would benefit from decompaction and “rough and loose” restoration. The forest is recovering from logging and may benefit from thinning. There is also proposed recreational activity in the area that will likely add to management pressure, including retreats held within the developed area which is nestled within the proposed nature reserve. Access to parts of the land for management may be challenging.
Time/Urgency	3/10	There is no imminent threat to the ecology of the land; the landowner has expressed a desire to complete the rezoning in a timely manner.
Threat Subtotal:	8/20	
Total:	45/80	Indicates land is suitable for securement if land can regenerate with minimal inputs. However land will require moderate and ongoing level of input to regenerate, as well as a high level of staff time to work though the complexities associated with the proposed land transfer.

Management Consideration

1) Adjacent land use

The proposed lot configuration for the subdivision would have the land retained by Crystal Mountain Society separated into two separate lots, surrounded by nature reserve that would be owned and managed by the Trust Fund Board. This presents a large shared border. Given that there is an existing trail network and established pattern of use on the proposed nature reserve lands, more than the typical amount of signage to mark boundaries is recommended. Staff suggest the applicant should be responsible for installing

boundary markers at the time of subdivision to assist with monitoring and management of recreation use of the nature reserve.

2) Trails

The current conservation proposal includes a map with a reduced number of trails from the July 2017 proposal, still including both “public” trails and “meditational” trails. If the land were to transfer to the Trust Fund Board, staff would need to assess the existing and proposed trail locations and the potential impact of these trails. Recommendations on trail location and use, and possibly closure, would be determined through a management planning process. Public safety and ecological impact would be ITF’s primary considerations for location and management of trails.

3) Emergency road

An emergency road has been proposed that would connect the end of Devina Dr. with Porlier Pass Rd. This road will run through the proposed nature reserve and would result in some level of fragmentation as it will require maintenance. Staff feel this is a fairly low level of disturbance, and assume the road use would be minimal. Ideally, this road would be gated to prevent regular use.

4) Charges on the land title

There are several charges (easements and covenants) on the land titles, particularly Lot A, that would transfer to the Trust Fund Board if the land is transferred. At the TFB’s request, the lawyer for the applicant has provided a summary of the charges on title (Memorandum – Report on Title – May 29, 2017, attached).

There is a rent charge registered on the title of Lot A, associated with one or more easements. The Trust Fund Board is unable to take on a rent charge without prior Ministerial approval, as it would be a liability. Staff recommend that the discharge of the rent charge and any associated easements be fully explored before any next steps are taken. CMS indicates in their update that their lawyer is working on this.

A neighbouring property owner holds a water licence on Spotlight Creek, and as per the water licence, can install and maintain works on the subject property. According to the applicant, the water licence holder has blazed a trail and left PVC pipe and other debris on the property, which would appear to extend beyond the rights offered through their licence agreement. CMS indicates it is in communication with these neighbours to clarify issues of access.

TFB must be satisfied with the outcomes of these negotiations prior to transfer of land.

5) Management of invasive species

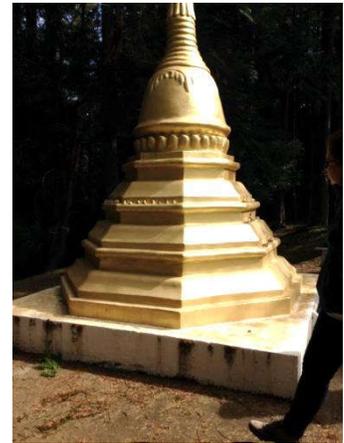
The biologist’s report identifies invasive species as a management concern in some areas – particularly on roadways and landings and on the more open ridges. Invasive species removal would need to be considered through management planning, and will be a management cost moving forward. The Crystal Mountain Society has offered to assist with the removal of invasive species, in partnership with ITF, if the proposal is approved.

6) Management of damage from logging

Some areas of the proposed protected area have been logged in the early 1990s and, according to the biologist’s report, would benefit from some thinning treatments over the next 20 years. This level of management will require staff time, possibly contractor time and property management resources (amount yet to be determined). The old logging roads and landings are highly compacted and would benefit from restoration (soil decompaction using machinery and replanting) which would be costly. CMS has increased the offer of endowment to \$30,000 to assist with the costs of restoration and management.

7) Pagoda

TFB Policy 2.2 states that the Board will not accept or acquire any lands where there is an obligation to maintain buildings or structures. Lot 9 contains a pagoda and a cement pad that would be part of the proposed land transfer. The CMS would like to continue to use and maintain the pagoda (i.e. clean and paint). The TFB could enter into an agreement that allows CMS to continue this maintenance, but the policy also states that the TFB should have full discretion over the maintenance and removal of any built structures. If the TFB chooses to proceed with transfer, the TFB may wish to consider an agreement that clearly indicates to CMS that the structure can be removed if maintenance or use of the pagoda becomes a management issue, or possibly consider leasing back the pagoda to CMS. CMS are willing to negotiate an agreement regarding the pagoda.



8) Access for monitoring and management

The eastern corner of Lot A, east of the narrow lot proposed by CMS, is above a cliff and not easily accessed from the portion of land to the west. In order to access these lands for monitoring and management, staff believe TFB would need an easement over private lands to allow access from a public road. This will likely require additional negotiation and legal costs, which have not yet been estimated. Access to this part of the land will be required for monitoring a conservation covenant as well, though hiking up from the lower portion is technically possible.

