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**REPORT TO THE CAPITAL REGIONAL DISTRICT BOARD  
MEETING OF WEDNESDAY, OCTOBER 8, 2008**

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**SUBJECT**      **Arbitration on the Regional Growth Strategy Amendment: Bylaw No. 3443 "Capital Regional District Growth Strategy Bylaw No. 1, 2002, Amendment Bylaw No. 1, 2007"**

**PURPOSE**

The purpose of this report is to respond to the September 25, 2008 letter from the Minister of Community Development regarding his direction to move to final proposal arbitration to resolve the dispute concerning the proposed amendment to the Regional Growth Strategy (RGS) contained in CRD Bylaw No. 3443, "Regional Growth Strategy Bylaw No.1, 2002, Amendment Bylaw No. 1, 2007" (Attachment One).

**BACKGROUND**

**Proposed RGS Amendment:**

The Capital Regional District (CRD) formally initiated the process to amend the RGS in 2006 following the Board's decision to accept the regional context statement submitted by the District of Highlands. The regional context statement submitted by the District of Highlands included a direct request to the CRD to amend the RGS to expand the Regional Urban Containment and Servicing Policy Area (RUCSPA) within the District of Highlands to facilitate the extension of CRD water and sewer services to the area largely comprised of the Bear Mountain Comprehensive Development Area.

The expanded RUCSPA would encompass an area of 267 hectares, located in the area west of Millstream Road to accommodate a comprehensive development consisting of 150 detached residential units, 250 tourist accommodation units, 1,100 square metres of commercial space, and an 18-hole golf course with ancillary facilities. An existing 57 lot subdivision is also included within extended containment boundary.

The CRD prepared Bylaw 3443 to amend the RGS Map No. 3 (Growth Management Concept Plan) to increase spatial extent of the RUCSPA.

**Legislative Context:**

*Local Government Act* Section 860 provides a range of settlement options in the event a RGS is not accepted by all affected local governments. The legislative provisions pertain to RGS and their amendments. Section 861(2) sets out the process for final proposal arbitration. Under this process, the arbitrator reviews written submissions only, and must choose one of the submissions to resolve the disputed issue. The arbitrator does not provide written reasons for his choice, nor is he at liberty to craft an alternative solution from those submitted. The provisions of the RGS settled under Section 861 are binding on the proposing regional district board and all affected local governments, whether they participated in the settlement process or not.

The dispute resolution process also provides opportunities for the parties to continue to work toward agreement during final settlement. During the settlement process, the parties can continue to negotiate on a mutually acceptable agreement. The regional district and the affected local governments also have 60 days after a decision has been rendered in which to negotiate a different resolution for the strategy before the arbitrator's decision becomes final and binding. No re-referral is required. No public hearing is held. Once final settlement is achieved, the regional district gives the revised amendment bylaw third reading and final adoption.

As outlined in the letter from the Minister of Community Development (Attachment Two) the following timelines have been established:

*By October 13, 2008*, affected local governments must indicate whether or not they wish to participate in the arbitration process.

*By October 27, 2008*, all participating parties must submit to the arbitrator a jointly prepared and agreed to statement which clearly and succinctly identifies the issues under dispute.

*By November 10, 2008*, each of the participating parties must make a written submission to the arbitrator.

### **Response to the Arbitration Process:**

The Board has a number of options for responding to the process outlined in the letter from the Minister of Community Development. The Board must first decide whether it wants to participate in the arbitration or not. If it chooses to participate, it must decide what the submission to the arbitrator should recommend. The Board must also decide if it wishes to prepare the joint submission on the issue(s) under dispute and work with the participating parties to finalize the statement and submit it to the arbitrator.

### **ALTERNATIVES:**

1. Refuse to participate in the arbitration for the RGS amendment and advise the arbitrator of that decision prior to the October 13, 2008 deadline, and
  - a. direct staff to prepare the joint statement indicating the disputed RGS amendment issue and work with the declared local government parties to finalize this statement, and submit it to the arbitrator prior to the October 27, 2008 deadline
2. Agree to participate in the final proposal arbitration and notify the arbitrator prior to the October 13, 2008 deadline, and
  - a. direct staff to prepare the joint statement indicating the disputed RGS amendment issue
  - b. direct staff to prepare and submit a written submission which does not support Bylaw 3443.
3. Agree to participate in the final proposal arbitration and notify the arbitrator prior to the October 13, 2008 deadline, and
  - a. direct staff to prepare the joint statement indicating the disputed RGS amendment issue
  - b. direct staff to prepare and submit a written submission which recommends a modification to Bylaw 3443 such that the overall extent of the RUCSPA boundary is reduced in size and the scenarios developed by the facilitator are reflected.

### **ARBITRATION PROCESS IMPLICATIONS**

***IMPLICATIONS OF ALTERNATIVE No. 1:*** The Board could choose to not participate and not submit a written recommendation. It could be left to the individual municipal councils to participate and submit recommendations for resolution to the arbitrator. The arbitrator's decision is binding on all affected local governments whether they choose to participate or not. However, as outlined in the minister's letter, the affected local governments can come to an agreement on an acceptable solution at any point during the arbitration process, and during the 60-day period following the decision of the arbitrator.

***IMPLICATIONS OF ALTERNATIVE No. 2:*** The Board could choose to participate and submit a written recommendation for resolution that refuses to accept the provisions of Bylaw 3443. This would have the effect of refusing to extend the RUCSPA within the District of Highlands. If the arbitrator chose this submission, no change would be made to the RGS and the process would stop. The District of Highlands would have the option of resubmitting a new regional context statement or work with the CRD through the RGS five-year review to reassess the nature and extent of the urban containment boundary in the municipality.

**IMPLICATIONS OF ALTERNATIVE No. 3:** The Board could choose to participate and put forward a written submission that articulates the intent of the RGS and incorporates some variation of the scenarios put forward in the *Report of the Facilitator*. Staff's recommendation for the proposed content for such a submission is included in Appendix One of this report. A regional district submission does not preclude an individual municipality from submitting a different or additional submission.

**Report of the Facilitator:** The *Report of the Facilitator* (Attachment Three) outlined a number of scenarios and options to address the issues associated with the proposed RGS amendment, including reducing the spatial extent of the servicing area and addressing the stated interests around aquifer quality, urban creep, public health, community economic gain and proportionality. The scenarios and options were designed to respect the provisions of the RGS while meeting the objectives of some of the District's council members. In essence, the facilitator recommended the proposal be "shrink-wrapped" to reduce the overall extent of the urban containment boundary extension and to limit density and servicing to the southern end of the site while strictly limiting the northward development. This was proposed to address the stated concerns around sprawl development, while recognizing the District's objectives to accommodate mixed use development and expand their tax base.

While consensus was not reached through the facilitated process, the facilitator's report provided information for next steps as well as guidance for the five-year review and subsequent implementation agreements.

### **GROWTH MANAGEMENT IMPLICATIONS**

The RGS established the RUCSPA; areas intended to accommodate urban growth and urban-level infrastructure services. The RGS contained a policy, to be reflected in the municipal and electoral Official Community Plans (OCPs), that water and sewer services were not to be extended to accommodate additional urban developments outside of the RUCSPA (Action 1.1.5) except to address pressing public health and environmental issues, to provide fire suppression or to service agriculture.

The effect of the RGS amendment, Bylaw 3443, is to modify Map 3 in the RGS to reflect an extension of the RUCSPA boundary within the District of Highlands. No additional text changes are required. The change to the RUCSPA within Highlands is required to allow for the extension of CRD water and sewer services to facilitate the development of residential and commercial uses beyond that permitted on private services. The District of Highlands made the extension of the RGS's containment boundary a condition of its development policy and regulations.

When the RGS was adopted in 2003, only 310 additional dwelling units were anticipated to be accommodated with the Highlands over the next 20 years, predominately on large acreages. The vision for the municipality contained within the RGS was put forward by the municipality and reinforced the reason Highland's incorporated as a municipality – primarily to protect the rural character of the area. The proposed development represents a significant change in this vision, development pattern and unit projection. As a result, there has been considerable debate and opposition to this development expressed throughout the community, which has yet to be resolved. However, from a regional perspective the development *could be* supported, if modified in spatial extent to ensure a more compact and efficient form, as it is adjacent to existing development; is accessible from a major corridor; provides a logical extension of an existing development in the City of Langford and can be serviced efficiently from existing infrastructure connections.

**Reinforcing the RUCSPA:** A number of concerns were raised through the RGS amendment process with respect to the establishment of RUCSPA boundaries and the utility of the servicing restrictions. In particular, the lack of consistent application of the RUCSPA and servicing limitations was an issue raised through the consultation process. It was noted that urban containment and servicing boundaries have not been applied consistently across the region. Some municipalities establish clear boundaries, consistent with the RGS designation, through their OCPs and reinforce the boundary through supportive planning policies, zoning provisions, development permit requirements, and servicing bylaws. Others have

embraced a much looser interpretation of the RGS. Since the RGS is not a prescriptive plan, successful implementation can only be achieved through the "layering" of various municipal planning tools mentioned above.

