



REPORT TO THE PLANNING, TRANSPORTATION AND PROTECTIVE SERVICES COMMITTEE
MEETING OF **WEDNESDAY, JULY 25, 2012**

SUBJECT **DEVELOPMENT PROCEDURES BYLAW, PROCESS AND POLICY**

AMENDMENT TO BYLAW NO. 3166, A BYLAW TO ESTABLISH THE JUAN DE FUCA LAND USE COMMITTEE (AMENDING BYLAW NO. 3826)

AMENDMENT TO BYLAW NO. 3110, JUAN DE FUCA ELECTORAL AREA DEVELOPMENT PROCEDURES BYLAW (AMENDING BYLAW NO. 3664)

ADOPTION OF CRD BOARD POLICY REGARDING CONSISTENCY WITH REGIONAL GROWTH STRATEGY AND PROCESSING DEVELOPMENT APPLICATIONS IN THE JUAN DE FUCA ELECTORAL AREA

ISSUE

At the October 12, 2011 and the November 9, 2011 Capital Regional District (CRD) Board meetings the Board directed that the motions regarding the role of the CRD Board in land use planning for the Juan de Fuca Electoral Area regarding consistency with the Regional Growth Strategy (RGS) be referred back to staff for a report to the Planning, Transportation and Protective Services Committee (Appendix 1). Staff have suggested amendments to the Juan de Fuca Land Use Committee Bylaw and to the Juan de Fuca Development Procedures Bylaw and proposed a new Board policy to address the Board's concerns outlined in these motions.

ALTERNATIVES

1. Recommend that the CRD Board approve the following bylaw amendments and adopt the following policies and procedures:
 - a. Bylaw No. 3826, "Capital Regional District Land Use Committee Bylaw No. 1, 2004, Amendment Bylaw No. 5, 2012", to amend Bylaw 3166.
 - b. Bylaw No. 3664, "Juan de Fuca Electoral Area Development Procedures Bylaw No. 1, 2003, Amendment Bylaw No. 4, 2012", to amend Bylaw No. 3110.
 - c. The Juan de Fuca Development Application RGS Consistency Policy.
 - d. The collaborative approach to staff recommendations regarding consistency with the RGS as outlined in report PPS/JP 2012-04.
2. That the CRD Board provides alternate direction to staff regarding the motions contained in Appendix 1 of report PPS/JP 2012-04.

PLANNING ANALYSIS

Juan de Fuca Electoral Area Development Application Referral Process

In response to the Board motions regarding the referral of applications to the whole Board for a determination of consistency with the RGS, staff has prepared amendments to procedural and committee bylaws to provide the requirement for the whole Board to determine consistency. Further, staff has prepared a draft Board policy addressing the handling of development applications once a Board determination of inconsistency has been made.

While the first part of motion 8.2 which concerns all Land Use Bylaw (rezoning) amendment applications in the Rural Resource Lands area of the Juan de Fuca Electoral Area, motion 8.3 concerns all Land Use Bylaw (rezoning) and Official Community Plan (OCP) amendment applications in the Juan de Fuca Electoral Area. Therefore, the proposed procedural changes would apply to all amendments to a Land Use Bylaw (rezoning) or an OCP in the Electoral Area.

Changes are proposed to the Juan de Fuca Land Use Committee (LUC) Bylaw, Bylaw No. 3166 to eliminate the referral delegation from the Board to the LUC (Appendix 2). This results in Committee A or B (the Board) pursuant to Part 26 of the *Local Government Act (LGA)* authorizing all referral recommendations from the LUC including requiring referral to the whole Board for a determination of consistency with the RGS in accordance with Part 25 of the *LGA*. In addition, changes were made to the Juan de Fuca Procedural Bylaw to revise the application process to support the amendments to Bylaw 3166 (Appendix 3). Under the revised procedure, electoral area planning staff in consultation with regional planning staff would prepare a report to the LUC which outlines whether the application is

considered to be inconsistent or not inconsistent with the RGS and the LUC would then make a referral recommendation for Committee A or B as appropriate. This revised process is outlined in Schedule B which will be incorporated in Bylaw 3110.

