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**TO:** Paul Thompson  
Manager of Long Range Planning

**DATE:** September 8, 2011

**FROM:** Lisa Bhopalsingh  
Senior Planner

**FILE:** 6780 30

**SUBJECT:** Amendments to Regional Growth Strategy Bylaw No. 1615, 2011

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### PURPOSE

To make text and mapping amendments to “Regional Growth Strategy (RGS) Bylaw No. 1615, 2011” as a result of discussions with K’ómoks First Nation and a request from the Town of Qualicum Beach.

### BACKGROUND

On June 28, 2011, “Regional District of Nanaimo Regional Growth Strategy Bylaw No. 1615, 2011” was given first and second reading, and staff were directed to schedule a public hearing. Following the meeting held on June 28, 2011, new comments were received from First Nations and provincial agencies. The RDN Board subsequently approved the inclusion of amendments to the proposed Bylaw in order to address some of these comments. This was done by rescinding second reading given on June 28, 2011, and giving an amended second reading to Bylaw No. 1615 on August 23, 2011. RDN Staff were also directed to proceed with the public hearings.

On September 2, 2011, the RDN Board received a letter from K’ómoks First Nation indicating that the changes made to the proposed RGS Bylaw No. 1615 on August 23, 2011, did not fully address their interests. In light of the letter received, the public hearings on September 7<sup>th</sup> and 8<sup>th</sup> were postponed to allow for time to meet with K’ómoks First Nation to attempt to address their interests.

Regional District staff met with K’ómoks First Nation staff on September 7, 2011, resulting in a letter requesting a change to the text added in the amendment to Bylaw No. 1615 on August 23, 2011, (Appendix 1). Staff have reviewed the request and recommend making a change to “Schedule A” (August 23, 2011, draft RGS) of Bylaw No. 1615, 2011. The proposed text change would recognize that through Treaty Settlement processes, lands within the RDN may be transferred to “*corporations fully owned by First Nations*” as well as to First Nations (see Appendix 3 of this report).

Since amended second reading was given on August 23, 2011, the Town of Qualicum Beach has requested that the Growth Containment Boundary as shown on the maps in Schedule ‘A’ of the proposed Bylaw No. 1615, 2011, be amended to recognize a change to the Town of Qualicum Beach’s Official Community Plan that resulted from their recent OCP Review. This change to the Growth Containment Boundary must be made on RGS Maps 1-5 and Sheet 5 of RGS Appendix ‘B’. (change shown in Appendix 4).

Bylaw No. 1615 has not yet proceeded to public hearing and there is an opportunity for the RDN Board to consider making the recommended amendments prior to the public hearings and subsequent referral for acceptance. If the RDN Board supports the recommended changes then, the second reading of Bylaw No. 1615 given on August 23, 2011, should be rescinded. This will allow the Bylaw to include the proposed changes to Schedule 'A' and to be given a second reading as amended before proceeding to public hearing. These steps will ensure that the legislative requirements to adopt a Regional Growth Strategy are met.

## **ALTERNATIVES**

1. To receive this report with the proposed changes to "Regional District of Nanaimo Regional Growth Strategy Bylaw No. 1615, 2011", rescind second reading, that Bylaw No. 1615, 2011 be read a second as amended and proceed to public hearing.
2. To not rescind the second reading of "Regional District of Nanaimo Regional Growth Strategy Bylaw No. 1615, 2011" and proceed to public hearing.

## **FINANCIAL IMPLICATIONS**

There are no additional financial implications involved with either proceeding with the recommendations of this report or not, as the same schedule for public hearings can be followed either way. While the recommended change requested by K'ómoks First Nation is considered minor by staff, it should be noted that following the recommendations of this report will assist with building stronger political and working relationships between the RDN and First Nations Governments. This will help to improve the likelihood of finding effective ways of resolving issues as they arise while also helping mitigate the need for significant financial resources to be used to resolve conflicts.

## **LAND USE & SUSTAINABILITY IMPLICATIONS**

The proposed changes to the August 23, 2011, draft of the RGS do not have significant land use implications. The change to the Growth Containment Boundary as requested by the Town of Qualicum Beach is already recognized by their recently adopted Official Community Plan and the proposed change to the RGS Bylaw No. 1615 would be consistent with the direction of their OCP that has undergone a full public review process.

The proposed fine-tuning of wording as requested by K'ómoks First Nation recognizes that First Nations Treaties may result in the transfer of jurisdiction of some lands within the RDN to corporations fully owned by First Nations. Whether or not the RGS text acknowledges this, Treaty Implementation Agreements would continue to determine any changes in jurisdiction over Treaty Settlement Lands.

