

**REPORT TO THE PLANNING AND PROTECTIVE SERVICES COMMITTEE
MEETING OF WEDNESDAY, MAY 23, 2007**

SUBJECT

Proposed Amendment of the Regional Growth Strategy: 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 outline the issues raised through the initial consultation phase on the proposed amendments to the Regional Growth Strategy and to provide recommendations on how to proceed with the interim amendment.

BACKGROUND**RGS Proposed Amendment**

An amendment of the Regional Growth Strategy (RGS) was proposed to address a number of outstanding issues that were not completed at the time of adoption in August 2003. The need for an interim update was recognized in the RGS: implementation action I-6 requires the update of the RGS three years after adoption to define the regional urban containment and servicing policy area (RUCSPA) in the District of Sooke, and to incorporate revisions arising from regional strategies for transportation, housing affordability, and economic development.

At its meeting of December 6, 2006, the Board of the CRD approved a work plan for an interim amendment of the RGS that was reduced in scope from what was contemplated in the approved RGS and included the following issues

1. Inclusion of the proposed Highlands Servicing Area (as designated on Map 2.1 of the Official Community Plan for the District of Highlands) within the Regional Urban Containment and Servicing Policy Area (RUCSPA);
2. Recognition of settlement containment areas in the Juan de Fuca Electoral Area, as designated in the draft Official Community Plans for East Sooke and Otter Point;
3. Language to give effect to the Memorandum of Understanding (MOUs) signed in 2002. A MOU signed between the CRD and the District of Oak Bay enabled the District to achieve its housing targets through a variety of housing types, rather than limiting development to ground-oriented housing. The MOU signed between the CRD and the Town of View Royal agreed to identify the Town as a member of the Core municipalities for the purpose of the RGS.
4. Additional mapping and text changes were made, including:
 - Changes in terminology and mapping within the Renewable Resource lands Policy Area to acknowledge the Provincial abolition of the Forest Land Reserve (FLR);
 - Acknowledgement of the OCP settlement designations in Port Renfrew (which were previously identified as renewable resource lands in the RGS)
 - Update trail locations and park boundaries

At its meeting of February 14, 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). To resolve that inconsistency, the Board directed staff to “include an amendment to the RUCSPA to coincide with the proposed Highlands Servicing Boundary in the Regional Growth Strategy bylaw interim update.” As well, Official Community Plans for the Electoral Area communities of East Sooke and Otter Point defined “settlement containment areas” within their communities with an expectation that they may be reflected in the RGS to permit servicing in the future. The Board report of May 25, 2005 contained the motion, “that any proposed changes to the Regional Urban Containment and Service Policy Area (RUCSPA) in the Juan de Fuca Electoral Area be dealt with as part of the interim update of the Regional Growth Strategy.”

The Legislative Process for Amending the RGS:

The consultation, review and approval process for the RGS amendment is required, by provincial legislation, to follow the same process used to create the initial RGS. The steps involved in the consultation process are outlined in the appendix to this report.

Consultation Activities to Date:

The proposed RGS amendment was distributed to all “affected municipalities” as required by provincial legislation. This included all member municipalities, JDF electoral area, and the Cowichan Valley Regional District. Copies of the proposed amendment were couriered to every Indian Band office in the CRD. Notice of the RGS amendment was sent by letter and email to over 270 stakeholders and interested publics

The proposed amendment was presented to the Development and Planning Advisory Committee (DPAC), an inter-governmental committee made up of municipal planning representatives and Ministry of Community Services staff, as well as to the Round Table on the Environment

The CRD regional planning staff offered to meet with any/all municipal councils to explain the RGS amendment. Three municipalities invited regional planning staff to present the proposed amendment to their councils (Esquimalt, Sooke and View Royal). A presentation was also made to the JDF electoral area land use committee.

A dedicated CRD web site on the RGS amendment was established, which also included a feedback form for online submissions from the public.

A Public Information Session was conducted on April 11th. The session was advertised in the Times Colonist and the regional (Black Press) newspapers. Approximately 42 people attended the session which included a presentation and question and answer period.

