

**CAPITAL REGIONAL DISTRICT
Regional Planning Services Department**

**Staff Report to the Regional Planning Committee
Meeting of Wednesday, January 19, 2005**

SUBJECT:

Comments on Bylaw No. 3228, Malahat OCP; Bylaw No. 3229, Shirley/Jordan River OCP; Bylaw No. 3238, East Sooke OCP; and, Bylaw No. 3239, Otter Point OCP.

BACKGROUND:

- Aug. 13/03: CRD Regional Growth Strategy (Bylaw No. 2952) approved by the Board.
- Mar. 24/04: The Board receives a legal opinion from the regional solicitor (dated March 1, 2004 – Attachment A) on the extension of regional services and land use decision making in the Juan de Fuca Electoral Area (JDFEA) under the CRD's regional growth strategy bylaw. Further, the Board approves by resolution the RGS Corporate Implementation Strategy, which requires servicing extension requests to be forwarded through Regional Planning Services to Regional Planning Committee (RPC) and the Board for consideration, and reference to the RGS in all CRD comprehensive plans, including official community plans for the Juan de Fuca Electoral Area.
- Oct. 27/04: The Board tables an application to extend CRD water services, on the grounds of providing fire suppression, to De Mamiel Estates site at 2900 block Otter Point Road, to be reconsidered following adoption of the new Otter Point OCP.
- Nov. 24/04: RPS provides staff comments by letter to CRD Electoral Area Planning Services on the draft OCP's for Otter Point, Shirley/Jordan River, East Sooke and Malahat planning areas.
- Dec. 15/04: The Board gives first reading and authorizes the holding of public hearings for Bylaw No. 3228, Malahat OCP; Bylaw No. 3229, Shirley/Jordan River OCP; Bylaw No. 3238, East Sooke OCP; and, Bylaw No. 3239, Otter Point OCP.
- Jan. 12/05: The Board considers a recommendation to rescind the December 15, 2004 first reading of Bylaw No. 3238, East Sooke OCP, and give first reading to a revised version of the bylaw that deletes all reference to the Silver Spray property, prior to the bylaw going forward to public hearing.

DISCUSSION:

The four bylaws in question including maps and schedules, are available on the CRD website at <http://www.crd.bc.ca/jdf/> .

Overview Comments:

The Legislative Requirement for Consistency with the RGS

The Local Government Act (LGA) section 865 (1) states that “All bylaws adopted by a regional district board after the board has adopted a regional growth strategy, and all services undertaken by a regional district after the board has adopted a regional growth strategy, must be consistent with the regional growth strategy.” The Board gave effect to this legislative requirement with the adoption on March 24, 2004 of *The Corporate Implementation Strategy for the CRD’s Regional Growth Strategy* (CIS). In addition to approving the CIS, at the same March 2004 meeting, the Board passed the following resolutions relevant to the OCPs:

- A section be added to all CRD Committee and Board reports, including Juan de Fuca Electoral Area planning reports, to indicate whether a proposed bylaw, policy, acquisition or service extension is consistent with the provisions of the RGS. This would be similar in form to the section on “Financial Implications” now included on all Committee and Board reports.
- The RGS be referenced in all CRD comprehensive plans, including, but not limited to, the Juan de Fuca OCP’s (and their equivalent), Parks Master Plans, and the Blue/Green Strategy. The reference can be included in the introductory context, such as the provisions of the *Local Government Act* and the Agricultural Land Commission.

Ministry of Community, Aboriginal and Women’s Services (MCAWS) staff have confirmed that while there is no requirement in LGA section 866 for a regional context statement in an EA OCP, section 865 sets a higher test in that it requires the entire content of the EA OCP to be consistent with the RGS.

A summary of the RGS policy direction relevant to Juan de Fuca Electoral Area OCP’s is provided in Attachment A.

General Reference to the RGS in the Four OCP’s

The RGS is not referenced in the four OCP’s, except in the recital for each bylaw under the third “whereas”, where it states, “this community plan has been considered in conjunction with the Capital Regional District’s Financial and Capital Expenditures programme and the Capital Regional District’s Regional Growth Strategy.” In light of the foregoing, this is insufficient reference to demonstrate consistency with the RGS.