Policy Consideration

The current proposal to transfer land to the Trust Fund Board does have policy implications:

Policy 2.2 Assessing Conservation Proposals notes that the “The Board will evaluate any risks that may hamper the Board’s ability to protect the land’s natural values in perpetuity, as identified by the Staff Report. Risks that will be assessed in the Staff Report include, without limitation: contaminated soil, oil tanks or other environmental hazards; mineral and water rights issues; surrounding land use; requested reserved rights (e.g. trails or firewood removal); structures and utilities (e.g. septic fields, pumphouses, wells, etc.); and encumbrances on title (e.g. easements, mortgages, liens). The Staff Report will evaluate whether any identified risk can be reduced, eliminated or managed.”

- The proposed conservation area includes: adjacent land use (the retreat centre), requested reserved rights (meditational trails), an active water licence held by an adjacent landowner, a pagoda and cement pad, and multiple encumbrances on title, including a rent charge associated with easements.

Section 8 of Policy 2.2 states: “the Board will only consider accepting proposals that need extensive ecological restoration or substantial management if: a. the Board has adequate staff resources to manage the ongoing requirements; b. a substantial cash donation that is adequate to cover on-going restoration and/or management costs is provided; and, c. the Board has adequate funds available to undertake immediate restoration and/or management requirements”

- Much of Lot A is recovering from logging, and is in an early successional state. There is a need for invasive species removal/control, and the forest would likely benefit from thinning in areas as well as restoration and planting in old roadways and log landing areas. The full cost of this level of property management has not yet been estimated.

Policy 2.2 also allows the Board to require an endowment or donation (non-tax receipted) to cover the future management of a covenant or land transfer associated with a rezoning/development application.

Financial Consideration

To date ITF has already spent ~\$1,000 on the development and legal review of the previous proposed conservation covenant (in addition to staff time).

The costs associated with the proposed land transfer include approximately \$2,000 for legal fees associated with development and review of transfer documents and a covenant, a further \$1,000 in legal fees review issues around charges on title and access, and approximately \$8,500-11,000 to develop a management plan. There will be monitoring costs of at least \$500 per year and land management costs that are variable depending on the results of management planning and the level of management and restoration taken on by ITF. Other associated costs, such as survey and Land Titles registration, will be the responsibility of the landowner. Trust Fund Board policy permits the Board to request an endowment from the applicant to help defray long-term management costs. In 2014, the applicant indicated a willingness to provide a \$15,000 endowment (over 3 years) to support monitoring and management of the covenant. The update from CMS indicates a willingness to provide \$30,000. Staff suggest this amount could be split, allocating \$10-15,000 on upfront costs (management planning and restoration) and the remaining \$15-20,000 set aside as a long-term endowment. Legal fees and annual monitoring costs would be funded through ITF's base budget.

Organizational Consideration

Given the complexity of the proposal, and the number of addition agreements that would need to be negotiated, it is anticipated that this proposed transfer of land will require a high to very high level of staff resources. Approving this proposal may impact resources available for other conservation projects in the near future.

First Nations Consideration

ITF staff are not aware of any known archaeological features or special places on the land or nearby.

Development Consideration

The Galiano Island Local Trust Committee was provided with a memorandum outlining the TFB's July decision on the proposal. No comments were received.

The applicant intends to return to the Galiano Island LTC with a rezoning application indicating transfer of 75% of the land once they are able to find an agency to accept and manage the land as a nature reserve.

Rationale for Recommendation

Staff recommend the acceptance of the proposal to transfer the land, if the following requirements can be met:

- a. The release of the rent charge and related easements on the title of Lot A, and any other charges determined, through legal review, to be problematic for the Trust Fund Board;
- b. Establishing legal access for the Trust Fund Board to the most eastern part of Lot A;
- c. Receipt of \$30,000 upon transfer of the land, with at least \$15,000 to be held in a pooled Nature Reserve Management Fund, and \$10,000 to \$15,000 to be put towards the development of a management plan and management activities for the nature reserve;
- d. Staff reaching mutual agreement with the water licence holders to limit the impact of accessing and maintaining the permitted water works;
- e. Agreement with CMS that the portion of the proposed Emergency Access over the nature reserve would be used only in the case of emergency;
- f. Written agreement with CMS about the use and maintenance of the pagoda
- g. Installation of boundary and corner pin markers at the time of survey at the expense of the applicant (locations to be determined in consultation with ITF staff); and

- h. Final approval of the Trust Fund Board of the final survey plan, transfer agreement and all associated legal agreements.

ALTERNATIVES

The Trust Fund Board may consider the following alternatives to the staff recommendation:

- 1. Request additional information of the applicant**
- 2. Decline the proposal**

The Trust Fund Board may decline the Conservation Proposal. Recommended wording for a resolution is as follows:

That the Trust Fund Board decline the Conservation Proposal from the Crystal Mountain Society and suggest that the applicant consider another conservation organization to hold the land.

NEXT STEPS

Staff will inform the applicant of the TFB’s decision, and also provide a memo to the Galiano Island LTC and Planner Milne to outline this most recent decision.

Submitted By:	Jennifer Eliason, Islands Trust Fund Manager	November 13, 2017
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ATTACHMENTS

- 1. Conservation Proposal
- 2. CM Proposed Modification Nov 1 2017
- 3. Memorandum – Report on Title – May 29, 2017
- 4. Revised Map