Concurrently, amendments are proposed to the Juan de Fuca Development Procedures Bylaw to reflect changes to the referral process. The amendments will direct staff and Committee A or B to refer all zoning and OCP amendment applications to the full CRD Board for a determination of consistency with the RGS. The consistency decision would be forwarded back to Electoral Area Planning. Staff would prepare a report to the LUC outlining all of the referral comments and if the full CRD Board determined the application was not consistent with RGS; staff would propose that the LUC recommend the application be denied. This recommendation would proceed to Committee A or B and as outlined in the RGS Consistency Policy which specifies that should the Board determine an application is not consistent with the RGS that it will not proceed through the review process (Appendix 4).

The intent of these amendments and new Board policy is to provide the full Board the opportunity to consider whether or not all Land Use Bylaw and OCP amendment applications are consistent with the RGS and can be processed without an amendment to the RGS.

Determination of Consistency

While the procedural amendments and new Board policy outline the process for consideration of consistency with the RGS, there is no established technical methodology for determining consistency. Further, discussion with the provincial staff indicates that there is no overarching provincial methodology either. Most compelling is the recent Court decision regarding a Central Saanich application which appears to indicate that a decision of consistency made by a municipal government is sufficient and would likely not be successfully challenged in the Courts. As the CRD Board is the decision making entity for the Juan de Fuca Electoral Area, its determination regarding consistency would likely be supported by the Courts.

It is very difficult to establish a technical methodology for determining consistency. As was noted in a previous staff report to the Board on April 13, 2011, the language of the current RGS tends to be conceptual and general in nature, with very little wording that is absolute or discreet. This type of language does not lend itself well to a definitive determination of consistency or inconsistency. Several options were outlined in the report regarding the determination of consistency.

As noted above Electoral Area and Regional Planning staff will collaborate to assess the applications based on planning policy and if necessary legal counsel will be consulted to make a recommendation regarding consistency for the Boards consideration. Through the RGS review implementation procedures will formalize the role of the Board in determining consistency and provide guidance on staff recommendations on consistency for the Boards consideration.

Voting Structure on Part 26 in the Juan de Fuca Electoral Area

A previous report to the Board on April 13, 2011 outlined the various voting in relation to Part 26 decisions in the Juan de Fuca Electoral Area. The options include:

1. That the Board maintain the established voting Block A and Voting Block B structure as outlined in BC Reg. 287/2001 for voting on Part 26 decisions for the Juan de Fuca Electoral Area;
2. That the Board requests the Province repeal BC Reg. 287/2001 and revert to the “all directors vote” in accordance with Section 791(11) for voting on Part 26 decisions for the Juan de Fuca Electoral Area;
3. That the Board enter into Section 804.1 agreements that would allow municipal directors to vote on major land use planning issues for the Juan de Fuca Electoral Area in exchange for a contribution to the cost of planning in relation to the issue;
4. That the Board requests the Province to amend BC Reg. 287/2001 to create an additional Voting Block C that would allow all Board members to vote on Rural Resource Land matters for the Juan de Fuca Electoral Area.

It is the opinion of staff that the proposed changes to the procedures for rezoning and OCP amendments outlined above adequately address the concerns regarding the Boards role in determining consistency with the RGS and eliminate the need for revising the voting structure.

It needs to be pointed out the changes recommended in the procedure allows for a greater regional influence in the land use decision making process in the Juan de Fuca Electoral Area. Further to this, the November 9, 2011 motion acknowledges that such a greater Board interest in decision making in the Juan de Fuca Electoral Area should be accompanied with appropriate funding to support road infrastructure, emergency services and planning which relates to cost sharing agreements pursuant to Section 804.1 of the LGA.

CONCLUSION

The proposed amendments and new Board policy facilitates the full Board's consideration of all Land Use Bylaw and OCP amendment applications to ensure consistency with the RGS.