Appropriate reference would include acknowledgement in the recital of the CRD's statutory responsibility to confirm to the RGS under LGA section 865 (1), as well as provision of language in the text of the OCP's that places the plan area within the policy context of the RGS, as summarized in Attachment A.

The recital should contain language along the lines of: "this community plan has been prepared in a manner consistent with the Capital Regional District's Regional Growth Strategy, except as specifically noted in the plan." Further, the text of the OCP's should include statements under Part 2.0 Administrative Structure and Application of the Plan, that explain that the intent of the OCP is to be in conformity with the CRD's RGS, and also under Part 3.0 Goals and Objectives of the Plan, where a goal statement or statements related to the intent of the plan to implement the vision and strategic objectives of the RGS would further articulate RGS consistency. The summary of the relevant RGS policy direction given in the Attachment A can help frame any RGS context related goal and policy statements for part 3.0 and elsewhere in the four OCPs.

Recommendation 1: That Bylaws No. 3228, 3229, 3238 and 3239 be amended to include reference to the RGS as noted above.

General Comments on the Four OCP Bylaws

Long-term Rural Vision: All four OCP bylaws set out a long term rural vision for the plan areas consistent with the intent of the RGS.

The Regional Urban Containment Boundary: All four OCP bylaws identify (on Map 2) settlement areas which are generally described in the settlement areas policies, as designated areas where "...the predominant land use is for residential purposes." The OCP bylaws do not include clear statements, either in section 4.1 or elsewhere, of the scale or density of the overall residential development anticipated in these areas. It would add clarity to the OCP's, particularly for the purpose of determining if the settlement containment areas included in them are comparable to urban containment and servicing policy areas under the RGS, to quantify in some manner anticipated density ranges for the settlement policy areas. This could be done either by providing a range of minimum lots sizes (that would articulate what is meant by "small lot" or "residential density") or through some other expression of density, perhaps as a units/hectare range. This would give a measure of policy guidance for future zoning bylaw amendments without unduly introducing a hard regulation-type statement into the OCP.

Recommendation 2: That the settlement area policies included in Bylaws No. 3228, 3229, 3238 and 3239 be amended to include direction regarding the scale or density of overall residential development anticipated in settlement areas.

The Servicing Policy: All four OCP bylaws set out in section 4.7, a roads and servicing policy which in some cases appears to be consistent with the RGS, in other

cases, inconsistent. The plan statement "...Currently, no major roads, sewer or water systems are planned for the [OCP area] at the time of preparation of this plan..." appears to be consistent with the intent of the RGS. However, the wording regarding future servicing, used in the Otter Point, East Sooke and Shirley/Jordan River OCP bylaws is too wide open to be considered consistent with the RGS. Since the basic intent of the RGS is that areas outside the RUCSPA either not be serviced or not receive increased servicing capacity, then any deviation from this RGS policy would require a policy justification in the appropriate OCP. The RGS requires the inclusion of policy language in CRD OCP's that seek to maintain the long term stability of the RUCSPA. An open statement that settlement areas will be serviced in future does not provide this, but rather leaves the door open to application driven expansions of the servicing area. This is further contrary to the policy summarized in the Attachment A from RGS Initiative 1.1, Action 2, which would require amendments to the RUCSPA generally as an outcome of a comprehensive five-year review of the RGS.

Recommendation 3: That Bylaws No. 3228, 3229, 3238 and 3239 be amended to identify, as areas to be included within the RUCSPA through a CRD initiated RGS amendment following approval of the OCP, any settlement containment areas for which servicing with regional water or sewer services is anticipated in the next five years.

Recommendation 4: That Bylaws No. 3228, 3229, 3238 and 3239 be amended to include policy guidelines that address those situations where regional water service could be extended outside the RUCSPA to address the exceptional conditions noted in the RGS (human and environmental health, fire suppression or agriculture) and in particular, policy guidelines for any wildfire hazard mitigation strategy recommendations related to the extension of regional water services.

The Growth Projection: The OCP bylaws in section 1.1 set out population estimates to 2011 for the plan areas, forecasting modest rates of growth consistent with the RGS growth projection for the JDFEA.

Capital Green Lands Protection: The OCP bylaws contain extensive policy guidance and development permit guidelines related to the protection of environmentally sensitive areas consistent with the policy intent of the RGS.