*The Master Implementation Agreement.* The RGS anticipated the development of a Master Implementation Agreement (MIA) to guide requests for extending servicing beyond the RUCSPA boundaries. The MIA was intended to come forward through the Interim Update initiated in 2006, but was not carried forward when the Interim Update process was cancelled by the Regional Board in 2007. The MIA will be re-considered through the RGS five-year review process.

### **FINANCIAL IMPLICATIONS**

According to the provincial legislation, the fees and expenses of the arbitrator and administrative costs of the process, in addition to the costs incurred by the individual parties participating in the process, will be paid by the parties participating in the settlement process. The costs are to be shared proportionately between the regional district and the affected local governments that participate, on the basis of the converted value of land and by improvements in their jurisdictions.

These legislative provisions regarding the allocation of costs primarily address the approval of the RGS in its entirety, with the regional district as the proposing party. The regulations do not provide information or direction for cases, such as this amendment, where the proposing party is one municipality seeking development or servicing approval for a site-specific development application. The legislation allows the fees, expenses and administrative costs to be allocated on an alternative basis if agreed to by the parties. In addition, the arbitrator has the authority to reallocate the costs after hearing all the parties and making a decision. The fees associated with the arbitrator are estimated at \$2,000 a day, according to the ministry.

To date all costs associated with the RGS amendment have been born by the CRD through the Regional Planning department. The costs associated with the arbitration will be borne by the Regional Planning department.

### **INTERGOVERNMENTAL IMPLICATIONS**

The process to address the District of Highland's desire to extend the regional urban containment boundary has created significant challenges for the regional district and the other affected local governments, in a large part because of the lack of certainty and direction provided by the proposing municipality.

In addition the RGS dispute resolution process has proven difficult for addressing this type of amendment. The legislative provisions concerning RGS dispute resolution are geared to dealing with a broad-based strategic planning framework in a collaborative manner, using a consensus-based process. There is opportunity in that type of process to find common ground on cross-boundary issues that the parties can live with, without compromising their municipal interests. Provision is made to address changes over time, through interim updates and scheduled revisions, and review and re-negotiate the appropriate balance between shared directions and municipal autonomy.

Applying the same provisions to a municipal/site specific development proposal compromises many of the principles underlying the RGS legislation, including municipal autonomy. In effect, the Board and other local government parties are asked to arbitrate a development decision that the proposing municipality has been unable to effectively resolve itself. The actions of the minister and the pre-election timelines preclude the ability of the District of Highlands to confirm electorate support on this issue and convey that direction to the Regional Board.

**SUMMARY/CONCLUSIONS**

The proposal by the District of Highlands could meet the overall *intent* of the RGS strategic initiatives, even though it would require an amendment to provide servicing, providing the provisions of the OCP, zoning bylaws, and development permits were structured to do so. The facilitator's report outlined a number of options for the District of Highland's to meet the intent of the RGS while still meeting their municipal objectives. There has not been a desire or ability on the part of the municipality to revise the Regional Context Statement to reflect any new options even when faced with a significant level of municipal opposition to original proposal.

Nonetheless, the Board is now being asked by the minister to declare whether they want to be a party to final proposal arbitration; to prepare a joint submission indicating the disputed RGS amendment; and, if there is a desire to participate, to prepare a written submission to the arbitrator.

The following course of action is recommended:

**RECOMMENDATIONS:**

1. That the Capital Regional District participate in the arbitration.
2. That the Capital Regional District draft the joint submission and circulate the wording to the affected local governments for review and concurrence and submit the final wording to the arbitrator prior to the October 27 deadline. The wording will convey that the nature of the issue under dispute is: *Whether to amend the Regional Growth Strategy to extend the Regional Urban Containment and Servicing Policy Area (RUCSPA) within the District of Highlands to facilitate the development of a comprehensive development area as outlined in Regional Growth Strategy Bylaw #3443.*
3. That the Capital Regional District prepare a written submission for the final proposal arbitration as outlined in Appendix One of this report.



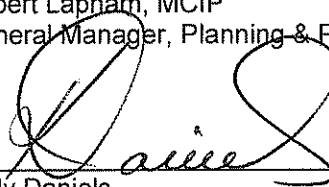
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Tracy K. Corbett, MCIP  
Senior Manager, Regional Planning



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Robert Lapham, MCIP  
General Manager, Planning & Protective Services



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Kelly Daniels  
Chief Administrative Officer  
Concurrence

**COMMENTS:**

## RGS Settlement Proposal

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### Submission of the Capital Regional District

#### Statement of Issue to be resolved

*Whether to amend the Regional Growth Strategy to extend the Regional Urban Containment and Servicing Policy Area (RUCSPA) within the District of Highlands to facilitate the development of a comprehensive development area as outlined in Regional Growth Strategy Bylaw 3443.*

**Chronology:** The chronology of the RGS amendment process is as follows:

*March 8 2006:* the Regional Board accepted the regional context statement for the District of Highlands which included a servicing boundary which was inconsistent with the Regional Urban Containment and Servicing Policy Area (RUCSPA). The request to alter the RUCSPA within the District of Highlands was approved by the Board and staff was directed to "include an amendment to the RUCSPA to coincide with the proposed Highlands Servicing Boundary in the Regional Growth Strategy bylaw interim update."

*February 2007:* The consultation period for RGS Interim Update began.

*April 2007:* The decision was made by the Board to eliminate the interim update and address only the District of Highland's request to amend the Regional Growth Strategy.

*July 11, 2007:* The Board gives first and second reading to the RGS amendment bylaw and refers it to public hearing.

*September 13, 2007:* Public hearing is held on Bylaw 3443. (The RGS Public Hearing report and submissions are available on the Regional Growth Strategy website @ [www.crd.bc.ca/regional\\_planning](http://www.crd.bc.ca/regional_planning)).

*October 3, 2007:* The amendment bylaw is referred to the affected local governments for the 120-day acceptance review. The review period was scheduled to run until February 4, 2008.

*January 28, 2008:* Mr. Gordon Sloan, is appointed by the minister to facilitate resolution of the proposed RGS amendment after several municipalities resolved to reject the Bylaw 3443. The 120-day referral period is extended to June 30, 2008 to allow the opportunity to resolve outstanding issues.

*June 19, 2008:* The facilitator submitted his report to the CRD Board.

*August 13, 2008:* The CRD Board recommends resolution of the dispute through a non-binding process, specifically, the scheduled five-year review of the Regional Growth Strategy.

*September 25, 2008:* The minister rejects a non-binding resolution process, imposes a final proposal arbitration process and appoints Mr. Glenn Sigurdson as arbitrator, effective September 29, 2008.

#### Planning Context:

The following recommendation for resolution of the RGS amendment dispute recognizes the following:

- ⌘ The approvals the proposal has received to date through the municipal and regional processes (*all relevant regional reports to be included in the submission*).
- ⌘ The information contained within the Report of the Facilitator (*to be attached to the submission*).
- ⌘ The opportunity to address municipal and regional objectives associated with responsible growth management, including; contained growth and servicing, protection of rural and ecological values, water quality and quantity, contiguous development and adjacency of services (*copy of RGS to be included with submission*).
- ⌘ The need to provide the development proponent with some certainty in outcome and the need to provide assurances to the community on where growth stops.
- ⌘ The opportunity to reflect the regional planning considerations that would be included in the review of

this development through the scheduled five-year review.

#### **Proposed RUCSPA Change:**

It is proposed that the Regional Growth Strategy be amended to extend the Regional Urban Containment and Servicing Policy Area (RUCSPA) within the District of Highlands to incorporate the following areas:

- 11.6 ha of land on the southwest portion of the site intended for tourist-commercial uses. This area is identified in the facilitator's report as "hotel development" on Map B (page 10) of his report. (*colour maps will accompany the submission*)
- The parcels of land lying to the west of Millstream Road, along the southern boundary of the municipality, including existing development in the Hanington Creek Estates, north to approximately 50 metres north following the alignment of Hanington Road. This area includes that Residential Development and Commercial Development lands outlined on Map C of the Facilitator's report (page 11) but includes a slightly larger area to the north by using the Hanington Road alignment as the northern boundary.
- No additional lands to the east of Millstream Road are to be included, beyond the existing RUCSPA boundary in that area.

The extension of services beyond the new RUCSPA boundary would only be permitted through a municipal Official Community Plan (OCP) amendment and regional implementation agreement. Approval of additional development within the comprehensive development area that exceeds the development density contained within the District of Highland's OCP in place as of this date (October 1, 2008) would require a RGS amendment.