RECOMMENDATIONS

That the Planning, Transportation and Protective Services Committee recommend to the Capital Regional District Board:

1. That Bylaw No. 3826, "Capital Regional District Land Use Committee Bylaw No. 1, 2004, Amendment Bylaw No. 5, 2012" be introduced and read a first time, a second time;
2. That Bylaw No. 3826, "Capital Regional District Land Use Committee Bylaw No. 1, 2004, Amendment Bylaw No. 5, 2012" be read a third time; and
3. That Bylaw No. 3826, "Capital Regional District Land Use Committee Bylaw No. 1, 2004, Amendment Bylaw No. 5, 2012" be adopted.
4. That Bylaw No. 3664, "Juan de Fuca Electoral Area Development Procedures Bylaw No. 1, 2003, Amendment Bylaw No. 4, 2012" be introduced and read a first time and a second time;
5. That Bylaw No. 3664, "Juan de Fuca Electoral Area Development Procedures Bylaw No. 1, 2003, Amendment Bylaw No. 4, 2012" be read a third time; and
6. That Bylaw No. 3664, "Juan de Fuca Electoral Area Development Procedures Bylaw No. 1, 2003, Amendment Bylaw No. 4, 2012" be adopted.
7. That the CRD Board Juan de Fuca Development Application Regional Growth Strategy Consistency Policy be adopted.
8. That the CRD Board endorse the collaborative approach to staff recommendations regarding consistency with the RGS as outlined in report PPS/JP 2012-04.

****ORIGINAL SIGNED****

June Klassen, MCIP
Manager, Local Area Planning

Marg Misk-Evans, MCIP
Senior Manager Regional and Strategic Planning
Concurrence

Robert Lapham, MCIP
General Manager, Planning and
Protective Services
Concurrence

Kelly Daniels
Chief Administrative Officer
Concurrence

Appendix 1: CRD Board Motions

Appendix 2: Proposed Bylaw No. 3826

Appendix 3: Proposed Bylaw No. 3664

Appendix 4: Proposed Juan de Fuca Development Application RGS Consistency Policy

Appendix 1: CRD Board Motions

October 12, 2011 CRD Board Motions

8.2 Juan de Fuca Rural Resource Land Rezoning and Provincial Legislation

The Board directs that staff draft a policy that all future rezoning applications pertaining to the JDF resource lands be referred to the whole CRD Board for determination of consistency with the RGS upon receipt by staff;

Further that the Board direct staff to refer to the Province the Board's requirement that local government legislation provide clearly and unequivocally that such referrals be mandatory;

Further that the Board direct staff to refer to the Province the need for clarification of local government legislation to confirm the difference between the process regarding a regional district board bylaw and a municipal council bylaw in determining consistency with the RGS.

8.3 Ruling of Consistency re Regional Growth Strategy

That the Board of the Capital Regional should take steps to clearly indicate that in matters of governance for the Juan de Fuca Electoral Area, the full Board has the authority and obligation to rule on the issue of consistency with the Regional Growth Strategy;

Furthermore, that on matters in the Juan de Fuca Electoral Area which may contravene the Regional Growth Strategy, it is the expectation of the full Board that it will exercise this power early in the application process and, most certainly, before the application comes before the Board or a subset of the Board for approval;

Finally, the Board of the Capital Regional District should take the stance that a ruling of inconsistency will prevent any such application from proceeding further in the process of approval.

8.4 Revised Voting Structure – Juan de Fuca Rural Resource Lands

That the Board of the Capital Regional District should petition the Government of the Province of British Columbia to revise the Order in Council which created Voting Block A in order to:

a) limit the authority of Voting Block A to lands in and immediately around settled areas in the Juan de Fuca Electoral Area such as Otter Point and Shirley

b) to establish the full Board of the Capital Regional District as the decision making authority for the rest of the Rural Resource Lands in the Juan de Fuca Electoral Area.

November 9, 2011 CRD Board Motion

WHEREAS through the recent process of an application to rezone a large area of undeveloped property in the unincorporated area of JDF Rural Resource Lands, it has been recognized that both safe road infrastructure and emergency services are at a critical state in relation to citizens using the parks, trails and roads within the said area and beyond;

AND WHEREAS through the recent CRD JDF Rural Resource land rezoning process, the directors representing the Core Area have made it clear on behalf of their citizens that they want both rights and voting rights over said lands and area;

AND WHEREAS from the submitted e-mails, letters, public participation and public hearing over the Marine Trail Holding Rezoning Application, given that approximately 83% of the input came from citizens of Saanich and Victoria where it was made clear they want a say in how the lands develop and how the said area is protected for their enjoyment, use and protection of wildlife/environment;

THEREFORE BE IT RESOLVED that the Capital Regional District immediately ask the Core Area Municipalities to contribute substantial capital and operating funding for the establishment of Emergency Services/Infrastructure and Planning for the stated area.

