

REPORTS OF COMMITTEES

1. Committee of the Whole – June 8, 2017

7. 2016 Regional Growth Strategy - Dispute Resolution Process

Motion:

It was moved by Councillor Isitt, seconded by Councillor Loveday, that Council advise the CRD of the City's interest in appointing a designated representative to participate in the RGS dispute resolution process.

Carried

For: Mayor Helps, Councillors Isitt, Loveday, Lucas, and Madoff
Opposed: Councillors Alto and Young

6. LAND USE MATTERS

6.3 2016 Regional Growth Strategy – Dispute Resolution Process

Committee received a report dated May 19, 2017 from the Director of Sustainable Planning and Community Development providing information regarding an upcoming non-binding dispute resolution process for the 2016 Regional Growth Strategy.

Motion: It was moved by Councillor Alto, seconded by Councillor Young, that Council advise the CRD that the City of Victoria will not participate in the dispute resolution process for the 2016 Regional Growth Strategy.

Committee discussed:

- Reasoning for municipalities not supporting the Regional Growth Strategy.
- Deadline for response to the CRD.
- Of the accepting municipalities who would be participating in the dispute process.

Motion to Postpone:

It was moved by Councillor Alto, seconded by Councillor Loveday, that the motion be postponed pending information from staff.

On the motion to postpone:
CARRIED UNANIMOUSLY 17/COTW



Committee of the Whole Report

For the Meeting of June 8, 2017

To: Committee of the Whole **Date:** May 19, 2017
From: Jonathan Tinney, Director, Sustainable Planning and Community Development
Subject: 2016 Regional Growth Strategy – Dispute Resolution Process

RECOMMENDATION

That Council advise the CRD that the City of Victoria will not participate in the dispute resolution process for the 2016 Regional Growth Strategy.

EXECUTIVE SUMMARY

The purpose of this report is to provide Council with information related to an upcoming non-binding dispute resolution process for the 2016 Regional Growth Strategy (RGS). Council previously accepted the 2016 RGS as part of a formal referral process; however, since some CRD municipalities did not accept the RGS, the Local Government Act requires the CRD and those municipalities that rejected the RGS to enter into a dispute resolution process as a means to gain full acceptance of the RGS. The dispute resolution process is focused on resolving specific issues identified by those municipalities that did not accept the RGS; however, any municipality that accepted the RGS also has the option to participate in the process. Participation in the process requires the appointment of an authorized representative from each municipality and the total cost of the process is shared by all participating municipalities through a proportional assessed value. At the conclusion of the dispute resolution process, all CRD municipalities will have the opportunity through a formal re-referral process to review and either accept or reject those changes to the 2016 RGS that arise from the dispute resolution process.

PURPOSE

The purpose of this report is to provide Council with information on a non-binding dispute resolution process for the 2016 Regional Growth Strategy (RGS). Council has the option to pass a formal motion if it wishes to participate in this process through an appointed representative.

BACKGROUND

On January 26, 2017 Council passed a motion to accept CRD Bylaw No. 4017: 2016 Regional Growth Strategy. Council's acceptance was part of a 60-day formal referral process that is required through the *Local Government Act*. Council's acceptance of the RGS was supported by the strong alignment between the RGS policies and the policies of the City's *Official Community Plan*. Resolutions from each CRD local government were then presented to the CRD Board on February 22, 2017 including resolutions to accept by the City of Victoria, District of Oak Bay, City of Langford,

of Langford, Town of Sidney and the District of Metchosin. Resolutions to not accept were submitted by the City of Colwood, District of Central Saanich, Township of Esquimalt, District of Saanich, District of North Saanich, District of Highlands and the Town of View Royal. Although each rejecting municipality identified different reasons for not accepting the RGS, the most common issue related to water servicing and growth management policies. The CRD Board received the various resolutions and passed a motion to notify the Minister of Community, Sport and Cultural Development and to request a mediated process in accordance with section 439 of the *Local Government Act*. Subsequently, the CRD organized a meeting with all CRD municipalities to provide information on the process. The municipalities that rejected the RGS were then requested to collaborate with the CRD and the Province to confirm a non-binding dispute resolution process including retaining the services of a third-party dispute resolution professional based on an RFP process. With the process confirmed at a staff level, the Minister directed that the dispute resolution process must begin by June 14, 2017 which also provides the option for accepting municipalities to participate in the process through a Council appointed representative. On May 5, 2017 the CRD sent a letter (Attachment) to each CRD municipality that includes background information and an overview of the process.

