

CAPITAL REGIONAL DISTRICT
Regional Planning Services Department

Staff Report to the Regional Planning Committee
Meeting of Wednesday, January 22, 2003

SUBJECT:

Regional Growth Strategy Bylaw No. 2952 Approval Process

BACKGROUND:

2002

- Feb. 27 The Board gives Bylaw No. 2952 first and second reading and resolves to hold a public hearing on the bylaw, ask the Minister to appoint a provincial facilitator, and to submit the bylaw to member municipalities, the Cowichan Valley Regional District and the Minister for acceptance following the public hearing and before third reading.
- April 3 The public hearing on Bylaw No. 2952 is held by Chair Causton as a delegation of the board at the Ambrosia Catering and Event Centre, 638 Fisgard Street, Victoria. The report of the public hearing was subsequently received by the Board on April 24th and referred to member municipalities for information.
- April 5 Bylaw No. 2952 is formally submitted by letter signed by Chair Causton to member municipalities, the CVRD and the Minister for acceptance. The bylaw is also distributed for information to the Islands Trust, School Districts, First Nations and the Greater Vancouver Regional District.
- May 8 Provincial facilitator Dale Wall presents to the Board on the role of the facilitator for the CRD Regional Growth Strategy.
- May 15 The RGS Referral Process Update Report #1 is presented to the Regional Planning Committee. No formal responses were received at this time.
- June 19 The RGS Referral Process Update Report #2 is presented to the Regional Planning Committee. Formal acceptance of the RGS is received from the District of Sooke and the Cowichan Valley Regional District.
- July 17 The RGS Referral Process Update Report #3 is presented to the Regional Planning Committee. Formal acceptance of the RGS is received from the District of Saanich, the Township of Esquimalt, and the Township of Central Saanich.
- Aug. 14 RGS Referral Process Report on Issues and Options for Resolution (Update #4) is presented to the Board of Directors. At this date formal acceptance has been received by Central Saanich, Colwood, CVRD, Esquimalt, Langford, Oak Bay,

Saanich, Sooke and Victoria. Acceptance has not been obtained from Highlands, Metchosin, North Saanich, Sidney and View Royal.

- Sept. 11 A memorandum of understanding between the Town of View Royal and the CRD Board is approved by the Board of Directors. The MOU recognizes the Town of View Royal as a core municipality for the purpose of the RGS. View Royal subsequently sent a new resolution to the Board (dated September 27, 2002) accepting the RGS
- Sept. 23 Correspondence is received from Dale Wall, Assistant Deputy Minister, Ministry of Community, Aboriginal and Women's Services, extending the referral period to October 31, 2002.
- Sept. 25 The Council of the District of Metchosin passed a resolution to accept the regional Growth Strategy.
- Oct. 21 The Provincial Facilitator meets with representatives from the Province, the District of Highlands and the District of Langford to resolve outstanding issues related to the RGS. The proposed resolution was not acceptable to the members of the Highland's Council.
- Oct. 28 The District of Highlands Municipal Council resolved to accept the Regional Growth Strategy at a Special Council Meeting.
- Oct. 31 The statutory referral period ends.
- Nov. 28 Letter sent by Regional Board Chair, Christopher Causton, to Minister George Abbott to notify him (in accordance with Section 859 of the Local Government Act) of the conclusion of the RGS referral period and that two municipalities had not accepted the RGS bylaw.
- Dec. 18 Regional Board Chair and Directors receive correspondence from the Town of Sidney requesting the Board revise the Regional Growth Strategy to address the concerns of municipalities, particularly with regard to implementation and review.

DISCUSSION:

At the conclusion of the statutory referral period for the RGS, two municipalities had still not accepted the growth strategy; the Town of Sidney, and the District of North Saanich.

As required by Section 859 of the Local Government Act, the Minister of Community, Aboriginal and Women's Services was notified of the conclusion of the referral period and the decisions of the municipal councils. Provincial staff associated with the administration of the regional growth strategies have indicated that the minister and the provincial facilitator will monitor the process and contact the Town of Sidney and the District of North Saanich in the very near future to determine the course of action that should be taken.