Appendix 2: Proposed Bylaw No. 3826

CAPITAL REGIONAL DISTRICT

BYLAW NO. 3826

**A BYLAW TO AMEND BYLAW NO. 3166, “A BYLAW TO ESTABLISH THE
JUAN DE FUCA LAND USE COMMITTEE”**

- A. WHEREAS** the Capital Regional Board wishes to amend “A Bylaw to Establish the Juan de Fuca Land Use Committee”;
- B. NOW THEREFORE** the Capital Regional Board in open meeting assembled, hereby enacts as follows:
 - 1. Bylaw No. 3166 being the “Capital Regional District Land Use Committee Bylaw No. 1, 2004” is hereby amended as follows:
 - A. 4.0 POWERS OF THE COMMITTEE**
 - i) Delete SECTION 4.2
 - 2. This bylaw may be cited as the “Capital Regional District Land Use Committee Bylaw No. 1, 2004, Amendment Bylaw No. 5, 2012”.

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

CHAIR

CORPORATE OFFICER

CAPITAL REGIONAL DISTRICT

BYLAW NO. 3664

A BYLAW TO AMEND BYLAW NO. 3110, “JUAN DE FUCA ELECTORAL AREA DEVELOPMENT PROCEDURES BYLAW NO. 1, 2003”

A. WHEREAS the Capital Regional District Board wishes to amend “A Bylaw to Establish Fees and Procedures to Amend an Official Community Plan, a Zoning Bylaw, to Issue a Permit under Part 26 of the Local Government Act, and to Apply for a Building Conversion Subdivision Application in the Juan de Fuca Electoral Area”;

B. NOW THEREFORE the Capital Regional District Board in open meeting assembled, hereby enacts as follows:

1. Bylaw No. 3110 being the “Juan de Fuca Electoral Area Development Procedures Bylaw No. 1, 2003” is hereby amended as follows:

A. BYLAW DESCRIPTION

1. Delete the bylaw description in its entirety and replace with the words “**A BYLAW TO ESTABLISH DEVELOPMENT APPLICATION FEES AND PROCEDURES FOR THE JUAN DE FUCA ELECTORAL AREA**”.

B. PREAMBLE

1. Insert the word “and” before the word “subdivision”.

C. SECTION 3.0 DEFINITIONS

1. Delete the definition of “**Building Conversion Subdivision Application**” and replace with the words:

“**Building Conversion Strata Application** means a completed application for the conversion of a previously occupied building or structure into strata title;”

2. Delete the definition of “**Land Use Committee**” and replace with the words:

“**Land Use Committee** means the Juan de Fuca Land Use Committee established by Bylaw No. 3166;”

D. SECTION 4.0 FEES

1. Amend Item 1 by inserting the words “strata and” before the word “subdivision”.

E. SECTION 5.0 PROCESSING OF OCP, REZONING AND BUILDING CONVERSION APPLICATIONS

1. Amend item 2 by deleting the word “subdivision” and replace with the word “strata”;

F. SECTION 6.0 APPLICATIONS OR REVISED APPLICATIONS

1. delete item 5
2. Renumber item 6 as item 5

G. SECTION 7.0 RECONSIDERED APPLICATIONS

1. Item 1 delete the words “Regional District’s Meeting Procedure Bylaw’ and replace with the words “Capital Regional District Procedural Bylaw”.

H. SCHEDULE 'B' OCP AND REZONING PROCESS FLOW CHART

1. Delete current Schedule "B" OCP and Rezoning Process Flow Chart in its entirety and replace with a new Schedule "B" OCP and Rezoning Process attached to and forming part of this bylaw.