ISSUES AND ANALYSIS

1. Participation in Dispute Resolution Process

As outlined in the *Local Government Act*, any municipality that accepts the Regional Growth Strategy also has the voluntary opportunity to participate in a subsequent dispute resolution process along with the municipalities that have not accepted the RGS. The dispute resolution process is limited to discussions only on those specific items that have been identified as the basis for non-acceptance of the RGS. This means that additional issues cannot be introduced into the process by any participating municipality. If an accepting municipality wishes to participate, the local Council must pass a resolution to indicate their interest, as well as, identify a representative who has the authority to speak on behalf of the municipality and whom would be required to report and/or consult with their respective Council as needed. The representative is typically an elected official or administration/staff. A Council resolution is not required if an accepting municipality does not wish to participate.

2. Opportunities for additional consideration of the RGS

Regardless whether the City of Victoria chooses to participate or not in the RGS dispute resolution process, there will still be additional opportunities to consider the RGS including through a subsequent formal re-referral process that would occur at the conclusion of the dispute resolution process. This is similar to the previous 60-day formal referral process; however, the basis for acceptance or rejection of the revised RGS will be restricted to those specific provisions that have been changed as an outcome of the dispute resolution process.

3. Dispute Resolution Cost Sharing

In accordance with section 439(6) of the *Local Government Act*, the costs of the dispute resolution process must be shared between all participating parties. The amount that each participating municipality contributes toward the overall cost is based on a converted value that proportions the combined land values and improvement values for each municipality as established through BC Assessment. Based on information provided by the CRD, the City of Victoria's combined land and improvement values represent approximately 27% of the overall combined values for the Region. Therefore, if the City of Victoria decides to participate it would be responsible for

approximately 27% of the total dispute resolution process costs. The specific costs for the process are not yet known as the costs may fluctuate based on the length of time and the number of CRD municipalities that participate; however it is anticipated that total costs could range from \$40,000 up to \$100,000. This means that the City could be required to pay anywhere from \$10,800 up to approximately \$27,000 for this process. Funding for this process is not included in the current Financial Plan.

OPTIONS AND IMPACTS

Option 1:

Advice the CRD that the City of Victoria will not participate in the RGS dispute resolution process. **(Recommended)**

Since the City of Victoria has already accepted the 2016 RGS, there does not appear to be a strong reason to participate in the dispute resolution process. The City of Victoria will also have the opportunity to review any changes to the 2016 RGS that arise from the dispute resolution process as part of a subsequent formal referral process.

Option 2:

Advice the CRD of the City's interest in appointing a designated representative to participate in the dispute resolution process through a resolution of Council.

If Council decides to participate in the dispute resolution process, there will be a need to identify potential funding sources for the City's proportioned cost share, as well as, a potential impact on further staff time required to participate and support the process.

2015 - 2018 Strategic Plan:

Although the review and acceptance of the RGS is not specifically identified within the *Strategic Plan*, Council did previously accept the 2016 RGS as the various objectives contained in the 2016 RGS align with many of the City's strategic objectives.

Impacts to Financial Plan:

Participation in the dispute resolution process for the 2016 Regional Growth Strategy is not identified within the current *Financial Plan*. If Council decides to participate in the process, this would require a 2017 financial commitment of up to approximately \$27,000.

Official Community Plan Consistency Statement:

Council's previous acceptance of the 2016 Regional Growth Strategy was premised on the alignment between the policies and objectives of the 2016 RGS with those of the Official Community Plan. In addition, once the RGS receives acceptance by all CRD municipalities, the City of Victoria will have two years to prepare and submit an updated Regional Context Statement to the CRD Board that highlights the alignment between the RGS and the *Official Community Plan*. The Regional Context Statement is subject to acceptance by the CRD Board, to ensure the municipality and the CRD Board agree that the two documents are compatible and consistent.