#### **Required RGS Bylaw Amendment**

That Map 3 of the Regional Growth Strategy be amended to reflect an extension of the Regional Urban Containment and Servicing Policy Area (RUCSPA) within the District of Highlands. (*Amended map to be attached*)

**ATTACHMENTS**

**Attachment One:** CRD Bylaw No. 3443, "Regional Growth Strategy (RGS) Bylaw No.1, 2002, Amendment Bylaw No. 1, 2007

**Attachment Two:** Correspondence from the Minister of Community Development

**Attachment Three:** Report of the Facilitator

**CAPITAL REGIONAL DISTRICT**

**BYLAW NO. 3443**

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**A BYLAW TO AMEND THE REGIONAL GROWTH STRATEGY  
FOR THE CAPITAL REGIONAL DISTRICT**

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WHEREAS Part 25 of the *Local Government Act* provides for a regional district to undertake the development, adoption, implementation, monitoring, amendment, and review of a regional growth strategy;

AND WHEREAS the Regional Board of the Capital Regional District seeks to amend its regional growth strategy to include the expansion of the Regional Urban Containment and Servicing Policy Area (RUCSPA) within the District of Highlands;

AND WHEREAS the Regional Board of the Capital Regional District on December 6, 2006 initiated by resolution, pursuant to Part 25, Section 854 of the *Local Government Act*, the process to amend the Regional Growth Strategy;

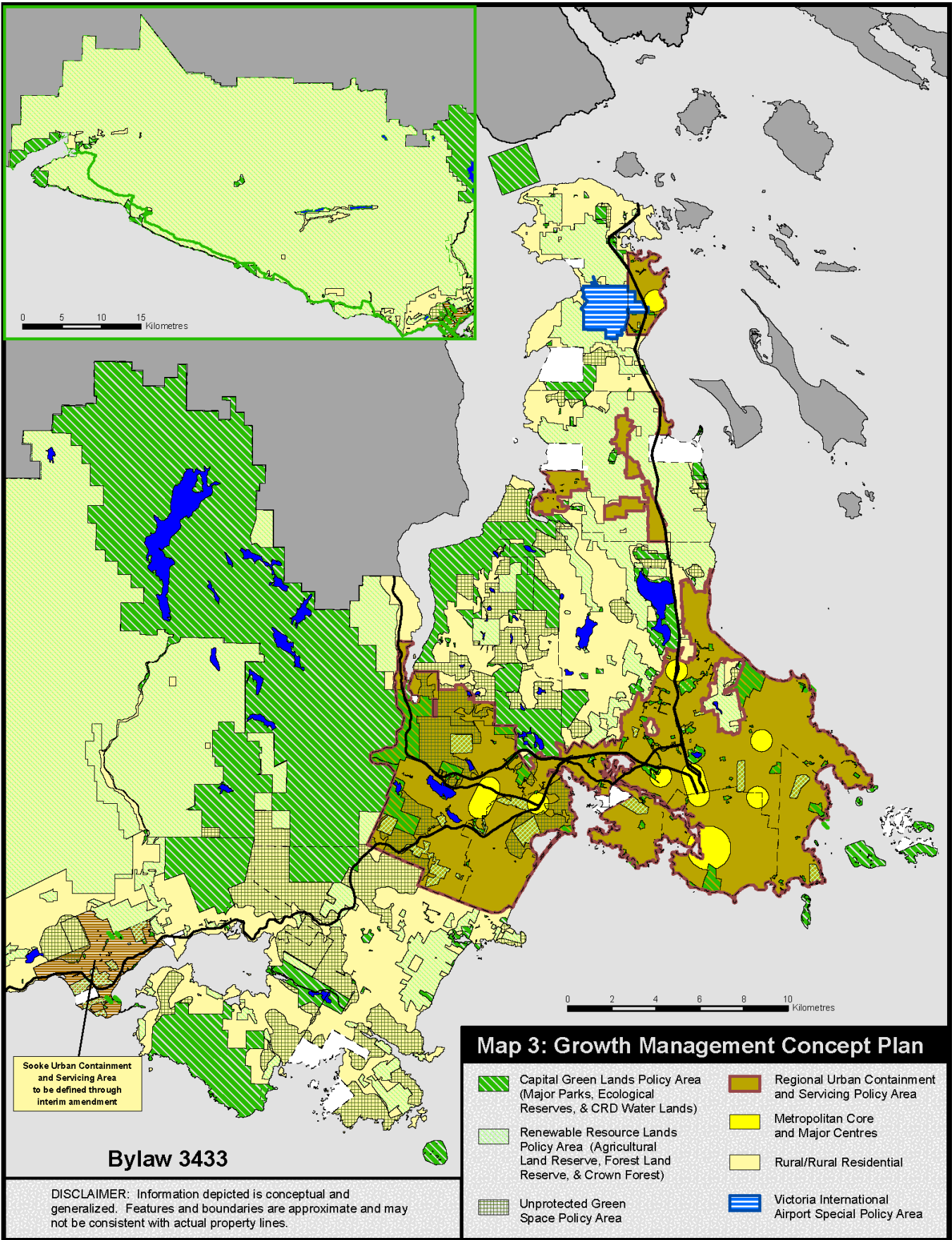
NOW THEREFORE the Regional Board of the Capital Regional District in open meeting enacts as follows:

1. Bylaw No. 2952, Capital Regional District Regional Growth Strategy Bylaw No.1, 2002” is amended as follows:
  - a) Map 3 in Schedule “A” attached to and forming part of Bylaw 2952, is deleted in its entirety and replaced with the attached Map 3 forming part of Bylaw 3443.
2. This Bylaw may be cited as the “Capital Regional District Regional Growth Strategy Bylaw No.1, 2002, Amendment Bylaw No. 1, 2007.”

READ A FIRST TIME this	11 <sup>th</sup>	day of	July	2007
READ A SECOND TIME this	11 <sup>th</sup>	day of	July	2007
PUBLIC HEARING HELD, PURSUANT TO PART 25, SECTION 855 (4) of the <i>LOCAL GOVERNMENT ACT</i> , this		day of		2007
ACCEPTED BY AFFECTED LOCAL GOVERNMENTS, PURSUANT TO PART 25, SECTION 857 (3) of the <i>LOCAL GOVERNMENT ACT</i> this		day of		200_
READ A THIRD TIME this		day of		200_
ADOPTED this		day of		200_

\_\_\_\_\_  
CHAIRPERSON

\_\_\_\_\_  
SECRETARY





BRITISH  
COLUMBIA

Ref: 128710

September 25, 2008

Ms. Denise Blackwell  
Chair  
Capital Regional District  
625 Fisgard Street  
PO Box 1000  
Victoria, BC V8W 2S6

Dear Chair Blackwell:

Thank you for your letter of August 19, 2008, regarding the proposed amendment to the Capital Regional District's (CRD) Regional Growth Strategy (RGS), to alter the Regional Urban Containment and Servicing Policy Area (RUCSPA) to include additional area within the District of Highlands (District).

It is my understanding that this issue first came forward on March 8, 2006, when the CRD Board voted to accept the District's Regional Context Statement that contained policies to adjust the RUCSPA. The CRD then followed up by developing an RGS amendment bylaw in July 2007 to implement this direction, as it was contrary to the original RGS. When acceptance was not reached on the proposed amendment, the Ministry of Community Development (Ministry) and the CRD cost shared on the appointment of a facilitator in early 2008 to assist in finding agreement on the amendment. The facilitator extended the acceptance period to provide time for a full discussion on the outstanding issue and determine if agreement on an acceptable outcome was possible. The facilitator met with all affected local governments that chose to participate, and produced a report on June 20, 2008, outlining the interests and potential options for resolving the dispute.

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Ministry of Community  
Development

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You have now advised me that there is still no acceptance on the RGS amendment bylaw from member municipalities. At this point in time, as required under section 859(2) of the *Local Government Act* (Act), I am faced with a decision to direct that the dispute be addressed either through a non-binding process or be settled through arbitration.

In the resolution passed at the August 13, 2008 CRD Board meeting, the CRD Board recommended that resolution of this matter be sought through a non-binding process, specifically the 5-year RGS review. If I were to consider a non-binding dispute resolution process, the 5-year RGS review would not be considered a non-binding resolution process under section 859 of the Act. One of the principles underpinning the regional growth strategy legislation is to ensure certainty and closure with respect to the resolution of any outstanding issue. The RUCSPA amendment issue has been under discussion and negotiation for quite some time. While I can appreciate the CRD Board's interest in directing the matter into the broader 5-year RGS review process, this does not provide any certainty with respect to finding a resolution, nor would any form of non-binding dispute resolution. I am, therefore, directing that the matter be resolved through arbitration under the provisions of section 860 of the Act.

The Act provides for three different forms of arbitration: 1) peer panel review; 2) final proposal arbitration; or 3) full arbitration. I am not confident that agreement can be reached between the numerous parties on the form of arbitration to be used, nor on the choice of arbitrator, as there has been no agreement to date on resolving the dispute. Therefore, as authorized under sections 860(3) and 861(2)(b) of the Act, I am further directing that the dispute over the RGS amendment be settled through final proposal arbitration and that Mr. Glenn Sigurdson be the arbitrator to conduct the settlement proceedings. Final proposal arbitration is based on written submissions by those local governments that decide to participate.

