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REPORT TO FIRST NATIONS RELATIONS COMMITTEE MEETING OF WEDNESDAY, FEBRUARY 26, 2020

SUBJECT **First Nations Inclusion on CRD Board Standing Committees**

ISSUE SUMMARY

This report seeks direction for staff to bring back implications and proposed draft amendments to Board Procedures Bylaw No. 3828 (the "Procedures Bylaw") and appropriate Board Standing Committee Terms of References that would enable the inclusion of First Nations elected representatives in discussions that take place through the existing CRD governance structure.

BACKGROUND

Several First Nations within the capital region have signaled their interest in being a part of the CRD Board and its committee structure, expressing a desire for more involvement in discussions and, ultimately, in decisions that may impact First Nations. There are provincial legislative restrictions within the *Local Government Act (LGA)* and practical reasons related to the requisition, regional service structure and weighted voting requirements as to why First Nations are not Members of the CRD Board as defined in the Procedures Bylaw. However, a number of approaches have been explored and implemented by other regional districts that the CRD can consider that are within its authority to create more opportunities for First Nations inclusion in regional discussions.

A complete timeline of activities related to this initiative is attached to this report (Appendix A). Following Ləkʷəŋən (Songhees First Nation) Chief Ron Sam signaling the Nation's interest in having formal representation on the CRD Board in October 2014, the CRD established the Special Task Force on First Nations Engagement (Task Force) with the mandate to recommend more inclusive models of governance and decision-making. The Task Force undertook direct engagements with First Nations and letters were sent to the province from past CRD Board Chair Nils Jensen in 2015 (Appendix B) and past CRD Board Chair Steve Price in 2017 (Appendix C) along with a supporting letter from W̱SIKEM (Tseycum First Nation) in 2018 (Appendix D). The letters all expressed, in various ways, the need for the provincial government to address the legislative and capacity barriers impacting the ability of local governments and First Nations to move their relationships forward.

In December 2016, the CRD Board adopted the suite of recommendations contained within the Year End Report from the Task Force (Appendix E) with the direction that the Task Force guide the completion of the items that include, among others, developing recommendations to allow for First Nations representation and options for increased resourcing to accommodate greater participation, engagement and reconciliation. Staff are now looking to reaffirm the commitment of the sitting CRD Board on this approach in support of more inclusive regional discussions with First Nations participation.

ALTERNATIVES

Alternative 1

The First Nations Relations Committee recommends to the Capital Regional District Board:

That staff bring back implications and draft amendments to the Capital Regional District Procedures Bylaw No. 3828 to enable the inclusion of First Nations elected representatives on Board Standing Committees, Select and Advisory Committees, Commissions and other appointed bodies of the Board.

Alternative 2

The First Nations Relations Committee recommends to the Capital Regional District Board: That this report be referred to staff for additional information, as directed.

IMPLICATIONS

Legislative Implications

The LGA is explicit under Section 196(1) that a Regional Board consists of municipal Directors and electoral area Directors, except in the specific case under Section 253(1) where a Treaty First Nation is a member of a regional district. This section limits any non-treaty First Nations from full participation on the Board or as a service participant, other than as a third-party client of a service (such as a water supply contract to reserve lands). Section 218(3) of the LGA allows persons who are not Directors to be appointed by the Board to a Select Committee or by the Chair to a Standing Committee. Within the context of this staff report, Section 218(3) allows voting participants at a Select Committee and/or at a Standing Committee to include First Nations at the discretion of the Board or the Board Chair. Should there be a questions of matters discussed in closed meetings, the *Community Charter* Section 91(2)(b) allows for any participants the Board considers appropriate, which could include First Nations, to be present in matters discussed in closed.

Staff have identified that there will remain some specific commissions where First Nations participation will not be possible. In response to First Nations expressing an interest in participating in regional water commissions, staff undertook a review of the ability to do this and identified that the *Capital Region Water Supply and Sooke Hills Protection Regulation*, BC Reg. 287/97 sets a fixed, elected-official-only membership for the Regional Water Supply Commission and the Juan de Fuca Water Distribution Commission. This regulation only allows for local government participants to be members of the commission, with voting being conducted according to LGA weightings. Under the regulation, First Nations participation is limited to the Water Advisory Committee, where they are already included as members in the Water Advisory Committee Terms of Reference. The regulation permits one or more First Nations entities to propose a member, who may be appointed by the Board to the Water Advisory Committee.

Environmental & Climate Implications

It is likely that as First Nations participation increases in discussions relating to the environment and climate that elements relating to cultural practices and traditional uses of areas are brought forward with the expectation that these shared teachings are woven into existing approaches. This could add additional time and complexity to projects that are already underway as staff consider how to incorporate any information that may come forward. However, this additional perspective also could enhance the effectiveness of efforts being made by the CRD through the incorporation of cultural knowledge as well as additional partnership or collaborative opportunities as First Nations are also looking to support work related to taking care of the land and water.

