

**REPORT TO CORE AREA LIQUID WASTE MANAGEMENT COMMITTEE  
MEETING OF WEDNESDAY, NOVEMBER 14, 2012**

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**SUBJECT    COMMISSION BYLAW**

**ISSUE**

A bylaw is required to establish a Commission to administer the Core Area Wastewater Treatment Program (the Program) in accordance with the provincial and federal Program governance conditions.

**BACKGROUND**

When the Core Area Liquid Waste Management Committee (CALWMC) considered the draft bylaw on October 10, 2012, a number of areas of concern were raised, including the need to ensure the RFP documents encourage innovation by CALWMC approval of the RFQ/RFP terms, and the exclusion of elected officials from Commission membership and the apparent lack of accountability to the public. In the previous draft of the bylaw, the Province expressed concern with the section 10.1 (a)(i) 'approve the terms of the RFQ/FFP'.

To address these concerns, a number of changes/additions to the draft bylaw are being proposed. The changes are underlined in the draft bylaw (Attachment 1).

To ensure that innovation is being appropriately addressed, the addition of a new section (6.11) to section 6 'Commission Terms of Reference' is proposed:

'In recognition of the importance of promoting innovative design that minimizes tax payer's long term costs, and is consistent with CRD social, environmental and economic objectives, the Commission must work collaboratively with the CALWMC to draft the sections of the RFP that promote innovation.'

This section will ensure participation of the Committee in the drafting of the innovation clause.

To address the Province's concern with section 10.1 (a)(i), the addition of section 10.1 (a)(v) ensures Regional Board participation in establishing the principles for RFP evaluation and bid award:

'approve the principles of evaluation for the RFP and bid award, such as best value for dollar, minimum cost or maximum benefit.'

The wording in section 10.1 (a)(i) would revert to the previous wording i.e. 'review' in place of 'approve'. While the Commission membership excludes elected officials, a condition of provincial funding, elected officials will continue to have significant influence over the governance and implementation of the Program. In the attached draft bylaw, the sections that describe the role and authority of the Board and CALWMC are highlighted. The Board is delegating authority to the Commission to implement the Program, but within clearly defined limits. The draft bylaw articulates when the Commission must involve the Regional Board and/or the CALWMC. Some of the key sections are recapped below:

- The Commission must determine any matter referred to it by the Regional Board – Sections 6.1, 7.1(d), 8.1(c);
- The Commission must liaise with the CALWMC prior to appointing a Project Director – Section 6.8;
- The Commission must oversee the implementation of the procurement methods selected by the Regional Board – Section 6.10;
- The Regional Board has reserved for itself the authority to approve all amendments to the Liquid Waste Management Plan, mitigation guidelines, design guidelines and principles for evaluation of RFP and bid award – Section 10;
- The CALWMC has a significant role in reviewing documents and reports, advising the Commission on local issues and concerns, monitoring financial and program construction performance and reviewing any Program changes being recommended – Section 11;
- The Regional Board must approve the Program budget and direct the Commission to make amendments to the Board's satisfaction – Sections 13.3(c), and (d);
- The authority delegated to the Commission is subject to the policies and procedures of the Regional Board – Section 14.3; and
- Meetings must be open to the public unless closed in accordance with sections 90 and 91 of the *Community Charter* – Section 4.4.

While the Regional Board is establishing the Commission and delegating the authority to implement the Program, the ultimate authority remains with the Board, which can intervene in the event the Commission fail to fulfill its mandate.

### **ALTERNATIVES**

1. That the Core Area Liquid Waste Management Committee recommend to the Capital Regional District Board that Bylaw No. 3851, Core Area Wastewater Treatment Commission Bylaw No.1, 2012 be introduced and read a first time and second time, read a third time and adopted; or
2. That the Core Area Liquid Waste Management Committee provide any additional changes to Bylaw No. 3851 prior to forwarding the bylaw to the Capital Regional District Board.

### **IMPLICATIONS**

#### **SOCIAL IMPLICATIONS**

Despite establishing a Commission comprised of non-elected officials, the CRD Board will remain the ultimate authority in the delivery of the Program and will thus remain accountable to the public for Program outcomes.