It is important that the current CRD Board and councils of the affected municipalities achieve resolution on this RGS bylaw amendment. I do not want potentially new councils and CRD Board members to have to deal with this after the upcoming local government elections. To this end, the selection of Mr. Glenn Sigurdson as arbitrator is effective as of September 29, 2008. With the process starting on this date, the CRD Board and other affected local governments must advise the arbitrator by October 13, 2008 if they are going to participate in the arbitration. Further, as required under section 19 of the Regional Growth Strategies Regulation (BC Reg. 192/98), a joint statement indicating the disputed RGS amendment issue is required by October 27, 2008. Finally, each local government participating in the arbitration is required to have its written submission to the arbitrator no later than November 10, 2008. The arbitrator then has three weeks in which to make his decision.

I do appreciate that the CRD Board did not request that this matter be resolved through arbitration. I would like to emphasize that although I am directing this matter to arbitration, the affected local governments can come to agreement on an acceptable resolution at any point in time during the arbitration process. This would negate the need for the arbitration process to continue. In addition, even after the arbitrator has made a decision, the CRD Board and the affected local governments have 60 days to agree on an alternative resolution before the arbitrator's decision becomes binding. So in effect, while I have determined that arbitration on this issue should proceed, that does not have to stop the CRD Board, and affected local governments, from continuing to work together to find a mutually agreeable solution.

Ministry staff will be in contact with staff from the CRD and affected local governments to provide details of next steps for proceeding with the final proposal arbitration process.

Sincerely,



Blair Lekstrom  
Minister

**(pc's sent via fax on September 25, 2008)**

pc: His Worship Mayor Mark Cardinal, District of Highlands, Fax: 250 474-3677  
His Worship Mayor Jack Mar, District of Central Saanich, Fax: 250 652-0135  
His Worship Mayor Jody Twa, City of Colwood, Fax: 250 478-7516  
His Worship Mayor Chris Clement, Township of Esquimalt, Fax: 250 414-7111  
His Worship Mayor Stewart Young, City of Langford, Fax: 250 391-3428  
His Worship Mayor John Ranns, District of Metchosin, Fax: 250 474-6298  
His Worship Mayor Ted Daly, District of North Saanich, Fax: 250 656-3155  
His Worship Mayor Christopher Causton, District of Oak Bay, Fax: 250 598-9108  
His Worship Mayor Frank Leonard, District of Saanich, Fax: 250 475-5440  
His Worship Mayor Don Amos, Town of Sidney, Fax: 250 655-4508  
Her Worship Mayor Janet Evans, District of Sooke, Fax: 250 642-0541  
His Worship Mayor Alan Lowe, City of Victoria, Fax: 250 361-0317  
His Worship Mayor Graham Hill, Town of View Royal, Fax: 250 727-9551  
His Worship Mayor W.J. (Jack) Peake, Chair, Cowichan Valley Regional District,  
Fax: 250 746-2513

# **Proposed Amendment Bylaw 3443**

## **Report of the Facilitator**

**June 19, 2008**

Gordon Sloan, Partner, ADR Education

This report arises out of a facilitation effort concerning a proposed amendment to the Regional Growth Strategy (“RGS”) in the Capital Regional District (“CRD”).

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# **Proposed Amendment Bylaw 3443**

## **Report of the Facilitator**

**June 19, 2008**

Gordon Sloan, Partner, ADR Education

This report arises out of a facilitation effort concerning a proposed amendment to the Regional Growth Strategy (“RGS”) in the Capital Regional District (“CRD”).

### **History**

In 1995, British Columbia enacted legislation that enabled the municipal members of regional districts to work together to develop strategies that would manage regional growth. Those provisions are now contained in section 849 of the Local Government Act (“the Act”). These growth strategies are cooperative strategies for addressing regional growth issues. They are not land use plans, nor does a regional district take a direct hand in municipal planning functions through the vehicle of a regional growth strategy (“RGS”).

The CRD Board initiated a process to generate its RGS in 1996. After a great deal of discussion and staff work a proposed RGS was tabled and circulated in 2000. By 2002, the CRD Board had given the proposed RGS first and second reading and had completed the required statutory referrals.

The services of a facilitator were obtained in 2003 to assist the member municipalities in concluding their RGS which was adopted in August of that year. Under section 857 (1) of the Act, adoption of an RGS requires the “acceptance of the affected local governments” in the region, either expressly or by default. Thus, in the case of the CRD, all 13 member municipalities had signaled acceptance of the RGS after what was at times a tough negotiation.

Once a RGS exists, any municipality’s official community plan must contain a statement of how the official community plan relates to the RGS or how it will be made consistent with the RGS over time. The statement, called a Regional Context Statement (“RCS”), has to be submitted to the regional board and be accepted or, alternatively, objected to with reasons. It has been pointed out that, although an RGS is not binding on the member municipalities of a regional district, the RCS (once it is accepted) certainly is. So it is through the mechanism of regional context statements that the objectives of an RGS are realized in practical terms.

The District of Highlands submitted an RCS to the CRD Board which became the subject of considerable discussion as it advocated a change to the vision for the municipality from that which Highlands had when the RGS was adopted. The RCS promoted an extension of the urban containment boundary to facilitate changes in land uses, development densities and servicing provisions. Nevertheless, by a vote of 10 to 9, the board accepted Highland's RCS on March 8, 2006. The board directed regional staff to prepare a proposed amendment to the RGS as was necessary to respect the outcome of the vote. The proposed amendment sought to change the boundaries of urban growth to reflect the new configuration set out in Highlands' RCS.

The CRD is a region contained by the sea in most directions and mountains in others. Consequently, its growth strategy has provisions that are concerned with urban expansion consistent with the requirements of section 849 (2) (a) of the Act. Areas of existing or intended urban density are serviced with water and sewer among other amenities. These areas are designated on a map as being within a Regional Urban Containment and Servicing Policy Area (known as a "RUCSPA"). Areas within the RUCSPA are serviced with water and sewer, areas outside the RUCSPA are not unless pressing public health interests can be met, or there is a need for water for agriculture or fire suppression. The servicing policy is intended to promote higher density development and more efficient and planned infrastructure extensions within the RUCSPA, while maintaining rural-level services and densities in the lands outside the RUCSPA.

The proposed amendment to the RGS (bylaw 3443) journeyed through the various consultations, referrals and other legislative requirements of the Act. By the terms of section 853 (4), amendment of an RGS follows the same process as the original creation of the RGS. The amendment supporting Highlands' development intention was considered at a public hearing on September 13, 2007, then was sent out to member municipalities for review (often referred to as the "municipal referral process") under section 857. The municipalities had 120 days in which to signal by resolution their acceptance of or objection to the amendment. They completed this task with four municipalities supporting the amendment and nine objecting to it with reasons detailed as required.

Since the acceptance of *all* member municipalities in the region appears to be required by the Act, the matter was stalemated at that point.

### **The Appointment of the Facilitator**

An array of dispute resolution mechanisms exist in the Act. Non-binding resolution, peer panel, two arbitration options and facilitation are all dispute resolution technologies that can be applied to a lack of consensus at various prescribed points in the initiation, development or adoption of an RGS or in its amendment or repeal.

In this case, the Minister acted on the power to appoint a facilitator to assist with negotiations between local governments, and facilitate the resolution of anticipated objections (section 856 (1)). The Act does not specify any particular methodology for this function.

### **The Methodology Used**

In view of the lengthy history that member municipalities of the CRD had with the proposed Amendment Bylaw 3443 and the full opportunity they had had to think about this issue, I decided not to attempt to convene negotiating parties from all municipalities for active facilitation sessions. The views of the municipalities had been well expressed in writing. Instead, I took the following four-part approach:

1. Individual interviews with every municipality except Langford (which declined to be interviewed). These were sessions with whomever the municipality decided to provide for the interview as a reference point over this issue. In some cases, that was senior staff while in others it was elected officials. In some cases it was both. In a few cases, it was the entire council, mayor and senior staff. The interviews were completed by May 6, 2008. This process enabled me to understand the objectives and interests that were fundamental to each municipality in the position it had taken on this issue. Those are set out later in this report.
2. Meeting on May 28, 2008 with an informal group of senior municipal staff from a number of the municipalities together with some CRD staff. The purpose of this meeting was to use this group as a “sounding board” for scenarios that appeared to me to hold potential, based on the content of the interviews with municipalities.
3. Meeting with interested Mayors and any Council Members and senior staff on June 10, 2008. At this meeting I canvassed the developments to date and presented three scenarios for a resolution that had been developed from the previous meetings and from some discussions with the Highlands Mayor, Council and staff.
4. Provision of this report. I should point out that there is no obligation under the Act for a facilitator appointed by the Minister to render a report. But it is obvious to me that reporting publicly in this instance may be extremely useful and may provide an important source of information and direction for the review of the RGS presently being undertaken by the regional district.

### **RGS and its Values**

As has been noted, the Act is quite specific about the need to strategize about growth. It is specific about fourteen strategic goals (section 849 (2)) and about the minimum provisions that an RGS should contain (section 850 (2)).