The proposed changes to the draft RGS continue to be consistent with the August 23, 2011, draft RGS that the Board reviewed. As such, the land use and sustainability implications explained in previous reports to the Board are still relevant.

## **PUBLIC CONSULTATION IMPLICATIONS**

If the Board chooses to proceed with the recommendations of this report, this will allow the public to be fully aware of the proposed changes and have adequate time to provide a response to them by the close of the public hearings. If the Board chooses not to make the recommended changes then it is not necessary to rescind second reading and the bylaw can still proceed to public hearing.

It should be noted that, previous reports to the Board have detailed the public consultation process and outlined changes to earlier drafts of the RGS as a result of public consultation.

## **SUMMARY/CONCLUSION**

Since the Board gave Bylaw No. 1615, 2011 second reading on August 23, 2011, further requests for changes have been made by the Town of Qualicum Beach and K'ómoks First Nation. If the Board decides to make the changes recommended in this report to Bylaw No. 1615, 2011, the second reading should be rescinded and the Bylaw given another second reading. This will allow the Board to ensure that legislation governing the adoption the Regional Growth Strategy is followed, while also providing the public with sufficient time to review the amended Bylaw prior to the public hearings. The following recommendations are provided for the Board's consideration.

## **RECOMMENDATIONS**

1. That second reading of "Regional District of Nanaimo Regional Growth Strategy Bylaw No. 1615, 2011" be rescinded.
2. That "Regional District of Nanaimo Regional Growth Strategy Bylaw No. 1615, 2011" be amended as set out in Appendix 3 of the staff report.
3. That "Regional District of Nanaimo Regional Growth Strategy Bylaw No. 1615, 2011" be amended as set out in Appendix 4 of the staff report.
4. That "Regional District of Nanaimo Regional Growth Strategy Bylaw No. 1615, 2011" be read a second time as amended.

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Report Writer

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General Manager Concurrence

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Manager Concurrence

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CAO Concurrence

**APPENDIX 1**  
**Letter Received from K'ómoks First Nation Dated September 7, 2011**

Fax sent by : 2503397053

COMOX BAND OFFICE

09-07-11 15:37 Pg: 2/3



**K'ómoks First Nation**

3320 Comox Road, Courtenay BC V9N 3P8 Tel: (250) 339-4545 Fax: (250) 339-7053

September 7<sup>th</sup>, 2011

Mr. Joe Stanhope, Chair RDN Board  
Regional District of Nanaimo  
6300 Hammond Bay Road  
Nanaimo, BC V9T 6N2

Dear Mr. Stanhope:

**Re: Regional Growth Strategy Bylaw No. 1615**

Staff from K'ómoks First Nation and the Regional District of Nanaimo recently met to discuss proposed changes to the Regional Growth Strategy, specifically on the wording that applied to First Nations and the Treaty Settlement process.

Following these discussions, we are prepared to support the following wording:

*"In addition to the reserve lands noted above, it is recognized that additional lands within the RDN may be transferred to First Nations or corporations fully owned by First Nations through Treaty Settlement processes. The RGS will be updated to reflect these changes in jurisdiction over land as determined by Treaty Implementation Agreements.*

*The RDN will continue to pursue building respectful and collaborative relationships with First Nations with Traditional Territories adjacent to or within the RDN's boundaries. This will help ensure that common concerns and interests are addressed to achieve mutually beneficial social, economic and environmental goals."*

K'ómoks First Nation would support Regional Growth Strategy Bylaw No. 1615 following this amendment.

As noted in previous correspondence, we are open to exploring a Protocol Agreement with the Regional District of Nanaimo, and believe this Agreement could assist in advancing knowledge on consultation, First Nation's Rights and Title, and First Nation's Economic Rights. Previous correspondence also suggested a meeting between Chief and Council and elected officials from the Regional District of Nanaimo. We will work with staff to schedule this meeting, and anticipate that the Protocol Agreement will be part of these discussions.

Fax sent by : 2503397853

COMOX BAND OFFICE

09-07-11 15:37 Pg: 3/3

The Supreme Court of Canada made it clear that both the provincial and federal governments owe a fiduciary duty of utmost good faith to consult with the First Nations with respect to our lands and resources. This consultation must at minimum have the intention of substantially addressing the concerns of the First Nation whose lands are at issue. The courts have also confirmed that government is obliged to make an initial assessment of our rights and must not only engage in meaningful consultation but also must seek an accommodation of our interests which include cultural and economic ones.

We look forward to building a relationship with the Regional District of Nanaimo.