ALTERNATIVES

1. That the Board approve the RGS Amendment as prepared in the consultation draft (Attachment #1), and introduce the Bylaw for first and second reading.
2. That the Board approve the modified RGS amendment, as outlined in Attachment #2 to this report, and introduce the Bylaw for first and second reading.
3. That the Board not proceed with the amendment and direct staff to address the proposed changes in the scheduled 5-year review of the RGS scheduled for 2008.

FINANCIAL IMPLICATIONS

The costs associated with public consultation and report distribution were included in the 2007 RGS budget.

PUBLIC CONSULTATION IMPLICATIONS

Comments received from the public through the consultation process were overwhelmingly negative around the issue of extending the urban containment boundaries, particularly through an amendment process as opposed to a more comprehensive review. Written comments received by post, email and through the online form are included in Attachment #3.

Process concerns: Some noted that changes to the urban containment boundary should only be done in the context of a comprehensive review of the RGS, rather than an interim amendment. Others also commented that the rationale for expanding the boundaries only considered development and financial goals, but did not consider the broader social, fiscal, environmental and transportation implications of making these changes. Many expressed concern that the proposed boundary changes would undermine the intent of the RGS. Some noted the inconsistency between CRD community energy plan objectives and changes to the containment boundaries.

Containment versus sprawl: Many expressed concern about the extension of containment boundaries throughout the electoral area and into the resource and rural lands as this was seen to encourage sprawl development. This was seen as being inconsistent with the RGS objectives and would set a precedent for continued sprawl in the region.

District of Highlands: The majority of comments received pertained to the proposal to extend the RUCSPA in the District of Highlands. Many felt that the area to be included within the RUCSPA was much larger than required to accommodate the Bear Mountain development and would lead to more growth in the future. Some expressed concern about the potential changes to the District as a result of changing housing, demographics, voting patterns and resident expectations. Many questioned the projected financial benefits associated with the development. Not everyone was against any development in this area; rather they expressed concerns about the amount of land included; concern about future development and additional density; and the ability to protect the trails and wildlife corridors located on the northern part of the site.

The pre-existing RUCSPA area within Highlands covers just over 73 ha of land, including 49.5 ha of industrially zoned land, on the east side of Millstream Road. The proposed extension of the RUCSPA would add another 267 ha, covering the Bear Mountain Comprehensive Development Area to the west of Millstream Road. The justification for the extension is to diversify the tax base by adding more non-residential development. The extended RUCSPA would include 250 tourist commercial units (initially proposed as hotel) and golf-course related commercial as well as 150 single-detached dwellings.

Electoral Area Settlement Areas: In addition to the general comments about the inadvisability of extending containment boundaries, a number of submissions were received from residents in the JDF electoral area expressing concern about the definition of the settlement areas. In particular, the submission from the Otter Point & Shirley Residents & Ratepayers Association (OPSRRA) noted that as a result of recent Timber West land sales, approximately 774 acres (313.2 ha) of land are proposed for development in Otter Point. *This exceeds the land area of the Bear Mountain development proposed for Highlands.* None of these lands are contained within OCP settlement areas. As a result, the existing OCP settlement boundaries may change in the future, so it would not be appropriate to enshrine containment boundaries in the RGS until those decisions are clarified at the local level. The Association also requested the Kemp Lake

Watershed and Goudie Creek watershed be identified as a watershed in the RGS (The existing RGS does include watershed definitions).

Memorandums of Understanding (MOUs): Few had any concerns or opinions regarding the MOUs or the map updates. Correspondence for the Town of View Royal requested that the provision in the amendment pertaining to View Royal being classified as a core municipality be severed from the RGS amendment as it is not relevant to the primary issues. Correspondence for the District of Oak Bay supported the proposed changes to the housing targets provision as outlined in their MOU.

