



**REPORT TO CAPITAL REGIONAL DISTRICT BOARD
MEETING OF WEDNESDAY, NOVEMBER 8, 2017**

SUBJECT Provincial Direction on Regional Growth Strategy Non-Binding Dispute Resolution

ISSUE

To provide direction as to next steps in the settlement of disputed Regional Growth Strategy (RGS) provisions.

BACKGROUND

On February 22, 2017 the Capital Regional District (CRD) Board received seven municipal decisions to “not accept” the 2016 RGS document. The Board Chair notified the then Minister of Community, Sport and Cultural Development of the refusals to accept.

On March 28, 2017, the then Minister directed a non-binding dispute resolution process for the 2016 RGS. The Minister required that a non-binding process begin by June 14, 2017. The Minister did not specify an end date for the non-binding process.

By June 14, 2017, the CRD Board and the municipalities who rejected the RGS agreed to a mediation process. Since June 14, 2017, the CRD, the municipalities who rejected the RGS and three accepting municipalities who decided to participate in the process have been working with the mediator to resolve the disputed provisions in accordance with the agreed-upon process.

On October 11, 2017, the CRD Board received a verbal update on mediation progress. The Board was advised that mediated sessions tentatively scheduled for October 24 – 26, 2017 were not possible as it took longer than anticipated for parties to sign-off on the mediator's pre-mediation report. Subsequent to the October Board meeting, the rejecting parties agreed to mediation being rescheduled for December 6-8, 2017.

On November 3, 2017, the Minister of Municipal Affairs and Housing (the Minister) directed that the non-binding process must be concluded by November 30, 2017. See Appendix A for the correspondence from the Minister.

ALTERNATIVES

Alternative 1

That the Minister of Municipal Affairs and Housing be advised that the Capital Regional District is unable to conclude the non-binding dispute resolution process by November 30, 2017 and that a binding process be directed as soon as possible.

That in accordance with the *Local Government Act*, the Minister of Municipal Affairs and Housing be advised that settlement by “final proposal arbitration” is the Board’s preferred method for resolving disputed Regional Growth Strategy provisions.

Alternative 2

That the Capital Regional District Board direct staff to provide more information.

IMPLICATIONS

Mediation Implications

The Minister has provided direction to conclude the non-binding mediation process being used to resolve the 2016 RGS by November 30, 2017. It is not possible to complete the mediation process by this date given the need for a 60-day referral to formally complete the process. The Minister's direction therefore effectively triggers an end to non-binding mediation.

To date, the mediation process has clarified the rationales for the rejections and allowed parties who did not accept the RGS to put forward possible solutions. This process has been valuable given that the RGS document must speak to 13 municipalities with different needs and points of view. The mediation process has generated information that will support the binding settlement process. The legislation recognizes that unanimous agreement is difficult and provides several options to resolve disputes.

RGS Settlement Implications

The Board has previously considered different options for settling the disputed RGS provisions as set out in the *Local Government Act* and *BC Reg 192/98*. See Appendix B for the staff report and the legislative and regulatory provisions.

The Board and the municipalities who did not accept the RGS must now agree to one of three binding settlement processes: 1) peer panel; 2) final proposal arbitration; and, 3) full arbitration. See Appendix C for a dispute resolution process diagram that summarizes key steps in each process.

As previously identified by staff, settlement by final proposal arbitration would be preferable for the following reasons:

- a) would resolve matters most quickly at likely the least cost;
- b) is the most transparent as all submissions to the arbitrator are made in writing;
- c) provides all participants with an option to submit preferred solutions; and,
- d) allows for the Board and municipal councils, and the Juan de Fuca Electoral Area subject to any conditions set by the panel or arbitrator, to sanction written submissions.

Intergovernmental Implications

The Board and municipalities who refused to accept the RGS must agree to a process and notify the Minister and all eligible participants.

Eligible participants include the municipalities who accepted the RGS, the Juan de Fuca Electoral Area, the Cowichan Valley Regional District and provincial ministries and agencies. Eligible participants will have the opportunity to identify if they wish to participate in the binding process once an arbitrator or peer panel is confirmed and appointed.

Electoral Area Implications

Section 442(5) of the *Act* provides for participation of the JdF EA Director in any one of the binding settlement processes, subject to any conditions set by the panel or arbitrator. Depending on the conditions, if any, the JdF EA Director will have the ability to participate independently of the CRD Board position.

Financial Implications

Section 442(4) of the *Act* sets out that costs related to binding settlement are to be shared proportionally between the Board and any participating local government, based on converted

value of land and improvements and subject to any provisions made by the arbitrator. The Board will be responsible for a portion of the costs. Costs will depend on the number of participants and the process used.

Next Step and Timing Implications

Next steps are summarized in Appendix C. Timing is dependent on when agreement to a binding settlement process is reached, and on when the Province confirms a binding settlement process and provides a list of eligible arbitrators.

CONCLUSION

The Minister has directed that the RGS non-binding dispute resolution process conclude by November 30, 2017. Given timing requirements, the Minister's direction effectively triggers binding arbitration. As per the legislation, the CRD Board and municipalities who rejected the RGS must agree to a binding settlement process to resolve the disputed RGS provisions. Settlement by "final proposal arbitration" would be preferable for timing, cost and process reasons.

RECOMMENDATION

That the Minister of Municipal Affairs and Housing be advised that the Capital Regional District is unable to conclude the non-binding dispute resolution process by November 30, 2017 and that a binding process be directed as soon as possible.

That in accordance with the *Local Government Act*, the Minister of Municipal Affairs and Housing be advised that settlement by "final proposal arbitration" is the Board's preferred method for resolving disputed Regional Growth Strategy provisions.

Submitted by:	Emily Sinclair, MCIP, RPP, Planner Regional and Strategic Planning
Concurrence:	Signe Bagh, MCIP, RPP, Senior Manager, Regional and Strategic Planning
Concurrence:	Kevin Lorette, P.Eng., MBA, General Manager, Planning and Protective Services
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

ES:SB

Attachments: Appendix A: Correspondence from the Minister of Municipal Affairs and Housing
Appendix B: February 8, 2017 CRD Board Staff Report
Appendix C: Dispute Resolution Process Diagram