I. SCHEDULE 'C' BUILDING CONVERSION APPLICATION PROCESS

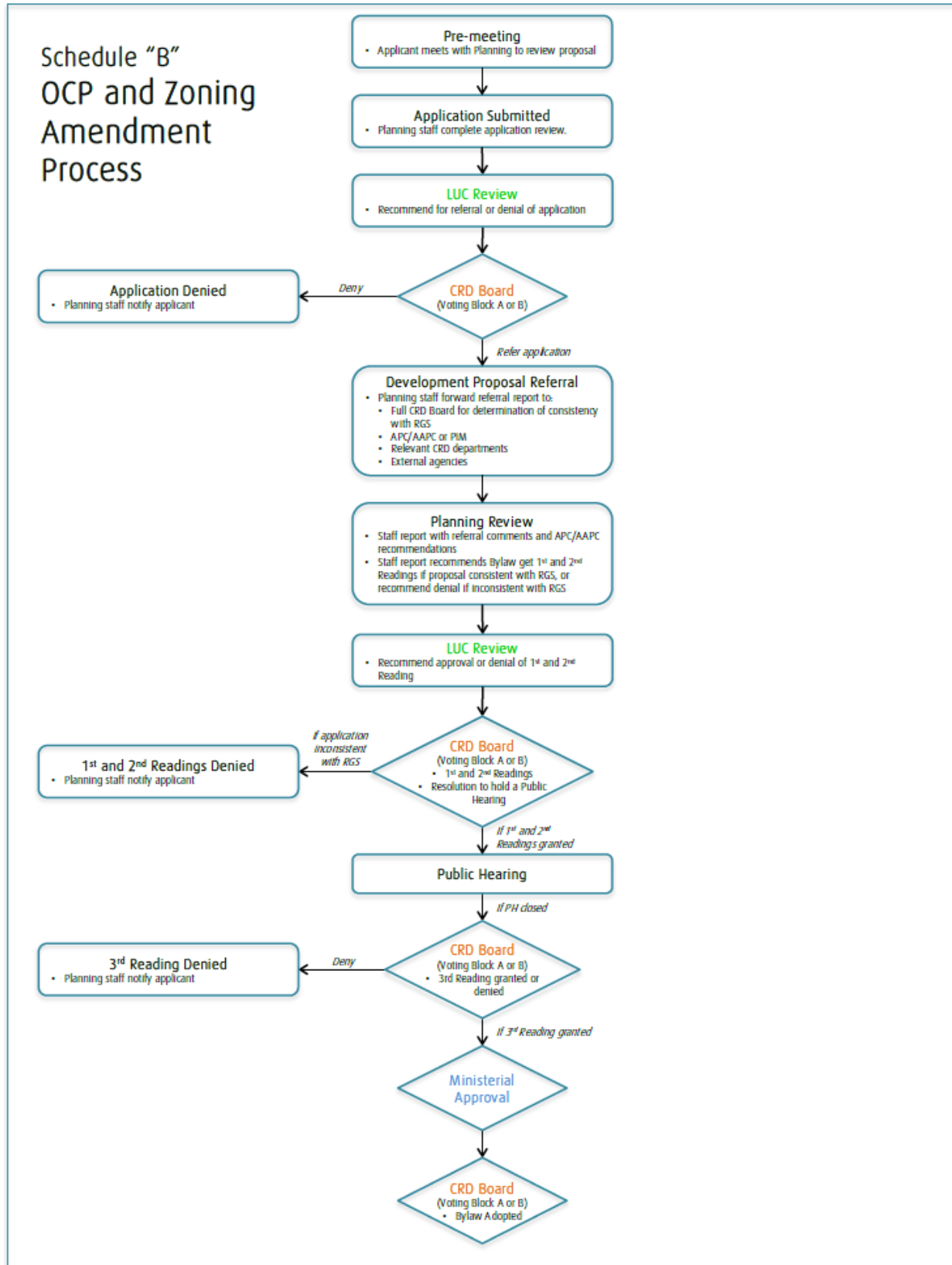
1. Delete current Schedule "C" Building Conversion Subdivision Application Process in its entirety and replace with a new Schedule "C" Building Conversion Strata Application Process attached to and forming part of this bylaw
2. This bylaw may be cited as the "Juan de Fuca Electoral Area Development Procedures Bylaw No. 1, 2003, Amendment Bylaw No. 4, 2012".