The CRD growth strategy is lengthy and detailed. It was preceded by a regional vision that had taken into account the OCPs of the various member municipalities. The RGS accents a number of purposes and programs (called “initiatives” in the RGS), including:

- Protecting the integrity of rural communities
- Protecting regional green and blue space
- Managing natural resources and the environment sustainably
- Building “complete” communities
- Improving housing affordability
- Increasing transportation choice
- Strengthening the regional economy

Despite the fundamental importance of each of these initiatives to the region, one additional initiative appears to receive disproportionate attention:

- Keeping urban settlement compact

The idea behind the compact urban settlement initiative is to concentrate new growth in existing centers and to connect those centers by transit. This is achieved in a number of ways, the land-based hallmark being the designation of the RUCSPA and the expectation that urban development of a concentrated sort will not occur beyond the RUCSPA boundary. The main servicing tool provided within the RUCSPA is the provision of sanitary sewer and water services, proven to be major catalysts of urban growth. Water and sewer can be extended beyond the RUCSPA boundary in exceptional circumstances where the region agrees to address pressing public health and environmental issues, fire suppression or agriculture (Action #5).

It is important to note that the region had a fundamental expectation that the RGS would be supported by a Master Implementation Agreement (“MIA”) within two years of the adoption of the RGS. The MIA was to give effect and definition to the “maintenance, amendment and periodic update” of the RGS. It was to define processes for review, criteria for expansion of the RUCSPA and generally give practical effect to the growth strategy. However, the MIA was never developed. It is obvious that failing to develop the MIA and thus come to grips with the practical implications of the RGS for local governments has left a void in the utility of the region’s RGS. In my work with Amendment Bylaw #3443, the MIA would have been enormously useful. In fact, I doubt that the history of the CRDs proposed extension of the RUCSPA on Highlands’ behalf would have unfolded as it has, had a MIA been in effect.

The RGS is a serious and foundational document that complies with provincial policy. I mention this because I have occasionally run into skepticism from some elected officials as to its importance. There is no question that the RGS is to be taken seriously and that, through RCSs, its provisions are integrated in a practical way into the community life and planning of every municipality in the region. Likewise the local autonomy of each municipality, regardless of the size of its population or wealth, as a fundamental unit of

independent community, is well established and needs to be recognized in the RGS's application to the region. The dynamic of a strong regional interest (in the RGS) and a strong municipal jurisdiction (in planning) maintains a *necessary tension*.

The tension between the regional good and local independence is always at play, and should be if vital local economies and neighbourly regional co-ordination are to co-exist productively. Neither principle can trump the other. It is no more possible for a region to shun the interests of a member municipality than it is for a municipality to ignore the regional good. Whenever I have run across an excess of either attitude in this regard, it has proven a half-truth that makes progress elusive for the region and municipality alike.

One practical application of this principle, of course, is the effect of the regional will about growth strategy and its implications for local land use. There is no question that there is such an effect (as an implication of the RCS regime). And the effect of the RGS on local planning is desirable from the standpoint of the region at the appropriate "grain" or "coarseness" of planning. This level of planning is nicely defined in the RGS and supported by the Act and provincial policy generally. Likewise, there is no question that individual municipal planning decisions, even those that are wholly consistent with an RCS, have implications on regional growth. Without seeking any change at all in the RGS, a municipality can "build out" to its limits in a way that will still have a profound effect on some of the initiatives of the RGS. Such is the reality of the *necessary tension*.

### **Identified Interests of the Municipal Members**

In the interviews with municipalities, I was seeking the *values, objectives* and *interests* that each municipality had with respect to amendment bylaw 3443 and the RGS.

Municipalities had already expressed their support for or objection to the proposed RUCSPA extension and had given reasons. But the reasons often did not articulate the motivating *interests* of the municipality (often expressed as *needs, desires, concerns, fears* or *hopes*). It was not uncommon to hear either of the following sentiments unsupported by the motivating interests of the municipality:

- "A municipality in the CRD should be able to execute its planning objectives unobstructed by the RGS. For local planning objectives to be curtailed, is an unwarranted regional intrusion into the sovereign rights of local government."

or;

- "They signed on to the RGS in 2005 so they should be obliged to live with that. Why should they expect that the rest of us are going to change the rules mid-game. Any alteration of the RUCSPA in this case will open the floodgates for similar amendments all over the place."

During discussion of these sorts of sentiments, a number of important interests were articulated, as follows:

- Concern about “urban sprawl creep”.
- Desire for consistency in applying the urban containment standard.
- Concern about precedent.
- Need to have a clean (uncontaminated) water supply.
- Desire for the right tension between the regional and municipal interest.
- Need to acknowledge the unique personality of each municipal unit while respecting regional influence.
- Need of municipalities to be economically viable.
- Recognition of the autonomy of municipalities and the regional impact of municipal decisions.
- Need for some mechanism to provide the right level of elasticity to the RGS.
- Concern that proposals should have a growth management rationale and clear documentation to support that rationale.

After a full review of the products of the interviews, it was apparent to me that some of the values in the initiatives *other* than urban containment were also on the minds of many. Combined with the above list, the five main interests motivating the various positions taken with respect to amendment bylaw 3443 were:

- **AQUIFER QUALITY:** preservation of the quality and quantity of the subsurface water resource
- **URBAN CREEP:** limiting northward development within the proposed 267 hectare site and the land area beyond
- **PUBLIC HEALTH:** solving the potential public health threat posed by one or more contamination sites in the area
- **COMMUNITY ECONOMIC GAIN:** providing an enhanced commercial source of tax revenue for Highlands
- **PROPORTIONALITY:** limiting the size of the proposal so it bears better relation to the actual land development needs

Any solution to the disagreement over this amendment has to address these five interests.

## **The Way Ahead**

### **A. The Present Situation on the Ground**

It is important to note that the choices involved in bylaw 3443 are not between a developed landscape and an unmodified one. The land in question is already significantly developed. A golf course, permitted by the existing zoning without a RUCSPA extension, is already excavated and planted. It comprises roughly 50% of the 267 hectare site. Under the terms of the May, 2005 Master Development Agreement

between the municipality and the developer, the developer is obliged to provide “non-aquifer water supply for residential and commercial use...” and to irrigate the golf course with recycled water and limited ground water sources which fill reservoirs only during the months of November to May.

In addition, there is an existing residential development (Hanington Creek Estates) in part of the southern portion of the site.

The size of the lands in the proposed amendment bylaw 3443 (267 hectares) comprises 6.5% of Highlands’ land base overall, and 1.63% of the total land area presently within the RUCSPA.

Important to note is that the development potential of the site *without* extension of the RUCSPA is 62 homes, and a golf course. That is the level of development permitted “as of right” according to Highlands’ land use regime, with the golf course already constructed, without the need for acceptance of the proposed RGS amendment. If the RUCSPA were extended as requested over the whole of the 267 hectare site, services would be sufficient for 150 single detached homes (without suites permitted) and 250 tourist accommodation rental units in addition to the golf course, a golf academy, golf related commercial facilities and a small addition to the industrial lands already within RUCSPA in the southeast corner of the site.

## **B. Scenario**

Keeping in mind the expressed interests of *aquifer quality, urban creep, public health, community economic gain* and *proportionality*, the following sort of scenario holds promise for acceptance by local governments. It would need considerable refinement including plotting the RUCSPA boundary more exactly once Highlands decides what amended proposal it wishes to proceed with. Highlands would then proceed based on support obtained from other municipal members of the region. We turn our attention to this under “Procedure for the Way Ahead” (below).

The scenario’s approach preserves the values of the RGS while acknowledging the need for the sort of elasticity which the MIA would have defined if it had been in place. It achieves sensible adjacency to the Bear Mountain development already extant in Langford. It achieves better proportionality by vastly reducing the scope of the RUCSPA extension. It concentrates more limited development at the south end of the site abutting on Langford. It capitalizes on the proximity to the services (roads, water, sewer) already in place. It acknowledges the special circumstances of potentially compromised drinking water quality as a result of a local contamination site. The contamination issue might in part be addressed by limited water service without additional extension of the RUCSPA.

The scenario is presented in three segments on maps B, C, and D which follow. Map A represents the original proposal. Maps B, C, and D do not attempt to exactly plot the location of the RUCSPA, but present a concept in three parts.