Municipal Concerns:

The District of North Saanich remains concerned about the potential cost of the RGS implementation. Due to the weighted voting structure of the Regional Board, they are concerned about losing their ability to manage their expenditures if required to undertake implementation projects they either do not support, or cannot afford. This concern is shared by several of the smaller municipalities, including those that have already accepted the strategy.

A very preliminary draft memorandum of understanding was prepared for North Saanich to attempt to address some of their concerns regarding implementation. However, because such a document is not legally-binding, it cannot provide a sufficient level of satisfaction on the part of the Council that their concerns will be addressed to their satisfaction.

The Town of Sidney has consistently expressed a number of reservations regarding the growth strategy ranging from site-specific concerns to procedural issues similar to those expressed by the District of North Saanich. They too are concerned about the potential cost and the voting structure on RGS implementation projects. The Council of the Town of Sidney unanimously adopted a motion that Council refuse to accept the Regional Growth Strategy on June 24, 2002.

CRD staff attempted to address the Town's concerns through a proposed Implementation Plan, with certain aspects re-enforced through a memorandum of understanding (MOU). In response, the Town referred the RGS and the proposed MOU to the Town's solicitors, Lidstone Young & Anderson, and at their meeting on December 16, 2002, reviewed the legal opinion. Council unanimously adopted the following motion:

1. *That the legal opinion of November 12th, 2002, be raised from In-Camera and that the legal opinion, the memo from staff and the Mayor's letter of November 27th, 2002, be sent to the CRD Chair and Directors and to the Provincial Minister responsible for the Regional Growth Strategies legislation.*
2. *That the CRD Board be requested to revise the Growth Strategy to address the concerns of a number of municipalities, particularly with regard to implementation and review.*
3. *That the CRD Board be requested to eliminate the use of Memorandums of Understanding which have attempted to address municipal concerns with the RGS as they clearly have no understanding and sections with "agreements to agree" be revised to eliminate concerns about their legality.*
4. *That the CRD Board consider and review the following suggestions:*
 - (a) *that project charters be created for any mandated initiatives, to be signed by each municipal Mayor or designate (13 municipalities – 13 votes). Failure to obtain at least 10 out of 13 signatures defeats the project plan and any expenditures.*
 - (b) *For non-mandated initiatives a municipality shall have the option of opting out and where five or more municipalities choose to get out of approval, the regional Board shall not carry forward the initiative, as a regional initiative.*
 - (c) *That the Regional Growth Strategies Bylaw be subject to one vote per municipality (13 votes) and that a two-thirds majority be required to pass or amend the Bylaw.*
5. *That the Regional Growth Strategy, after revision, be re-submitted for municipal consent so the municipalities give real, unqualified and unambiguous support for the document.*

Re: Memorandums of Understanding (Town of Sidney's recommendation #3)

The use of memorandums of understanding was first proposed to address specific issues raised by two other municipalities. The MOUs were not intended to be legally-binding agreements, rather, they were intended to be "*administratively-binding*" and to provide a greater assurance to the Council and to the Board that certain changes that were requested, and agreed to during the pre-bylaw review, be properly reflected in the next update of the plan. Unfortunately as the issues got more complex, the wording of the MOUs took on a much more legal tone, and with that, an expectation of them being legally binding, which as the Town of Sidney's legal advisors quite rightly cautioned against. Staff concur with their recommendation to stop using the MOUs in this manner.

Re: Regional Voting Structure (Town of Sidney's recommendation #4)

CRD staff had proposed a similar approach as a way of possibly addressing the municipal concerns (expressed by Sidney and North Saanich) regarding the weighted voting related to the implementation of the RGS. While the use of the project charters is acceptable, the regional district's legal advisors cautioned against the use of the veto provision as it runs counter to the provisions of the Local Government Act. This advice was communicated to staff at both municipalities.

Finding acceptable solutions for both municipalities that still respect the requirement of the Local Government Act (for voting provisions and the regional growth strategy requirements), while avoiding the need for an amendment and re-referral of the Bylaw has proved difficult.