Governance Implications

The proposed inclusion of First Nations would require amendments to the Procedures Bylaw to define the various appointments as well as amendments to the Terms of Reference of the

identified Committees and Commissions. An amendment to the Procedures Bylaw would then enable Committee and Commission Terms of References to be updated upon request by First Nations Band resolution so as to enable First Nations inclusion. As staff work on the proposed bylaw amendments, consultation will be conducted with the First Nations to gauge specific levels and items of interest.

Intergovernmental Implications

First Nations currently have the ability to participate on the CRD Water Advisory Committee, the Core Area Waste Liquid Waste Management Committee and the Saanich Peninsula Water Supply Commission. Providing additional opportunities for First Nations to participate in discussions on Committees and Commissions and for the Nations to have the space to bring items forward for discussions or information sharing, will significantly enhance the ability of First Nations and the CRD to work together towards building strong relationships that are based on trust and mutual respect, partnerships and working together on shared goals. Based on the expressed interests of First Nations, staff will look to take an incremental approach towards increased inclusion.

Financial Implications

Parallel to this report, staff are bringing forward a report proposing amendments to the CRD Board Remuneration Policy and the creation of a First Nations Remuneration Policy in order to establish a corporate approach to providing First Nations elected representatives with remuneration for participation on Committees and Commissions as well as to establish guidelines relating to the way the CRD compensates First Nations for supporting the CRD with meeting openings and cultural work.. In the 2020 CRD Budget, which has received provisional approval, \$12,000 was included in the CRD Board Budget with the intent that these funds would be available to support First Nations participation when an enabling amendment to the Board Remuneration Policy was approved. Specific costs for increased First Nations participation would be borne by each individual commission budget or, in the case of Committees, by the CRD Board budget.

Service Delivery Implications

Provincial legislation does not permit for First Nations to have a vote at a Regional District Board without signed modern treaties. Increased inclusion of First Nations in discussions at the CRD Board will not fetter the decision-making authority of Directors in any way. However, it will likely bring additional perspectives forward that contain new information or approaches that directors may wish to consider in their decision-making.

Alignment with Board & Corporate Priorities

The 2019 – 2022 CRD Board Priorities include Reconciliation with First Nations, specifically:

- 3a Look to First Nations for leadership in understanding how to create new regional planning and decision-making systems together on their Traditional Territories.
- 3b Seek partnerships, share information and deliver fair and equitable services in working with First Nations on achieving their economic goals.
- 3c Work with First Nations on taking care of the land and water while providing space for cultural and ceremonial use, food and medicine harvesting, traditional management practices and reclaiming Indigenous place names.

Alignment with Existing Plans & Strategies

The following strategies have been identified as related to the Reconciliation with First Nations

board priority:

- Special Task Force on First Nations Relations Final Report and the Statement of Reconciliation;
- Regional Climate Action Strategy;
- Regional Food and Agricultural Strategy;
- Regional Growth Strategy;
- Regional Housing Affordability Strategy;
- Regional Parks Strategic Plan;
- Regional Water Supply Strategic Plan;
- Organizational Development Plan; and,
- Corporate Asset Management Strategy.

CONCLUSION

First Nations have previously expressed an interest in increased participation in regional discussions and, ultimately, an impact on regional decision-making. Provincial legislation limits full First Nations participation at the CRD Board prior to the completion of a treaty process, but there are options for the CRD to move towards greater inclusivity in discussions at the CRD Committee and Commission tables. Taking a more inclusive approach has the potential to impact ongoing or upcoming projects with the inclusion of First Nation's perspectives in various plans and strategies. However, the reconciliation mandate adopted by the Board requires that we look to include the perspective of First Nations in CRD projects and plans, and having greater inclusion on Committees and Commissions could support a more collaborative and effective process. It could also strengthen existing partnerships and identify additional collaboration efforts.

RECOMMENDATION

The First Nations Relations Committee recommends to the Capital Regional District Board: That staff bring back implications and draft amendments to the Capital Regional District Procedures Bylaw No. 3828 to enable the inclusion of First Nations elected representatives on Board Standing Committees, Select and Advisory Committees, Commissions and other appointed bodies of the Board.

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ATTACHMENT(S)

- Appendix A: Background on Activities Related to First Nations Inclusion
- Appendix B: Letter to Premier Christy Clark, 2015
- Appendix C: Letter to Scott Fraser, Minister of Indigenous Relations and Reconciliation, 2017
- Appendix D: Letter to Scott Fraser, Minister of Indigenous Relations and Reconciliation, 2018
- Appendix E: Year End Report on the Activities of the Special Task Force on First Nations Engagement, 2016