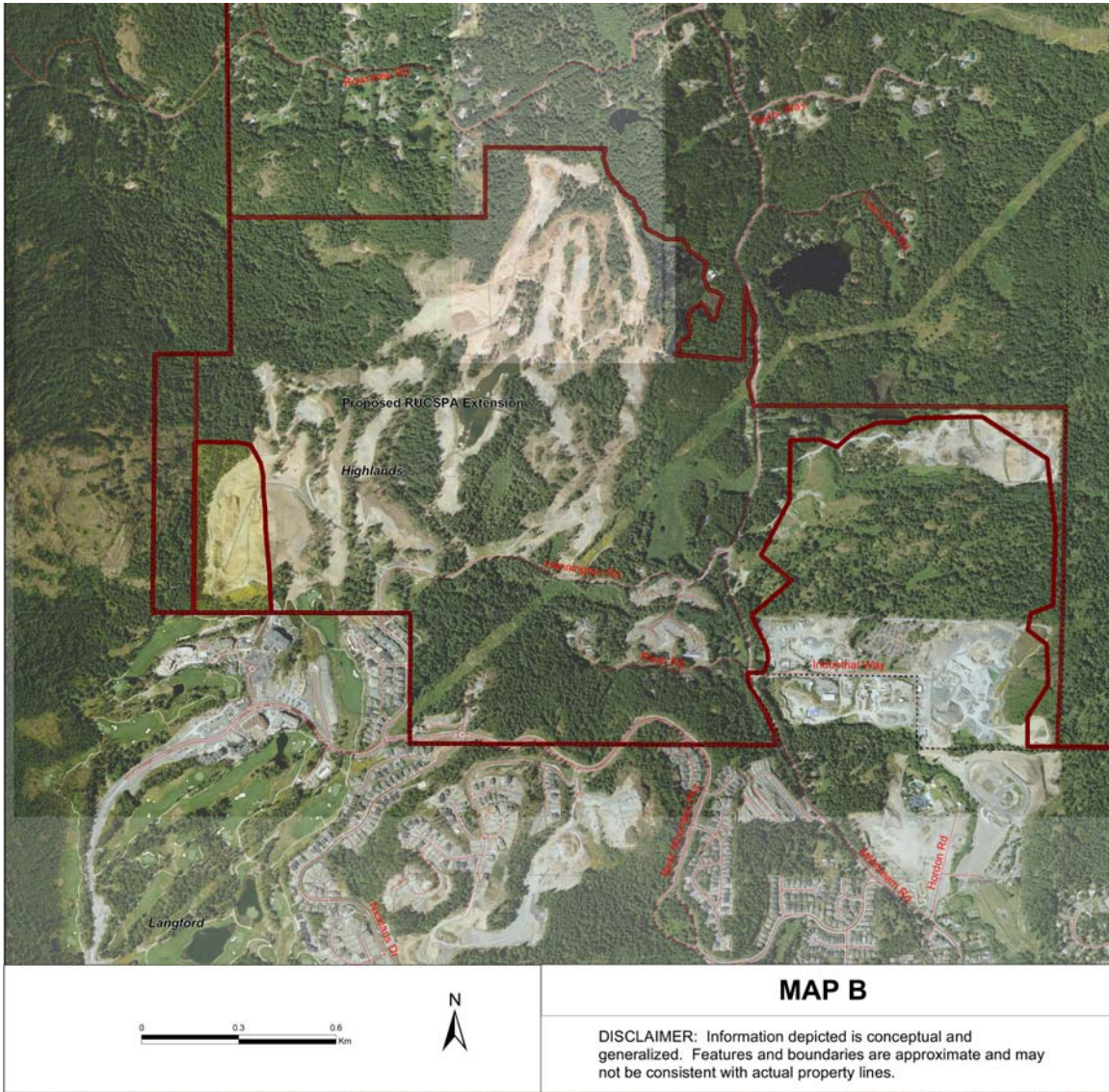
When referring to Map A, note the following features on the map as these will be referred to in the maps that follow:

**“Hotel Development”**: This is the bare area in the south west corner of the site which would be the site of most of the tourist accommodation. It would be serviced by road either from the east, across the southern edge of the golf course or from the south (the location of the existing hotel and golf course development in Langford) or both.

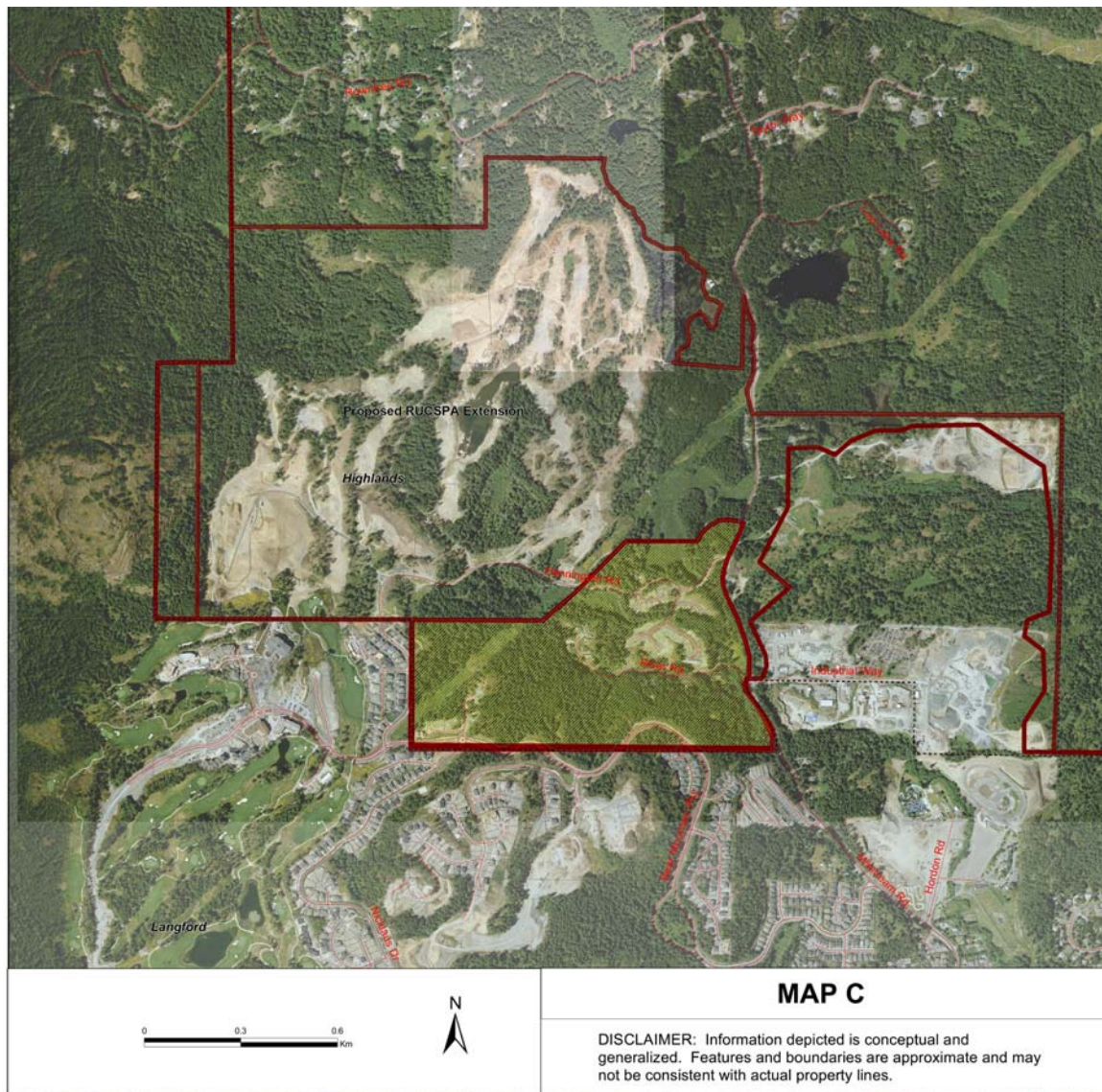
**“Residential Development”**: This is the land comprising the southern part of the map, running from the north-south boundary of the RUSCPA, (just east and south of the “Hotel Development”) to Millstream Road. It would be the site of most of the residential development. It includes the Hanington Creek Estates development presently partially constructed and occupied, which has its own water system and septic fields but is constructed for connection to CRD water and sewer.

**“Commercial Development”**: This is a small area northeast of Hannington Estates, along Millstream Road in the general vicinity of the present Municipal Hall. It is proposed that some commercial development would be located in this area.