Mapping Changes: Most of the changes made to the RGS maps reflect already approved or existing conditions. Trail locations, Indian reserve lands, and park boundaries were better defined. Changes to ALR boundaries that occurred since adoption of the RGS and approved by the provincial commission were noted. Of particular importance was the change to the Forest Land Reserve (which was abolished by the Province). A few commenters noted the change in status of the Forest Land Reserve and Provincial Capital Commission (PCC) lands in Langford, which were changed to residential and unprotected green space. (The PCC lands were previously designated as Park in the RGS.)

GROWTH MANAGEMENT IMPLICATIONS

The initial consultation phase for the RGS amendment highlighted two significant issues which should be addressed through this amendment and through the subsequent revision of the RGS: the RGS servicing policy and the limitations associated with the Provincial Legislation.

The RGS Servicing Policy: The substantive aspects of the proposed RGS amendment pertain to the RGS servicing policy which seeks to restrict the extension of urban-level servicing to areas within the regional urban containment boundary. The RGS servicing policy, as described in Initiative 1/Action 5 of the RGS, states:

The CRD and member municipalities agree not to further extend urban sewer and water services, or increase servicing capacity to encourage growth beyond designated official community plan limits at the date of adoption of the Regional Growth Strategy bylaw, outside the Regional Urban Containment and Servicing (RUCS) Policy Area generally described on Map 3, except to address pressing public health and environmental issues, to provide fire suppression or to service agriculture.

The RGS servicing policy is intended to do two things:

- Reduce sprawl development throughout the region by containing the majority of urban and suburban type growth within a containment boundary, defined as the Regional Urban Containment and Servicing Policy Area (RUCSPA).
- Minimize the costs associated with extending, operating and maintaining piped infrastructure throughout the region.

The basic philosophy of the RGS is to contain urban growth within defined urban areas, while protecting the rural, resource and park lands, to prevent incremental loss of these amenities through unmanaged growth. Limiting the outward extension of servicing is intended to provide a signal to the development community as to where development should be directed and where public infrastructure investments will be made.

Notwithstanding the good intent of the servicing restriction, the actual application of this policy is creating some unintended effects. To effectively meet the intent of this policy, suburban-level densities should not be provided for in the rural areas. However, the extent of pre-existing zoning provisions throughout the region which allows suburban development “as-of-right” without the need for OCP or RGS amendments compounds this problem. In particular, the four

units on 10 acres provision within the electoral area facilitates the suburbanization of large tracts of rural lands. The RGS servicing restriction simply means much of this development occurs as un-serviced sprawl. It does not prevent the development from occurring.

This condition needs to be addressed through a number of means, including OCP policies and zoning bylaws, servicing agreements, standards and criteria, and servicing rate structures, not just through RGS boundary provisions.

The response to the servicing restriction in some communities has been to over-expand the urban containment boundary to enable future servicing and to avoid triggering the lengthy RGS amendment process. Some communities did this before the RGS was adopted; some accomplished it through regional context statement provisions, and some are proposing to do that now through this amendment. While approval of such boundary extension meets the “letter” of the RGS, it clearly misses the intent.

The regional urban containment boundary should serve to identify those areas where *urban* level development exists or is contemplated in the next 25 years, and where future urban-level infrastructure investments should be targeted (including transit, sewer, commuter rail, commuter cycling routes and the like). However, by linking the extension of *water* services to the urban containment boundary means including lower density/non-urban development that may want access to a water pipe sometime in the future. The effect of this approach can be seen in the mapping produced for this proposed amendment, which includes numerous proposed settlement areas that are not intended (or suitable) for urban uses or region-wide services.

It was intended that the RGS RUCSPA and servicing provisions would be guided by a Master Implementation Agreement (MIA) which would establish criteria for the extension of the boundary and presumably establish criteria to guide the extension of piped services. The MIA was never adopted. It is recommended that other mechanisms be explored to meet the objective of better managing infrastructure and limiting sprawl as, clearly, the servicing policy (as it pertains to water services) within the RGS has not proved effective in this regard and triggers an inappropriate level of regional involvement in local land use decisions.