Renewable Resource Lands Protection: The OCP bylaws contain very extensive policy guidance and development permit guidelines related to the protection of the ALR consistent with the policy intent of the RGS. The four OCP bylaws do not include comparable policy guidance regarding the protection of forest lands.

Recommendation 5: That Bylaws No. 3228, 3229, 3238 and 3239 be amended to include policy guidelines for the protection and buffering of crown forest or private forest lands in or adjacent to the plan areas.

Limitations on Rural Subdivision and Development: The intent of the OCP's is to limit the amount of rural subdivision and development and to cluster that which does occur. The inclusion of some statement of anticipated density range (as proposed in recommendation 2 above) in the settlement area policy sections, would provide more clear direction that ongoing subdivision and development will remain generally within limits established in the OCP at the date of the adoption of the RGS, unless specifically noted to the contrary in the plan.

Protection of Unprotected Green Space: The only portion of the four plan areas that is designated within the Unprotected Green Space Policy Area in the RGS, is a polygon noted on RGS Map 4 that straddles the Otter Point OCP Area/District of Sooke boundary northeast of Kemp Lake. A good portion of this land is identified as crown provincial land on OCP Map 2, and the riparian and lakeshore areas are identified on OCP Map 3b. There is no reference on either Otter Point OCP Background Map 2 or on Map 3b that these lands have been identified as un-protected core green space in the Sensitive Ecosystem Inventory and the RGS (see Attachment A, summary of Initiative 2.1 action 2).

Recommendation 6: That the maps of Bylaw No. 3239 be amended to identify the polygon northeast of Kemp Lake as within the Unprotected Green Space Policy Area in the RGS, and further, that Bylaw section 4.6 be amended to include policy direction related to the intent to protect these lands, perhaps through the designation of that portion of the polygon within the Otter Point plan area as a development permit area.

Specific Comments on Bylaw No. 3239, Otter Point OCP

Section 4.7.2 – Servicing Development Policies, states: “It is the intent of this plan that, if not already serviced by a community water system, settlement containment areas as designated on Map No. 2 of this bylaw will be serviced by a community water system in the future.” In light of recent discussions related to servicing and wildfire hazard in the Otter Point Road area, this servicing issue should be specifically addressed in the OCP and if a case can be made to service the area, the policy justification should be provided. The general wording of section 4.7.2 is too broad to be considered consistent with the RGS, without a policy justification to support it.

Specific Comments on Bylaw No. 3229, Shirley/Jordan River OCP

Since the OCP forecasts a flat to declining population for the plan area, section 4.7.2 should be amended to indicate that reconsideration of the servicing strategy for the plan area be considered only as part of a comprehensive five-year review and update of the RGS. There does not appear to be any significant demand anticipated through to 2011 that would justify the extension of regional services to these settlement areas.

Recommendation 7: That Bylaw No. 3229, section 4.7.2 be amended to indicate that reconsideration of the servicing strategy for the plan area be considered only in the context of a comprehensive five year review and update of the RGS.

Specific Comments on Bylaw No. 3238 East Sooke OCP

The provision of regional water service to portions of East Sooke should be noted somewhere in the OCP, and specifically, a distinction should be made between those settlement areas that would receive regional water service, and those (if any) that would not. For the areas that are currently serviced or are forecast to receive service, consideration should be given to identifying those areas as lands which should be included within the RUCSPA through a RGS amendment.

Specific Comments on Bylaw No. 3228, Malahat OCP

No specific comments.

RECOMMENDATION:

That Regional Planning Committee:

1. Circulate this report to the Juan de Fuca Electoral Area Land Use Committee and the Board for information; and,
2. Recommend to the Juan de Fuca Electoral Area Land Use Committee and the Board that bylaws No. 3228, 3229, 3238 and 3239 be amended as noted in recommendations 1 through 7 in the body of this report.

RGS CONSISTENCY

Full consistency with the Capital Regional District's Regional Growth Strategy and the Board's Corporate Implementation Strategy cannot be demonstrated for Bylaw No. 3228, Malahat OCP; Bylaw No. 3229, Shirley/Jordan River OCP; Bylaw No. 3238, East Sooke OCP; and, Bylaw No. 3239, Otter Point OCP.

FINANCIAL IMPACT OF THE RECOMMENDATION:

N/A

Mark Hornell, MCIP
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EXECUTIVE DIRECTOR'S COMMENTS:

W.M. Jordan, Executive Director

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