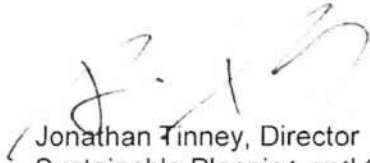
CONCLUSIONS

The City of Victoria accepted the 2016 RGS as part of a previous formal referral process as it provides alignment with the policies and objectives of the *Official Community Plan*. Therefore, staff recommend that participation in the dispute resolution process is not necessary as the City will continue to have the opportunity at the conclusion of the process to accept or reject the revised RGS as part of a formal re-referral process.

Respectfully submitted,



Robert Batallas
Senior Planner
Community Planning Division



Jonathan Tinney, Director
Sustainable Planning and Community
Development Department

Report accepted and recommended by the City Manager:



Date: May 31, 2017

List of Attachments

- Letter dated May 5, 2017: Preparation of a Non-Binding Dispute Resolution Process.

May 5, 2017

File: 1475-20

Development Planning Advisory Committee (DPAC) Representatives

Dear DPAC Representatives:

Re: Preparation of a Non-Binding Dispute Resolution Process

This letter is to provide information on the preparation of a non-binding dispute resolution process for the 2016 Regional Growth Strategy (RGS). A summary of the proposed non-binding dispute resolution process is provided in Attachment A.

On March 28, 2017, the Minister of Community, Sport and Cultural Development directed a non-binding dispute resolution process for the 2016 RGS, as requested by the CRD Board. As per s.439 of the *Local Government Act*, the process for non-binding dispute resolution is to be determined by agreement between the rejecting municipalities (Central Saanich, Colwood, Esquimalt, Highlands, North Saanich, Saanich and View Royal) and the CRD Board. Municipalities accepting the RGS (Langford, Metchosin, Oak Bay, Sidney, Sooke and Victoria) may participate in dispute resolution if they so choose. Agreement to a process and identification of a desire to participate in the process must happen by June 14, 2017.

Developing the Mediation Process

The legislation does not prescribe requirements for developing a non-binding dispute resolution process. CRD staff have worked with municipal directors of planning through the Development Planning Advisory Committee (DPAC) to provide information about non-binding dispute resolution and to develop a mediation process in coordination with rejecting municipalities.

The desired outcome was to reach agreement – at a staff level – on a mediator and a process that could be brought to rejecting municipal councils and the CRD Board for approval by June 14, 2017. To facilitate agreement, CRD staff coordinated a competitive process to identify a qualified mediator who could develop and deliver a dispute resolution process to which DPAC representatives from the CRD and rejecting municipalities could agree. The following summarizes key decisions leading to the identification of a mediator and a process.

- In anticipation of Ministry direction, on March 23, 2017, CRD staff issued a request for qualifications (RFQ) to two locally-based mediators with previous experience resolving RGS disputes. The mediators were on a provincial list of qualified service providers.
- On April 3, 2017, DPAC representatives from the CRD and the rejecting municipalities met to review the RFQ submissions. A mediator was not identified based on the RFQ submissions, and the group requested that the CRD broaden the search through a request for proposal (RFP) process. The group provided input on the RFP and the RFP evaluation criteria.

- On April 7, 2017 the CRD issued an RFP for RGS dispute resolution services, with a closing date of April 19, 2017. One Proponent, different from the Proponents who submitted on the RFQ, submitted a proposal in response to the RFP.
- On April 25, 2017, DPAC representatives from the CRD and the rejecting municipalities met to review the proposal. The group agreed that the proposal could be brought forward for council / Board approval subject to clarification / refinement of certain items. CRD staff invited the Proponent to revise the proposal.
- On April 29, 2017, the Proponent submitted a revised proposal. DPAC representatives from the CRD and rejecting municipalities were satisfied with the refinements and agreed to bring forward the proposed mediation process for council / Board approval.