Provincial Legislation: As can be seen in previous sections of this report, the process to create and amend a regional growth strategy is time consuming and complex. The initial intent of these procedural requirements, established in the provincial legislation, was to dissuade local governments from frequently modifying the RGS. However, the legislation itself is based on a bottom-up, consensus-seeking process which respects local autonomy over collective decision-making. A regional growth strategy does not over-ride local autonomy; it only identifies those policies and initiatives the member municipalities have decided to address collectively and it remains only as strong as that collective commitment.

The RGS itself is not binding on a member municipality; it is only binding on the regional district. Member municipalities bind themselves to the provisions of the RGS through their Regional Context Statements. It is the responsibility of the Board to determine the extent to which each context statement adequately reflects the RGS policies and may choose to accept a regional context statement which is not consistent with the RGS, providing a majority of the Board approve. Needless to say, this has created confusion on the part of both the public and the member municipalities.

SUMMARY/CONCLUSIONS

The interim amendment of the RGS was put forward to respond to a number of outstanding issues, including map and text updates; the provisions of the Memorandums of Understanding (MOUs); and new settlement areas. The timing of the amendment was in a large part driven by the request from the District of Highlands to provide servicing to the Bear Mountain

Comprehensive Development Area as described in their approved regional context statement.

The following suggests a response to the issues raised through the initial consultation process:

District of Highlands: Whether the RUCSPA (and associated servicing) is extended to this development will affect the *density* of development proposed; it will not prevent the development. According to municipal provisions, the golf course and approximately 62 housing units could be provided on this site without further municipal or regional approvals and would be accommodated on private services (well and septic systems). If servicing can be obtained, another 90 housing units and 250 “tourist commercial” units could be developed.

From a social and environmental perspective it makes sense to extend servicing to this development if the proposed hotel is to be developed. This could be accomplished in a number of ways:

1. Extending the RUCSPA to cover the entire area contained within the comprehensive development area.
2. Extending the RUCSPA to include only the area intended for the hotel and the residential component
3. Avoid extending the RUCSPA and enter into a multi-party servicing agreement to extend services to the commercial and tourist-commercial development as outlined in the Highlands regional context statements to service specific development areas within the comprehensive development area, but not permit the extensions beyond that without the development of a new agreement. Any future expansion of the RUCSPA would be done as part of the RGS 5 year review and when the District has adopted their OCP.

As a result of the approval of the District of Highlands Regional Context Statement and direction from the Board, staff has recommended the 1st sub-option which forms part of Alternative No. 2 of this report. A reason for considering the 3rd sub-option, above, and not including the entire area within the RUCSPA at this time, is the Highlands OCP is still in draft form and changes continue to be made to it. Further, unless this area is intended to accommodate significant increases in density, it may not warrant such an extensive boundary extension. However, given the extent of process which has occurred to date on this project, it would be unreasonable to deny the extension of servicing to the hotel and the adjacent residential. Wording in the modified RGS Amendment makes provision for entering into agreements to deal with servicing extensions in the future, if there is Mutual Agreement on utilizing this approach. Proposed servicing extensions would need to be consistent with approved Regional Context Statements and/or OCP's.

JDF Electoral Areas: As a result of the consultation process and further review of the Electoral Area OCPs, it is recommended that the Settlement Containment Areas identified in OCP's *not* be included in the RGS at this time. Within the OCPs themselves, there needs to be a more definitive planning rationale developed which identifies what type of growth is anticipated, where it should be concentrated and what the priorities for servicing are prior to establishing a regional boundary. As can be seen through this report, the process to alter containment boundaries is very time consuming. As such, unless a clear case can be made to define a specific boundary at this time, it is recommended that this issue be dealt with as part of the RGS revision beginning next year. To ensure cost-effective servicing extensions, the boundary areas should be contiguous to the greatest extent possible.

Memorandums of Understanding: The provisions of the MOUs were previously approved by the Board, and are being brought forward at this time as housekeeping amendments. Should the RGS amendment not be approved, the provisions of the MOU will remain in place as they have also been reflected in approved regional context statements, and will be incorporated in the RGS 5-year review.