Yours truly,

  
for Ernie Hardy  
Chief

cc: Honourable Mary Polak, Aboriginal Relations and Reconciliation  
Honourable Ida Chong, Community, Sport & Cultural Development  
Director Dave Bartram, Electoral Area H  
GM, Paul Thorkelsson  
CAO, Carol Mason

**APPENDIX 2**  
**Letter Received from Town of Qualicum Beach Dated September 8, 2011**



201 - 660 Primrose St.  
P.O. Box 130  
Qualicum Beach, B.C.  
V9K 1S7

**TOWN OF QUALICUM BEACH**  
INCORPORATED 1942

Telephone: (250) 752-6921  
Fax: (250) 752-1243  
E-mail: [qbtown@qualicumbeach.com](mailto:qbtown@qualicumbeach.com)  
Website: [www.qualicumbeach.com](http://www.qualicumbeach.com)

January 15, 2008

Paul Thompson, Manager of Long Range Planning  
Regional District of Nanaimo  
6300 Hammond Bay Road  
Nanaimo, BC  
V9T 6N2

**Urban Containment Boundary - Eaglecrest Subdivision**

The Town has received an application to amend the Town's Official Community Plan to permit a nine lot residential subdivision on land that was previously used by Eaglecrest Golf Course as their driving range. The land is outside of the UCB, although most of the golf course is inside the UCB. As such, the application will require an amendment to the Regional Growth Strategy. The proposed OCP and UCB amendment has been anticipated for some time, and is identified in the Town's OCP, which was adopted in May, 2011.

If the new Regional Growth Strategy were adopted before we proceed with this rezoning, then it would be considered a minor amendment since it is recognized in the OCP. However, rather than waiting for the updated RGS and applying for a minor amendment, the Town requests that the UCB boundary adjustment be included in the new Regional Growth Strategy.

I have attached two documents to provide details on the proposed subdivision and the UCB boundary adjustment.

1. Planning staff memo to Council for September 12, 2011
2. Conceptual diagram illustrating how the boundary adjustment would not have a net impact on the amount of land in the UCB. Land will be added, and land will be taken out. A more detailed reference plan will be prepared by a surveyor at the earliest convenience.

If it is possible to include this amendment in the new RGS it would most helpful.

Sincerely,

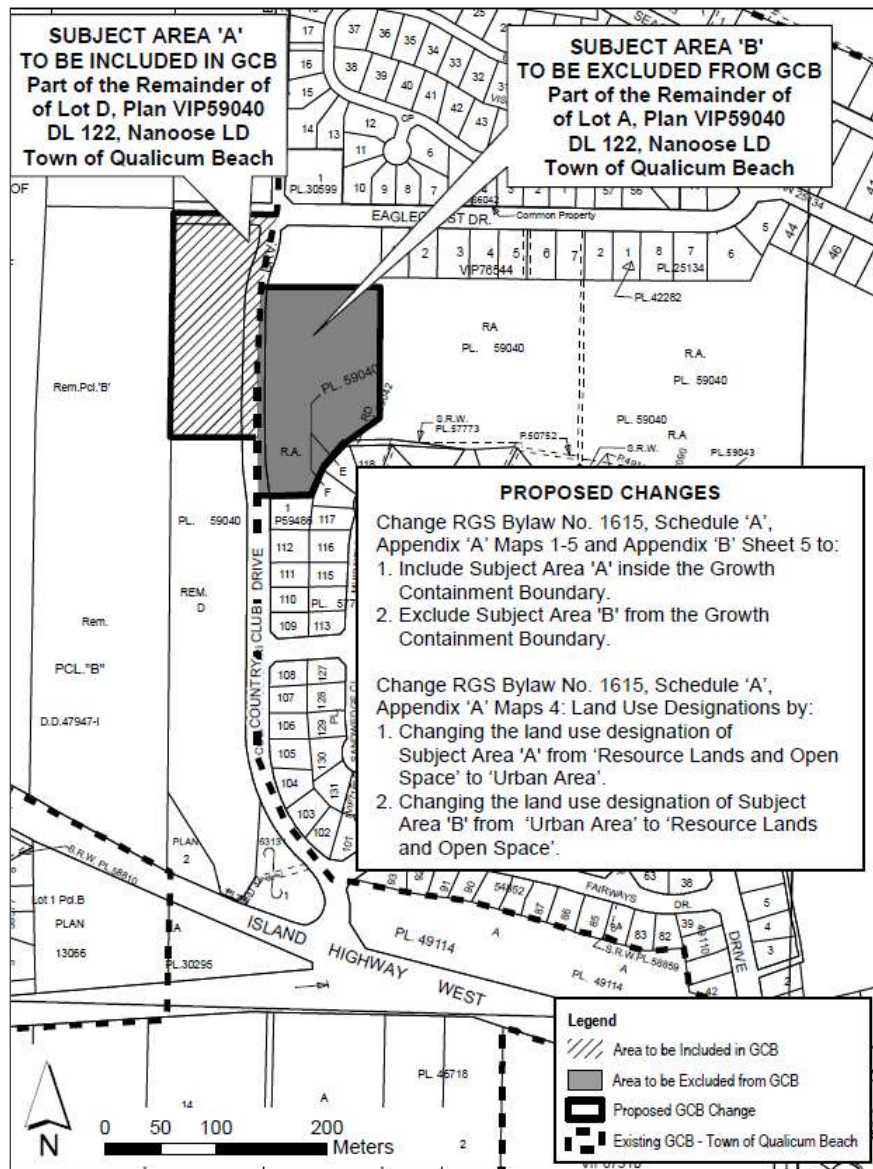
Paul Butler, Director of Planning  
[pbutler@qualicumbeach.com](mailto:pbutler@qualicumbeach.com)