Considerations

RGS dispute resolution is a niche field as a limited number of mediators have experience resolving RGS disputes. Staff from the province confirmed that seven RGS disputes have been subject to a non-binding dispute resolution process:

- RDN – Qualicum (in progress)
- CRD – Central Saanich
- Metro Vancouver – Langley
- Comox Valley
- Metro Vancouver – Coquitlam
- Squamish Lillooet
- CRD – Highlands

Three mediators have provided dispute resolution services to these disputes. The RFQ process identified that of those three mediators, one has retired and one may not be perceived as neutral for the present case. The third mediator decided not to submit a proposal in response to the RFP.

Next Steps

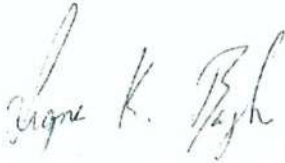
As directed by the Minister, the dispute resolution process must begin by June 14, 2017. If the rejecting municipalities and the CRD Board cannot agree to a process, the Minister will direct a process. The table below summarizes next steps.

Tasks		Timing
1	Rejecting municipalities indicate whether they agree to the mediator and the proposed process.	June 5, 2017
2	Accepting municipalities indicate if they wish to participate in dispute resolution.	June 5, 2017
3	The CRD Board indicates whether they agree to the mediator and the proposed process.	June 14, 2017



Thank you for your participation in the process to date. Please do not hesitate to contact me at 250-360-3244 or sbagh@crd.bc.ca for further information.

Kindly,



Signe K. Bagh, MCIP, RPP
Senior Manager, Regional and Strategic Planning

Attachments: Attachment A: Summary of Proposed Non-Binding Dispute Resolution Process

Distribution: Bruce Greig, Director of Planning & Building Services, Central Saanich
Iain Bourhill, Director of Planning, Colwood
Bill Brown, Director of Development Services, Esquimalt
Laura Beckett, Municipal Planner, Highlands
Mathew Baldwin, Director of Planning, Langford
Sherry Hurst, Planner, Metchosin
Anne Berry, Director of Planning and Community Services, North Saanich
Roy Thomassen, Director of Building & Planning, Oak Bay
Sharon Hvozdzanski, Director of Planning, Saanich
Alison Verhagen, Manager of Planning, Sidney
Robert Howat, Director of Development Services, Sooke
Jonathan Tinney, Director of Sustainable Planning and Community Development, Victoria
Lindsay Chase, Director of Development Services, View Royal



Attachment A: Summary of Proposed Non-Binding Dispute Resolution Process

Mediation Team Qualifications

The Proponent proposes that mediation for RGS dispute resolution be undertaken by a team consisting of a mediator, Mr. Morley McKeachie, and a retired lawyer and registered professional planner, Mr. Raymond Young. The mediation team has experience working with local governments on land-use related issues, although no direct experience working with Part 13 (Regional Growth Strategies) of the *Local Government Act*.

Mediation Team Roles and Responsibilities

Mr. McKeachie will lead the mediation team and be responsible for overall project coordination. Pre-mediation work (e.g., reviewing written submissions, contacting parties for bi-lateral discussions) will be divided between the team. Mr. McKeachie will lead the mediated sessions with Mr. Young providing support as-needed. The team will work collaboratively to evaluate positions and issues. Mr. McKeachie will author the final report, with contributions from Mr. Young.

Role of Participants

Each party will identify a representative who has the authority to speak on their party's behalf. The proposed process indicates that representatives would report and/or consult with their respective councils / Board as needed. The proposed process gives the parties flexibility to determine whether the representative is an elected official or administration / staff.

Proposed Process

The mediation will be undertaken in four phases, as follows:

1. **Process confirmation:** The mediators will review available information and plan their strategy / process.
2. **Pre-mediation:** The mediators will seek written submissions from participating parties and meet individually with parties via teleconference to clarify issues. Parties will be asked to comment, in writing, on the positions. The mediators estimate one round of comments on the positions. The mediators will work with the participating parties to identify a date, time and participants for the mediated sessions.
3. **Mediated session(s):** The mediated session(s) will be held with representatives from the parties. Note that representatives must be authorized to speak on behalf of the party.
4. **Findings report:** The mediators will prepare a findings report summarizing the process and outcome, and recommend next steps.