#### **ECONOMIC IMPLICATIONS**

By not establishing a Commission to deliver the Program, the CRD risks losing the \$501 million funding committed by the federal and provincial governments, as the governance Commission is a condition of funding.

**INTERGOVERNMENTAL IMPLICATIONS**

By establishing a Commission to govern the Program, the CRD will comply with the one of the conditions of both the federal (Public-Private Partnerships Canada) and provincial governments funding.

**CONCLUSION**

The amendments to the draft bylaw expand the role of elected officials, while ensuring that the expertise of the Commission members is appropriately employed in accordance with provincial and federal government expectations. While the Commission membership does not include elected officials, the bylaw ensures a significant role for the CALWMC and the Regional Board.

**RECOMMENDATION**

That the Core Area Liquid Waste Management Committee recommend to the Capital Regional District Board:

That Bylaw No. 3851, Core Area Wastewater Treatment Commission Bylaw No.1, 2012 be introduced and read a first time and second time, read a third time and adopted.

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J.A. (Jack) Hull, P.Eng., MBA  
Interim Project Director  
Core Area Wastewater Treatment Program

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Kelly Daniels  
Chief Administrative Officer  
Concurrence

JH:hr

Attachment: 1

CAPITAL REGIONAL DISTRICT

BYLAW NO. 3851

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A BYLAW FOR THE ESTABLISHMENT OF A CAPITAL REGIONAL DISTRICT COMMISSION TO ADMINISTER THE CORE AREA WASTEWATER TREATMENT PROGRAM

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WHEREAS:

- A. The Regional Board of the Capital Regional District (CRD) may establish a commission under Section 176(1)(g) of the *Local Government Act* to operate Regional District services, undertake operation and enforcement in relation to the Regional Board's exercise of its regulatory authority, and manage property or an interest in property held by the Regional District.
- B. The Regional Board of the Capital Regional District wishes to establish a Commission for the purpose of administering the Core Area Wastewater Treatment Program.

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

1. Definitions

In this Bylaw unless the context otherwise requires:

“COMMISSION” means the Core Area Wastewater Treatment Program Commission established under section 2 of this bylaw;

“CALWMC” means the Core Area Liquid Waste Management Committee of the CRD, or such other committee of the Regional Board as may from time to time replace such committee;

“COMMISSIONING” means the putting into functional operation the Wastewater Treatment Program or a component of the Wastewater Treatment Program;

“CONTRIBUTION AGREEMENTS” means the agreements between the CRD and senior governments setting out the terms and conditions for funding of the Program;

“CORE AREA PARTICIPANTS” means the City of Colwood, the Township of Esquimalt, the City of Langford, the District of Oak Bay, the District of Saanich, the City of Victoria and the Town of View Royal and the Juan de Fuca Electoral Area;

“CRD” means the Capital Regional District;

“CRD CORE AREA WASTEWATER TREATMENT PROGRAM” means all work connected with the design, procurement, construction and commissioning of the Wastewater Treatment Program to serve the Core Area Participants;

“LIQUID WASTE MANAGEMENT PLAN” means the plan adopted by the CRD and approved by the Minister of Environment under the *Environmental Management Act*, as amended from time to time;

“MEMBER” means a member of the Commission;

“PROGRAM” means the CRD Core Area Wastewater Treatment Program;

“PROGRAM TEAM” means the CRD term employees and consultants responsible for the delivery of the PROGRAM.

“REGIONAL BOARD” means the Board of the Capital Regional District;

“SENIOR GOVERNMENTS” means the government of the Province of British Columbia and the Government of Canada.

“WASTEWATER TREATMENT PROGRAM” means the wastewater management system for the Core Area Participants contemplated by section 6 of the Liquid Waste Management Plan.