**APPENDIX 3**  
**Text Amendment to Schedule ‘A’ of “Regional District of Nanaimo Regional Growth Strategy**  
**Bylaw No. 1615, 2011”**

RGS Section	Page #	Amendment
Section 2.1 RDN Mandate	7	<p>Add underlined text as follows:</p> <p><i>In addition to the reserve lands noted above, it is recognized that additional lands within the RDN may be transferred to First Nations <u>or corporations fully owned by First Nations</u> through Treaty Settlement processes. The RGS will be updated to reflect these changes in jurisdiction over land as determined by Treaty Implementation Agreements.</i></p> <p><i>The RDN will continue to pursue building respectful and collaborative relationships with First Nations with Traditional Territories adjacent to or within the RDN’s boundaries. This will help ensure that common concerns and interests are addressed to achieve mutually beneficial social, economic and environmental goals.</i></p>

**APPENDIX 4**  
**Map Amendments to Schedule 'A' of "Regional District of Nanaimo Regional Growth Strategy**  
**Bylaw No. 1615, 2011"**

RGS Section	Page #	Amendment
Appendix 'A' Maps 1-5 Appendix 'B', Sheet 5		Change the location of the Growth Containment Boundary for the Town of Qualicum Beach to include and exclude the lands identified on the map below.
Appendix 'A' Map 4		Change the land use designation of lands shown on the map below: <ol style="list-style-type: none"> <li>For lands being included inside the Growth Containment Boundary from Resource Lands and Open Space to Urban Area</li> <li>For lands being excluded from inside the Growth Containment Boundary from Urban Area to Resource Lands and Open Space.</li> </ol>





**APPENDIX 5**  
**Regional District of Nanaimo**  
**Bylaw No. 1615**

**A Bylaw to Adopt a Regional Growth Strategy for the Regional District of Nanaimo**

WHEREAS the Local Government Act provides for a regional district to undertake the development, adoption, implementation, monitoring and review of a regional growth strategy under Part 25,

AND WHEREAS a review of “Regional District of Nanaimo Growth Strategy Bylaw No. 1309, 2003” was initiated by resolution, pursuant to Part 25, section 854 of the Local Government Act;

NOW THEREFORE, the Board of the Regional District of Nanaimo, in open meeting assembled, enacts as follows:

1. “Regional District of Nanaimo Growth Strategy Bylaw No. 1309, 2003” is hereby repealed.
2. Schedule “A” attached to and forming part of this Bylaw is hereby designated as the “Regional Growth Strategy for the Regional District of Nanaimo”
3. This Bylaw may be cited as “Regional District of Nanaimo Regional Growth Strategy Bylaw No. 1615, 2011” and takes effect on the date adopted.

The Regional Growth Strategy Bylaw was introduced and read two times on the 28th of June, 2011.

Second reading was rescinded and the Bylaw was amended on the 23rd of August, 2011.

The Regional Growth Strategy Bylaw was read a second time as amended on the 23rd of August, 2011.

Second reading was rescinded and the Bylaw was amended on this \_\_\_\_\_ day \_\_\_\_\_ of \_\_\_\_\_ 20\_\_\_\_.

The Regional Growth Strategy Bylaw was read a second time as amended on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

The Board conducted a public hearing on the Regional Growth Strategy Bylaw on this \_\_\_\_\_ and \_\_\_\_\_ days of \_\_\_\_\_, 20\_\_\_\_.

“Regional District of Nanaimo Regional Growth Strategy Bylaw No. 1615, 2011” was accepted, by resolution as follows:

- City of Nanaimo on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_;
- City of Parksville on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_;
- District of Lantzville on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_;
- Town of Qualicum Beach on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_;
- Comox Valley Regional District Board on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_;
- Alberni-Clayoquot Regional District Board on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_;
- Cowichan Valley Regional District Board on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Read a third time this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Adopted this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

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Chairperson

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Sr. Mgr., Corporate Administration