Re: Cost considerations

Both the District of North Saanich and the Town of Sidney expressed concerns over the potential cost of implementing the RGS. Even some of the municipalities who have accepted the RGS Bylaw have raised this concern. CRD staff have responded to this concern by developing the RGS implementation plan (distributed to the Regional Planning Committee and the members of IAC in November 2002), and proposing procedural improvement to bring more accountability and transparency to the RGS budget and project management process.

There is a concern on the part of the smaller municipalities that they could be "out-voted" on budget decisions related to the RGS implementation, thus forcing them to fund projects which may not be in their interest. Some have suggested that the voting arrangement be changed to a single vote for each municipality on RGS-related projects. However, the existing voting structure may provide a reasonable "*check and balance*" on budget increases because of the significant financial implications for the larger municipalities (see RGS budget table attached)

Re: Bylaw revision and amendment (Sidney's recommendation #2 & 5)

Through-out the bylaw referral process, an attempt was made to address municipal concerns without the need for a comprehensive bylaw amendment. This was done to avoid the time delay and cost associated with the procedural requirements including another round of public hearings, municipal review, council reports and meetings.

An interim update was proposed for approximately three years from bylaw adoption to accommodate the municipal change requests and to accommodate any policy additions resulting from the three region-wide implementation projects (housing affordability, transportation, and economic development). The M.O.U.s created for View Royal and Oak Bay were developed to highlight changes that were to be incorporated in the interim update. The Town of Sidney does not find this approach adequate to address their needs, and would like to see the revisions made before the bylaw is adopted.

A revision to the Bylaw would require another public hearing and another 120-day statutory referral period. To ensure acceptance by all the member municipalities, adequate time and effort would be needed to ensure that all issues on record from the previous referral be addressed in the new bylaw.

Provincial Interests:

The province plays a key role in terms of guiding the RGS content and the process followed to develop and approve the RGS bylaw. They also provide a significant share of the funding required to develop and support a regional growth strategy. The province established the growth strategy legislation to provide an opportunity for the member municipalities within a regional district to work collectively with the province to achieve the growth management goals as set out in the legislation.

At this stage of the process (post-referral period) the Minister determines which of the two available dispute resolution processes, mediation or arbitration, to use to address the outstanding concerns of the two municipalities. The Minister may confer with the three parties to the dispute (Town of Sidney, District of North Saanich and the Capital Regional District) prior to making his decision. It is the responsibility of the three parties to agree on the choice of the person to mediate or arbitrate the resolution. Other member municipalities are provided an opportunity to make submissions to the mediator or arbitrator.

RECOMMENDATION:

That the Regional Planning Committee receive this report and refer it to the Regional Board for information.

Tracy Corbett, Senior Planner
Regional Growth Strategy, RPS

Mark Hornell, Director
Regional Planning Services

EXECUTIVE DIRECTOR'S COMMENTS:

W.M. Jordan, Executive Director
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RGS Budget:

The RGS program (1.330) requisition for the FY 2003 is \$89,310 out of a total requisition of \$46,085,473. This represents 0.002% of the total municipal requisition.

The FY 2003 budget includes funding for two large implementation studies, the Housing Affordability study and the Regional Transportation study.

An example of the municipal requisitions and the cost per average residential assessment is as follows:

Municipality	2003 Annual Requisition	Cost per Ave. Res. Assessment
Total	\$89,310	
Victoria	\$27,244	\$0.60
Saanich	\$26,207	\$0.61
Oak Bay	\$ 6,168	\$0.89
Central Saanich	\$ 4,636	\$0.59
Langford	\$ 4,478	\$0.45
North Saanich	\$ 4,244	\$0.86
Sidney	\$ 3,504	\$0.49
Esquimalt	\$ 2,907	\$0.52
Colwood	\$ 2,637	\$0.49
Juan de Fuca	\$ 2,081	\$0.48
View Royal	\$ 1,861	\$0.56
Sooke	\$ 1,691	\$0.38
Metchosin	\$ 1,053	\$0.60
Highland	\$ 415	\$0.62
Songhees First Nation	\$ 182	\$0.23
Tsawout First Nation	\$ 143	\$0.20