## 2. Establishment of Commission

2.1 The Regional Board establishes the Core Area Wastewater Treatment Program Commission.

2.2 The purpose of the Commission is:

- (a) to administer all aspects of the management of the Program except as set out in this bylaw;
- (b) to conduct the procurement process to promote innovative design and approaches, in addition to those approved in the Liquid Waste Management Plan, that minimize tax payers costs over the long term and are consistent with CRD social, environmental and economic objectives;
- (c) to complete the Program within the established budget and timeframe;
- (d) to achieve best overall value for money of the Program and the best overall triple bottom line outcomes for the Program; and
- (e) to ensure Program compliance with all applicable Provincial and Federal regulations and Contribution Agreements.

## 3. Commission Membership

3.1 The Commission shall consist of a minimum of seven (7) Members appointed by the Regional Board who shall have experience or expertise in one or more of the following areas:

- (a) large, complex infrastructure construction projects;
- (b) wastewater engineering;

- (c) resource recovery;
  - (d) contract law;
  - (e) alternative procurement methods;
  - (f) project management;
  - (g) project finance;
  - (h) Local government waste water plant operations and maintenance;
  - (i) public consultation and communications;
  - (j) environmental sciences, including climate change.
- 3.2 The Regional Board shall ensure that there is diversity of expertise and experience among the Members.
- 3.3 Four (4) of the Members shall be appointed for terms of twelve (12) months and three (3) of the Members shall be appointed for terms of two (2) years as specified by the Regional Board at the time of the initial appointment. Thereafter, appointments shall be for terms of two (2) years.
- 3.4 The appointment of a Member expires at the end of his or her appointed term.
- 3.5 Despite section 3.3, the term of office of all Members shall expire:
- (a) following the completion of the CRD Core Area of the Wastewater Treatment Program; or
  - (b) upon the death, incapacity or resignation of a Member.
- 3.6 The Regional Board shall appoint a person to fill a vacancy on the Commission no later than ninety (90) days of the position becoming vacant.
- 3.7 Notwithstanding section 3.6, the Regional Board may choose not to appoint a replacement Member in the case of a vacancy occurring less than twelve (12) months before the expected date for commissioning of the final component of the Wastewater Treatment Program.
- 3.8 A Member may not appoint an alternate to take his or her place.
- 3.9 The Regional Board may reappoint a Member whose term expires and there is no limit on the number of terms.
4. Meetings
- 4.1 The Commission shall meet at least six times each year, and more frequently as required for the proper management of the Program.
- 4.2 A quorum of members of the Commission is a majority of the Members.

- 4.3 A decision of the Commission shall be decided by a majority of the Members.
- 4.4 Meetings shall be open to the public except insofar as the Commission determines, in accordance with sections 90 and 91 of the *Community Charter*, that a meeting should be closed to the public.
- 4.5 Meetings of the Commission shall be conducted in accordance with the Procedures Bylaw of the CRD in force from time to time, insofar as this is applicable to the proceedings of the Commission, and applicable legislation.
- 4.6 Without limiting section 4.5, if a Member attending a meeting of the Commission considers that he or she is not entitled to participate in the discussion of a matter, or to vote on a question in respect of a matter, because the Member has:
- (a) a direct or indirect pecuniary interest in the matter, or
  - (b) another interest in the matter that constitutes a conflict of interest the Member must declare this and state in general terms the reason why the Member considers this to be the case.
- 4.7 After making a declaration under section 4.6, the Member must not:
- (a) remain or attend at any part of a meeting of the Commission during which the matter is under consideration;
  - (b) participate in any discussion of the matter at such a meeting;
  - (c) vote on a question in respect of the matter at such a meeting; or
  - (d) attempt in any way, whether before, during or after such a meeting, to influence the voting on any question in respect of the matter.
- 4.8 Without limiting the circumstances in which a Member's appointment to the Commission may otherwise be rescinded, and for certainty, the Regional Board may rescind the appointment of a Member who contravenes section 4.6 or 4.7 of this Bylaw.
5. Appointment of Chair
- 5.1 The Regional Board must appoint as Chair a Member agreed upon by the Province.
- 5.2 The Commission shall each year elect a Vice-Chairperson from among the Members.
6. Commission Terms of Reference
- 6.1 The Commission must, within the time stipulated by the Regional Board or such other reasonable time frame, determine any matter relating to the Program referred to the Commission by the CALWMC or the Regional Board.
- 6.2 The Commission must cause the following plans to be prepared:
- (a) a Program Implementation Plan;
  - (b) a Program Management Plan;