Costs

The mediators underscore that time spent on the process is dependent on the nature of the issues under dispute and the level of responsiveness and participation in the process. The mediators are not presently in a position to provide a cost estimate on the dispute resolution process as they do not yet have detailed information as to the issues under dispute. The mediators are amenable to provide weekly cost reports. The mediators suggest that the parties be responsible for coordinating meeting logistics so as to save on costs.

As a cost control mechanism, the CRD would request that the Proponent provide an estimate of fees once information on issues and reasons for objections has been obtained, at the end of Phase 1. The estimate of fees would then be used to manage costs for the remaining dispute resolution phases.

Summary of RGS Formal Referral

ACCEPT	REJECT	REJECTED PROVISIONS
Langford	Central Saanich	Policies 2.2(1) and 2.2 (2)
Metchosin	Colwood	Objective 6.1 and requests changes to Map 3: Growth Management Concept Plan
Oak Bay	Esquimalt	Policies 1.1(1), 2.1(1), 5.1(3) and 5.1(4); requests that Objective 7.1 be moved to earlier in the RGS document and requests changes to the description of its community profile in Appendix A
Sidney	Highlands	Policy 2.2(2)
Sooke	North Saanich	Objectives 1.1, 1.2, 2.2, 4.1 and 6.1
Victoria	Saanich	Objectives 1.1, 1.2, 2.2 and 3.1
	View Royal	Map 3: Growth Management Concept Plan and associated policies, and policies 2.2(2), and 2.2(4)

CONTENT AREA	RGS OBJECTIVES	RATIONALE FOR REJECTION
Growth Management and Mapping	1.1, 1.2, 3.1	Insufficient direction for growth management within the growth area
	1.2	Insufficient protection of rural communities
	1.1, 2.1, 5.1	Disagree with the application of Capital Green Lands and Renewable Resource Lands land use designations and associated policies to properties within the growth area as shown in Map 3: Growth Management Concept Plan
	4.1, 6.1	Weak relationship of population projections to transportation planning and food systems targets
Water Servicing and Growth Management	2.2	Relaxed water servicing policy likely to create additional development in rural areas that will contribute to transportation issues, increase Greenhouse Gas emissions and divert development away from land within the Growth Area boundary
Climate Action	5.1	Municipalities should be responsible for setting priorities for new business attraction and investment, not the CRD
	7.1	Disagree with placement of the Climate Action objective at the end of the document

2016 Regional Growth Strategy (RGS)

Dispute Resolution Process



Purpose

- Provide Council with information related to an upcoming non-binding dispute resolution process for the 2016 Regional Growth Strategy



Background

- January 26, 2017 Council passed a motion to accept the 2016 RGS (CRD Bylaw No. 4017) as part of a 60-day formal referral process
- Council's acceptance was supported by the strong alignment between the RGS policies and those of the Official Community Plan
- Resolutions to not accept the RGS were passed by seven municipalities and resolutions to accept the RGS were passed by six municipalities
- When a municipality does not accept the RGS a dispute resolution process is required through the Local Government Act between the CRD and those rejecting municipalities as a means to gain full acceptance of the RGS



Participation in RGS Dispute Resolution Process

- The dispute resolution process is limited to resolving only those specific issues identified by rejecting municipalities; however any municipality that accepted the RGS has the option to participate in the process
- Participation requires the appointment of an authorized municipal representative (e.g. Elected Official or Senior Administration)
- Total cost of dispute resolution process is shared by all participating municipalities based on a proportional assessed value; City of Victoria would be responsible for approximately 27% of the total costs which could range from approximately \$40,000 up to \$100,000
- The RGS will be subject to a re-referral process at the conclusion of the dispute resolution process to allow all CRD municipalities the opportunity either accept or reject the proposed changes to the RGS



Recommendation

That Council advise the CRD that the City of Victoria will not participate in the dispute resolution process for the 2016 Regional Growth Strategy