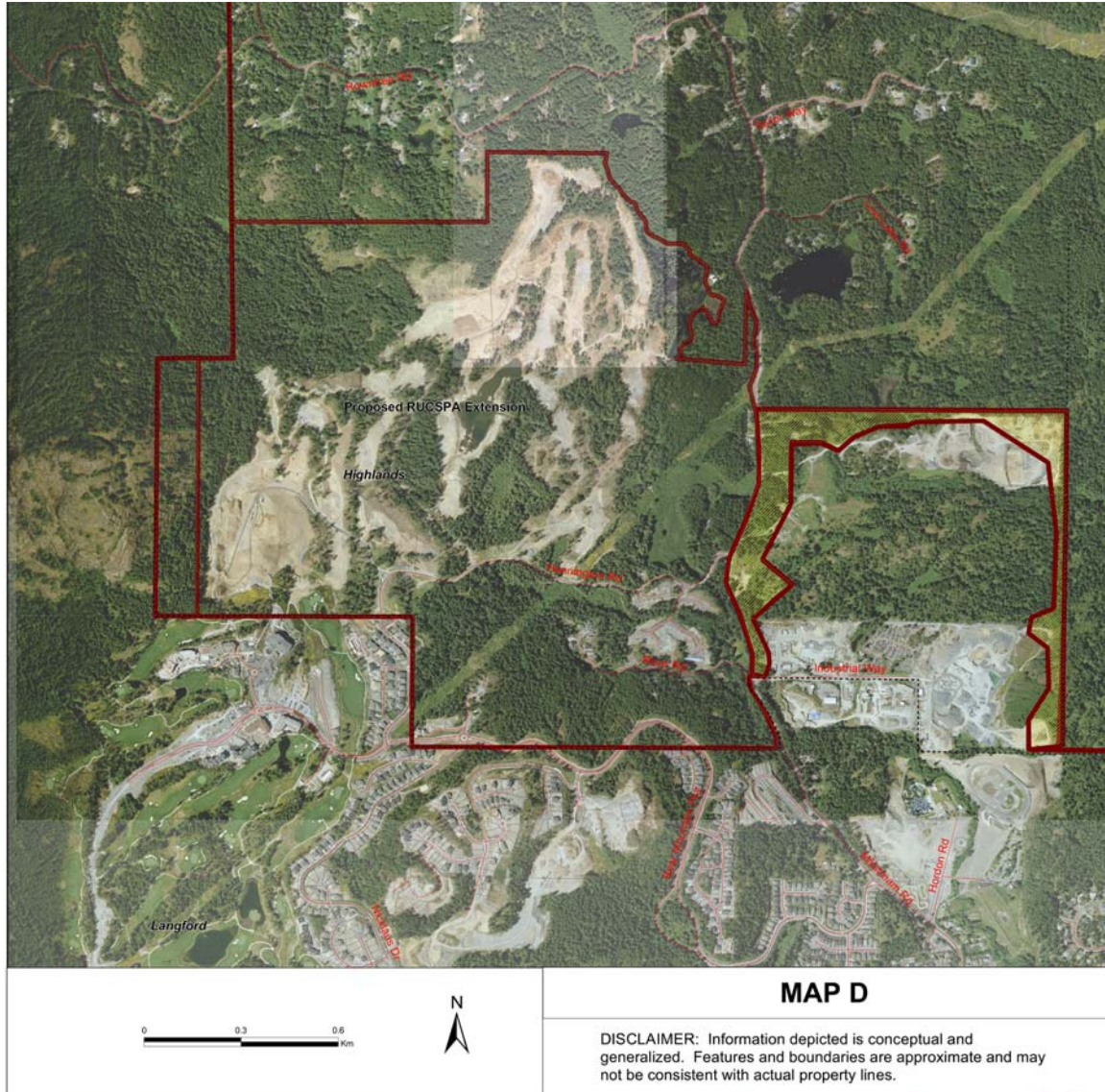
**“The Hook”**: This is the area east of Millstream Road that hooks around the only land in Highlands that is presently in the RUCSPA. The Hook was included in the proposed amendment with a view to tidying up the mapping and to bring into urban containment land some of which was already being used for industrial purposes.



Map “B” shows hatched in yellow the rough location of the “Hotel Development”; i.e. lands proposed for tourist accommodation. A RUCSPA extension roughly as shown would accommodate the hotel development on this site. Note the buffer strip within Highlands lying between the “Hotel Development” and Langford lands to the west.



Map “C” shows hatched in yellow the rough location of the “Residential Development” and “Commercial Development” lands as we have named them in this scenario. Note that Hanington Creek Estates is contained in this area and would thus be serviced. Also of note is that about 22 ha. of this area (to the south of Hanington Creek Estates) is the subject of a third party covenant with The Land Conservancy to preserve the land in its natural state and prohibit subdivision. At the northeast corner of the hatched area, bordering Millstream Road, is the land intended for some commercial facilities.



Map “D” shows hatched in yellow the “Hook”. There are some residential uses along Millstream Road on the east side. The contamination site is in an area known as “Millstream Meadows” which is mostly contained in the existing RUCSPA boundary but also extends to the west into the Hook.

**C. Analysis**

It is clear from the degree of objection that the proposed amendment cannot be supported. Member municipalities of the CRD indicated on a 9/4 basis, their lack of support for it. But neither can the status quo be supported. Four out of nine municipalities support an extension of the RUCSPA.

It is my opinion, based on discussions with elected officials and senior staff, that extending the RUCSPA boundary and the associated services over specific and carefully chosen lands in this case, can be the solution to this stalemate. All the prime interests in this case would be achieved, as follows:

- **AQUIFER QUALITY:** the subsurface water resource is not harnessed for these developments and existing wells servicing Hanington Creek Estates are replaced by regional water service.
- **URBAN CREEP:** northward development is strictly limited and residential and hotel densities are “shrink wrapped” in the southern portion of the site adjacent to existing similar densities in Langford.
- **PUBLIC HEALTH:** concerns about the potential public health threat posed by contamination sites in the area are addressed by regional water being extended to housing to the immediate west and east of Millstream Road.
- **COMMUNITY ECONOMIC GAIN:** the hotel and limited commercial development provides an enhanced but physically contained commercial source of tax revenue for Highlands
- **PROPORTIONALITY:** the size of the proposal is reduced considerably so it bears better relation to the *actual* land development needs

It will be obvious from Maps B, C, and D that a number of options are available. The RUCSPA boundary could be extended over all four of the features (Hotel, Residential, Commercial and the Hook) or over one of them or over combinations. By way of comparison, extension of the RUCSPA over various of the features has roughly the following effect on urban expansion overall.

Scenario	Land Area	Percentage of Highland Land Base	Percentage of Existing Regional RUCSPA
Proposed bylaw 3443	267 ha	6.5%	1.63%
Hotel only (Map B)	11.6 ha	.29%	.07%
Residential/Commercial only (Map C)	53.2 ha	1.3%	.32%
Hook only (Map D)	19.9 ha	.49%	.12%
All uses (Maps B, C, D)	84.7 ha	2.1%	.52%

#### D. Other Tools

So far in this report, consideration has been given to scenarios mostly in geographic terms. Since some of the vital interests relate more to *effects* than to land surface given over to urban expansion, other tools might be applied to this issue to address those interests.

For instance, water or sewer or both might be extended to some part of the 267 hectare site which remains *outside* the RUCSPA. There is precedent for this elsewhere in the

region and (as has been mentioned) there are criteria for that extension in “Action #5” of the “Keep Urban Settlement Compact” initiative of the RGS, particularly where pressing public health and environmental issues are recognized.

Consideration may also be given to the “net down effect” on the development by the use of covenants which could protect various other values (e.g. movement of wildlife, protection of riparian interests, trail networks, critical green corridors, wetlands, viewsapes). These can either be covenants directly between an owner/developer and the municipality (which can later be altered by mutual agreement of the parties) or third party covenants which usually engage a public interest society as a “trustee” of the public good. In any such case, although the RUCSPA boundary is extended, some of the land area is effectively removed from the possibility of urban development, thus reducing the area affected.

Finally, any concrete plans in connection with the other initiatives of the RGS that can be agreed to by the municipality and the developer should be given consideration. Some such interests are already expressed in the Master Development Agreement. In this way, some negative effects of RUCSPA expansion on the other seven core initiatives of the RGS can be moderated or even neutralized. So, for instance, agreements concerning how new commercial space in Highlands and existing commercial space in Langford can relate to the new residential development may respond to the initiatives of “protecting the integrity of rural communities” (to the north) and “building ‘complete’ communities”.

In the end, it will be up to Highlands, as proponent, to determine what additional tools it wants to include in a proposal to enhance the likelihood of the proposal’s acceptance by the other regional municipal members as affected parties whose concurrence is required.

## **Procedure for the Way Ahead**

There are a number of ways to proceed with further consideration and resolution of this issue. However, several important factors have to be kept in mind in selecting how to move ahead.

### **A. Factors:**

#### ***1. Expiration of the current municipal referral process:***

When I was appointed on January 28, 2008 to facilitate resolution by the Minister, the 120 day period for municipal referral of proposed amendment bylaw 3443 was about to expire (on February 4, 2008). So I acted under the discretion provided to me in section 858 (3) of the Act to extend the acceptance review period to June 30, 2008.

## **2. *Municipal elections:***

Elections will occur in November, 2008 which gives a window of less than 5 months from the date of this report in which to take next steps.

## **3. *RGS review:***

The five year review of the RGS is just now underway and may take more than a year to complete. Various parties are of the opinion that consideration of Highlands' request should have been "rolled into" the review. That may still in part occur. However, there is real value to the present consideration of proposed amendment bylaw 3443 *informing* the review while the review also informs the consideration of the bylaw! What is being learned through the facilitation process will assist in the review and some of the issues being canvassed now may not need to be revisited, at least with the same thoroughness. At the same time, this process is identifying principles that can have broader application for review of the RGS more generally (see below).

## **4. *Bill 27:***

The Local Government (Green Communities) Statutes Amendment Act (formerly Bill 27) was recently proclaimed. Although it appears not to have retrospective effect, it may be that proceeding afresh under its provisions would be possible for Highlands and the CRD. It provides a mechanism for establishing a process for minor amendments to an RGS. If that process is in place, an amendment of the sort being considered here could move through full consideration much more quickly.

## **B. *Some Procedural Options:***

### **1. *Non-binding Dispute Resolution Process***

The CRD could inform the Minister that the matter has not been resolved through this facilitated process. That would trigger section 859 (2) of the Act by the terms of which the Minister would either determine that a non-binding process must begin or that such a process is unlikely to be fruitful and direct that the matter go immediately to a binding settlement process. I think it is quite possible that the Minister could conclude that this facilitation constituted a sufficient non-binding process and the matter should proceed to binding settlement. I personally don't think this is the best procedural option but it would likely be the quickest.