- (c) a Financial Plan; and
  - (d) Public Communications and Consultation Plans,
- that will document all aspects of the Program.
- 6.3 The Commission must, from time to time as necessary, cause the Program Implementation, Program Management Plan and Consultation Plans to be amended or updated.
- 6.4 The Commission must report in writing to the CALWMC and Regional Board at least once every thirty (30) days on the progress of the Program with sufficient detail to permit the CALWMC and Regional Board to remain reasonably updated on the Program and aware of significant issues.
- 6.5 The Commission must on or before September 30 of each year prepare an annual Program cash flow forecast, as part of its comprehensive financial accounting reporting, which must include updated forecasts of all capital costs to be incurred in the ensuing year and apportion them by funding entitlement such that each of the CRD, the federal government and the provincial government may commit their pro-rata shares in their provisional and annual budgets.
- 6.6 The Commission must establish a Program Team to deliver the Program and include current CRD Program Staff as members of the Team.
- 6.7 The Commission must:
- (a) appoint consultants as necessary to the Program Team to deliver the Program;
  - (b) appoint advisors to the Program Team including a Fairness Advisor and a Conflict of Interest Adjudicator;
- The procurement of these services shall follow the general tendering procedures outline in CRD's Procurement Policy.
- 6.8 The Commission must liaise with the CALWMC prior to appointing a Project Director.
- 6.9 The Commission must provide direction to the Program Team as necessary to complete the Program in accordance with the Program Implementation Plan and the Program Management Plan.
- 6.10 The Commission must oversee the implementation of the procurement methods selected by the Regional Board and in accordance with the Contribution Agreements, including the preparation of procurement documentation, review of responses to procurement calls, obtain regulatory permits and approvals and the settlement of consulting, construction, maintenance, warranty and security agreements relating to the Program.
- 6.11 In recognition of the importance of promoting innovative design that minimizes tax payer's long term costs, and is consistent with CRD social, environmental and economic objectives, the Commission must work collaboratively with the CALWMC to draft the sections of the RFP that promote innovation.
- 6.12 The Commission must cause to be prepared and provide the Regional Board with draft



reports to permit the Regional Board to report to Senior Governments as required under agreements between the Senior Governments and the CRD or as required by an enactment.

6.13 The Commission must cause all actions to be taken to enable the CRD to fulfill its obligations under agreements between the Senior Governments and the CRD or as required by an enactment to the extent that such actions are within the powers, duties and functions of the Commission.

## 7. Program Implementation Plan

7.1 The Program Implementation Plan to be prepared under section 6.2 must:

- (a) document and finalize the Program's scope, budget and schedule, the expectations of the Regional Board and the Senior Governments regarding the Program;
- (b) establish milestone dates for completion of the Program;
- (c) specify in a comprehensive manner how the Commission will deliver the Program in accordance with the plan parameters and with the expectations of the Regional Board and the Senior Governments;
- (d) address such other issues in relation to the Program as may be requested from time to time by the Regional Board.

## 8. Program Management Plan

8.1 The Program Management Plan to be prepared under section 6.2 must:

- (a) document all organizational aspects of the Program, including individual responsibilities of Program Team members, their reporting relationships with consultants and contractors and the administrative responsibilities conferred on Program Team members;
- (b) provide for a schedule for reporting to the CALWMC and the Regional Board; and
- (c) address such other issues in relation to the Program as may be requested from time to time by the Regional Board.

## 9. Consultation Plans

9.1 The Consultation Plans under section 6.2 must provide for early, ongoing and continuous and responsive consultation in accordance with applicable public participation policies of the CRD with:

- (a) the public;
- (b) public organizations having an interest in the Program;
- (c) Core Area Municipalities and other public authorities; and
- (d) The Esquimalt, Beecher Bay and Songhees First Nations and any other First Nation identified by the Regional Board,

during the Program.