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

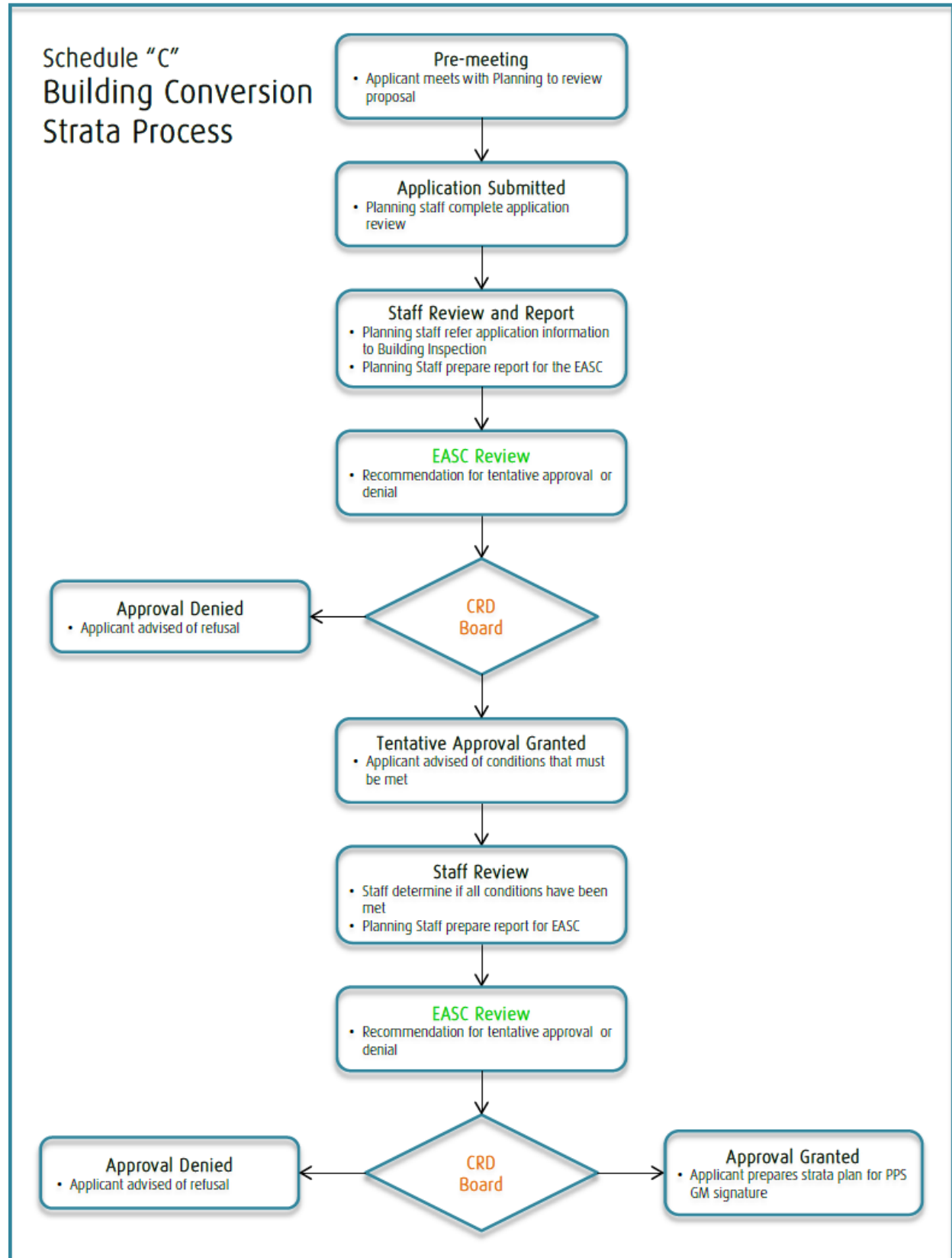
CHAIR

CORPORATE OFFICER

Schedule “B”



Schedule “C”



SUBJECT: Juan de Fuca Development Application Regional Growth Strategy Consistency Policy	
EFFECTIVE:	APPROVED: CRD Board
REVISION DATE:	
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The Board of the Capital Regional District has requested that all future applications to amend an Official Community Plan or Comprehensive Community Development Plan Bylaw or a Land Use Bylaw be referred to the whole Capital Regional District Board for determination of consistency with the Regional Growth Strategy upon receipt by June de Fuca Planning staff.

Furthermore, it is the expectation of the full Board that it will exercise this power early in the application process and, most certainly, before the application comes before the Board or a subset of the Board for approval.

Finally, the Board of the Capital Regional District has agreed that a ruling of inconsistency with the Regional Growth Strategy will prevent any such application from proceeding further in the process of approval.