### **2. *Binding Settlement Process***

Under section 860 of the Act, one of three processes would be selected (either by agreement or by Ministerial direction, if agreement is deemed unlikely). A peer panel review, final proposal arbitration or full arbitration would then occur.

### **3. Highlands Resubmitting an RCS**

Highlands could seek revocation of the CRD board’s amendment proposal or let it die a natural death. Highlands could then submit a new RCS that is more in line with one of the scenario variations presented in this report. It could seek to have the new proposal treated as a minor amendment under the new legislation (if a process for minor amendment is in place quickly). Alternatively, Highlands could seek a speedy municipal referral process under the conventional legislation since the issues have all been canvassed during the first 120 day period and the present extension for this report. Before proceeding in this way, Highlands would want to have obtained *reasonable assurance* that all other affected local governments are content with the new RCS. Incidentally, the new legislation (Bill 27) now provides for the facilitation of disagreement over an RCS.

### **4. Five Year Review**

Using this report and greater mapping particularity on the part of Highlands, the CRD board could continue to develop an agreeable scenario as part of the five year review. In that case, lessons learned from the present facilitation would be integrated into the discussion. Aspects of the review dealing with this amendment could also be facilitated on an as-needed basis.

## **Lessons Learned from this Process**

### **A. Consensus and Distributive Approaches**

One of the comments often heard in the interviews was that the “consensus” requirement of the Act was too demanding and that it should be changed. Consensus was understood as *unanimity* by those who commented about it. The ability of one or two municipalities to “hold out” from supplying consensus was seen to be too stringent a standard. The antidote to this was seen to be a more “elastic” model – one that provided greater flexibility to get past consensus.

Having considered the reasons for the frustration people have expressed about this interpretation of consensus, and the direction of the Act about reaching agreement, I suggest that it may be that a new appreciation of the true meaning and utility of consensus is called for.

Reference to the Act reveals that “consensus” is not at all an *explicit* standard in the legislation. Rather, the requirement is that an RGS “must be *accepted* by affected local governments” (sections 853 (1) (c) and 857 (1)). One of the standards to be met along the way to “acceptance” is that the regional board and the affected local governments have to “make all reasonable efforts to reach agreement” on the proposed RGS (section

855 (1) (b)). But it is not agreement to a static proposal that is envisaged. Rather, the legislation anticipates a negotiation that will go on for some time as affected municipalities consider the RGS, seek changes to it and accommodate those changes. A full slate of consultations are required (section 855 (2)). References to other levels of government may be sought by the regional government or the facilitator (sections 855 (2) and 856 (1) (a) (iv)). Finally, referral to affected municipalities is required for a lengthy period (section 857). The nature of that referral is that a *serious discussion* occurs in each council chamber of each local government because a resolution concerning the matter is required. Significantly, the resolution is not merely a matter of “yes” or “no” to the question of acceptance. It is an answer which requires details of acceptance, objection, reasons for objection and potential alteration (section 857 (7)). The section speaks of “objection”, not *rejection*.

So the regime in place under the Act encourages an **active negotiation** that seeks a true consensus in favour of an RGS (or amendment to one) with the full expectation that there will probably be objections that need to be ironed out. That sort of activity embodies the real meaning of consensus; literally “sensing together or feeling together”. The concept of consensus anticipates that adjustment will have to be made during consensus seeking to *accommodate*, not *compromise* objections along the way. This is characteristic of all robust negotiation among large social units like municipalities.

Somehow that concept of consensus, which is quite clear in the Act, has been reduced to mean *unanimity* where affected local governments merely count up the numbers in support and opposition to an RGS or amendment to it. In proceeding in this way, the Act’s integrating purpose for the region gets reduced to a distributive exercise much like voting at any council or board meeting.

One way to address this problem is to deal with it when the MIA is developed. The MIA could contain provisions which reinstate the true meaning of consensus. Its provisions could commit local governments to specific benchmarks that assure continued negotiation with a view to *accommodating by making adjustment* to whatever specific objections arise during the development of an RGS or amendment. Consideration of an amendment should have to take into account the interests of all local governments. Working to meet those interests should be the goal, and requirement, in these cases.

In seeking a consensus decision, obligations should fall on those assenting to and dissenting from a proposal as follows:

- those in *disagreement* with the proposal should be obliged to explain the basis of their disagreement and the objectives that they seek to advance in any version of the proposal that they would accept.
- those in *agreement* with the proposal should have a corresponding obligation to explain their agreement and the objectives that they seek to advance.
- a positive obligation should fall on all parties to accommodate the objectives of those with whom they disagree by attempting to find mutually acceptable

alterations to the proposal in order that “acceptance” as required by the Act, can be achieved.

## **B. Facilitation**

Assuming the adoption of a revitalized approach to consensus that is consistent with the above principles, facilitation may be extremely helpful. A facilitated negotiation often clarifies the interests (objectives) of local governments which need to be accommodated when crafting a tailored solution.

Facilitation is, of course, available on request from the Minister or on the Minister’s own initiative. But it is also accessible without triggering section 856 and the consequent legislation. A regional board can of course determine it wants to use a facilitator actively to assist the negotiation of any issues along the way to an amendment. This is a way to make decision-making easier and more genuinely consensus based.

Thought can also be given to using trained staff (either municipal or regional staff) part of whose dedicated function is facilitation. That has the double benefit of cost saving while bringing direct and immediate context knowledge to the table. Numerous programs in government across Canada at the Provincial and Federal level use in-house mediators and facilitators to assist in difficult discussions of this sort.

Of assistance here are the new amendments to the Act (Bill 27) which broadens the use of facilitation. It can now be used in the development of a RCS. If that had been the case here, matters might have been resolved at a much earlier date.

## **C. Principles to Consider in Future RGS Amendments**

The five-year review of the RGS is being undertaken. It will doubtless want to include consideration of how to approach RGS amendments in the future. Part of that consideration may include development of the awaited MIA. In any event, there are certain principles that were important in this facilitation that could inform the review (as well as RGS development and amendment more generally).

Most principles in the following list have special application to adjustment of the RUCSPA boundary. But some may apply to other initiatives in the RGS. These are listed in no special order and no one principle trumps the rest. But taken together, they can assist in evaluating the regional desirability of amending the RGS or extending the RUCSPA:

### ***1. Consideration of existing criteria or principles***

The RGS already has defined distinct “Actions” in connection with each initiative. For instance, the initiative “Keep Urban Settlement Compact” has five such actions.

Sometimes these actions set out criteria (such as those that would apply for extension of urban sewer and water services outside the RUCSPA) and those should be heeded.

## **2.     *Adjacency***

There are scores of contiguous borders between local governments in the region. An amendment sought for the benefit of one municipality should have geographic integrity with the uses adjacent to it.

## **3.     *Environmental protection***

The irreversibility of some landscape modifications makes it important to consider the long term environmental implications of any amendment that would result in changing the RUCSPA. This may suggest a precautionary principle and may warrant the development or adoption of some objective indicators of environmental sensitivity.

## **4.     *Proximity of services***

The closeness of water, sewer, roads (both planned and extant), regional and municipally shared services and the like should be considered in evaluating a proposal to amend. There will be cases where proximity is not well established but the case may still be made for an amendment based on other criteria.

## **5.     *Best use***

From both a municipal and regional perspective, thought should be given to the suitability of the land to support the extension or amendment being sought. Already well-established planning, geophysical and environmental principles can be applied in determining if this criterion is being met.

## **6.     *Economic fairness***

In a region in which there is such variation in the nature of municipalities, it is important to assure that consideration be given to equity among municipal members. Numerical economic equity would be unreasonable and unattainable, but it is only fair to give serious consideration to the economic stability of municipalities consistent with their unique character.

## **7.     *Balance in regional/local tension***

This report spoke earlier about the *necessary tension* that exists (and should exist) between the individual municipal interest and the collective regional interest. A principle that is derived from this is that thought should be given to whether a proposed amendment or extension achieves proper balance of that tension.

## **8. *Proportionality***

As a principle, the amendment or extension sought should be in proportion to the land use objective of the proponent. That cuts both ways. The land area sought should not be excessive to the intended use as a means to simply increase urbanization over the longer term. Nor should the land be inadequate, resulting in additional proposals to extend in the future.

## **9. *Urban creep***

One test should be the future focus of the effect (particularly unintended) of the amendment on increasing urban creep. This is particularly the case here, where the RGS specifically honours compact settlement. Thought should be given to the future pressure for urban expansion that a proposal may create and how that can be curtailed.

## **10. *Comparison with “as of right” development***

A principled approach to a proposal should compare the densities and population effect of the proposal with the densities and population effect if the land area were fully developed using the existing services.

## **11. *Synergy with other RGS initiatives***

A proposal should not be considered in a vacuum. The degree of relevance and integration of a RUCSPA boundary extension proposal to various other defined RGS initiatives should be an evaluation criterion.