#### 10. Role of the Regional Board

10.1 Without limiting the powers, duties or functions of the Regional Board under the *Local Government Act* or any other enactment,

(a) it shall be the function of the Regional Board to:

(i) review the terms of the RFQ/RFP;

(ii) approve all amendments to the Liquid Waste Management Plan;

(iii) approve mitigation guidelines for the Program;

(iv) approve design guidelines for above ground structures, respecting the design guidelines of the local municipality;

(v) approve the principles of evaluation for the RFP and bid award, such as best value for dollar, minimum cost or maximum benefit;

(vi) approve any agreement for funding for the Program.

(b) it shall be the function of the Regional Board, through CRD staff to:

(i) negotiate and administer cost sharing or contribution agreements with Senior Governments.

#### 11. Role of the CALWMC

11.1 It shall be the function of the CALWMC to:

(a) review all documents and reports prepared by the Commission for submission to the Regional Board;

(b) advise the Commission on local issues and concerns that may affect the Program and on the information and communications required by the communities regarding the Program;

(c) advise the Regional Board on any matter being considered by the Commission that may affect the Program;

(d) monitor the financial and Program construction performance of the Commission to ensure maximum public benefit;

(e) review any Program changes being recommended by the Commission for Board consideration; and

(f) appoint a representative to an agreement management committee under the applicable Contribution Agreements.

#### 12. Role of the CALWMC Chair and the Chief Administrative Officer

12.1 The role of the CALWMC Chair or his or her designate and the Chief Administrative Officer of the CRD is to attend meetings of the Commission and to advise and liaise between the Commission, the CALWMC and the Regional Board.

### 13. Budget

13.1 The Commission shall, on or before the 30<sup>th</sup> day of September in each year prepare and submit a proposed budget covering all anticipated costs of the Program under the management of the Commission for presentation to the Regional Board.

13.2 The proposed budget must:

- (a) be in a form approved by the Chief Financial Officer of the CRD;
- (b) provide for the necessary funds for the Program;
- (c) be approved by the Regional Board;
- (d) if directed by the Regional Board, be amended to the satisfaction of the Regional Board and be resubmitted not later than December 31 in each year;
- (e) at no time provide for the creation of a deficit or unauthorized debt.

13.3 The Commission must not authorize an expenditure other than an expenditure provided for in the budget as included in the approved financial plan of the CRD.

### 14. Delegation

14.1 Subject to section 10.1 and section 13.3 the Regional Board delegates to the Commission all of its powers, duties and functions in relation to the management of the Program until the completion of commissioning of the Program.

14.2 Without limiting section 13.1, the Commission may authorize entering into contracts related to the Program in the name of the CRD provided that:

- (a) the contract falls within the Commission's delegated authority in relation to the Program; and
- (b) the necessary expenditures to meet the obligations of the CRD for the contract are contained within the approved financial plan of the CRD.

14.3 Delegation of authority under this Bylaw is subject to:

- (a) the policies and procedures of the Regional Board, and
- (b) delegations of authority to officers and employees contained in sections 3 and 4 of the Capital Regional District Delegation Bylaw No. 1.

14.4 For certainty, the delegation of powers duties and functions of the Regional Board to the Commission under section 13.1 expires following the completion of commissioning the Program.

15. Remuneration and Expenses

15.1 The Regional Board shall determine the remuneration for the Chair, Vice-Chair and Members.

15.2 Expenses incurred by the Commission while engaged in the business of the Commission will be reimbursed in accordance with the policies of the Regional Board.

16. Severability

If any part of this Bylaw is found to be invalid by a court of competent jurisdiction, it must be severed without affecting the validity of the remainder of the Bylaw.

17. Citation

This Bylaw may be cited as the Core Area Wastewater Treatment Commission Bylaw No. 1, 2012.

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|-------------------------|--------|------|
| READ A FIRST TIME THIS  | DAY OF | 2012 |
| READ A SECOND TIME THIS | DAY OF | 2012 |
| READ A THIRD TIME THIS  | DAY OF | 2012 |
| ADOPTED THIS            | DAY OF | 2012 |

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CHAIR

\_\_\_\_\_  
CORPORATE OFFICER