RECOMMENDATIONS:

1. That the modified RGS Amendment Bylaw (Attachment 2) be approved.

That the Planning and Protective Services Committee recommend to the Board:

2. That Bylaw No. 3443 'Capital Regional District Growth Strategy Bylaw No. 1, 2002, Amendment Bylaw No. 1, 2007' be given 1st reading and 2nd reading and be referred to a Public Hearing.
3. That the holding of the Public Hearing on Bylaw No. 3443 be delegated to Director Clement or his Alternate.
4. That staff be directed to prepare a Master Implementation Agreement to address *future* water servicing extensions outside the RUCSPA, and establish criteria, in collaboration with CRD Water Services, Regional Planning, Electoral Area Planning, and other community water providers.

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COMMENTS:

Appendix One: RGS Amendment Consultation Process

The consultation and review requirements are as follows:

1. Board formally initiates RGS amendment.
2. Board approves RGS consultation plan.
3. The proposed amendment is distributed to member municipalities, stakeholders and interested publics for comment. *This is part of the first phase consultation and does not constitute the formal transmittal of the amendment.*
4. Comments from the consultation process are reviewed and the amendment is revised to respond to issues raised through this process. A report and recommendations are prepared for the Board's consideration. *This is the intent of this report.*
5. Board gives 1st and 2nd reading to the amendment bylaw.
6. A statutory public hearing is held (tentatively scheduled for the end of June 2007)
7. The amendment bylaw is formally transmitted to all affected local governments, which includes the member municipalities, the adjacent regional district (CVRD) and the Minister of Community Services. In keeping with the approved consultation plan, notice of the amendment bylaw is also sent to all Indian Band Councils, Electoral Area planning advisory committees and Land use committees, regional stakeholder groups, and interested publics on the RGS contact list. The affected local governments have **120 days** to formally approve or reject the RGS amendment and must communicate their decision to the Board through a resolution of their Council (or Board resolution from CVRD and acceptance letter from the Minister).
8. If there is unanimous acceptance, the Board gives third and final reading to the amendment and adopts the revised RGS.
9. If there is not unanimous approval, the dispute resolution provisions established in the provincial legislation apply. The province does not intervene directly in any resolution but facilitates or supports the process which can range from facilitated discussion to binding arbitration. If a member municipality rejects the amendment, it must state what aspect it cannot accept. A dispute over one section of a RGS or amendment does not negate the rest of the bylaw.

If the RGS is amended, all municipalities will again be required to submit regional context statements for acceptance by the Board. This requirement is stated in section 866(8) of the *Local Government Act*. Context statements must be submitted within two years of the date of adoption of an amended RGS.

Municipalities who have already submitted regional context statements for the current RGS bylaw may resubmit these same context statements provided that the amended RGS is not substantially different from the current RGS. Those with context statements still outstanding would presumably have another two years with which to submit their context statements. According to the Province, the impact of not meeting the legislative requirement to submit a regional context statement could affect the validity of an OCP if challenged and could affect the continuation or expansion of servicing extensions in the affected municipalities. (this would likely

require a legal challenge as there is no precedence of the Province enforcing its own legislation).

Timeline of RGS Amendment

Activity	Proposed Dates
Draft bylaw completed	Feb.15
Consultation period begins; Draft bylaw presented to DPAC	Feb.16
Draft bylaw presented to CRD Round Table on Environment	Mar.12
RGS Amendment web page goes online; Draft bylaw sent to stakeholders for comment	Mar. 20
CRD staff meet with interested parties from municipalities	Mar 26-May 09
Public Information Session	Apr. 11
Consultation period ends	May 09
Revised bylaw goes to committee (P&PS)	May 23
Board gives 1 st and 2 nd reading	Jun. 13
Public Hearing	Late June
Bylaw referred to municipal councils to accept or reject	Jun 27 – Oct 25 (120 days)
Board gives 3 rd reading	Nov. 14