

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.