

DATE: May 6, 2019

FILE: 6410-01

TO: Chair and Directors
Electoral Areas Services Committee

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

RE: Community Amenity Contributions: Board Policy

Purpose

The purpose of this report is to present a Community Amenity Contribution (CAC) Board policy for adoption.

Recommendation from the Chief Administrative Officer:

THAT the Community Amenity Contribution policy attached to staff report dated May 6, 2019 be adopted by the board as a Board policy and used to guide discussion and decision making regarding community amenity contributions.

Executive Summary

- In February 2019, the board directed staff to report back with a draft Board policy on voluntary CACs.
- Staff has prepared a draft Board policy (Appendix A) that is based on the principles and best practices of the province’s 2014 guidebook, entitled “*Community Amenity Contributions: Balancing Community Planning, Public Benefits and Housing Affordability*”.
- The draft policy is recommended for use as a companion to the CAC policy within Section 72 of Bylaw No. 337, being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014”.
- Staff suggests that a clear Board policy to be used in the board’s consideration of density bonus zoning, phased development agreements and voluntary CAC offers, will help to:
 - Avoid legal risk;
 - Maintain public confidence in local government and our planning process; and
 - Ensure transparent and equitable treatment of development proponents.

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Stakeholder Distribution (Upon Agenda Publication)

None	
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Background/Current Situation

Arising from the board's consideration of zoning amendment application (File No. RZ 5C 18), on February 26, 2019, the board passed the following resolution:

“THAT staff report back to the Comox Valley Regional District Board with a draft board policy on voluntary community amenity contributions per Section 72 of Bylaw No. 337, being the “Rural Comox Valley Official Community Plan Bylaw No. 337, 2014” and the Ministry of Municipal Affairs and Housing Guidebook, “Community Amenity Contributions: Balancing Community Planning, Public Benefits and Housing Affordability.”

Legislation allows local governments to levy development cost charges (DCCs) for some off-site services (i.e. water, sewer, park space). DCCs cannot be used, however, for all amenities that a community may value (e.g. affordable housing, protection or restoration of ecological systems, use of green building technology, etc.). As such, some local governments, including the Comox Valley Regional District (CVRD) have adopted density bonus zoning (Appendix B), entered into phased development agreements, and accepted voluntary CACs in order to achieve community benefits through the rezoning process.

In 2014, the Ministry of Community, Sport and Cultural Development, responded to the wide ranging approaches that were taking place around the practice of negotiating community amenity contributions by releasing a guiding document entitled, *“Community Amenity Contributions: Balancing Community Planning, Public Benefits and Affordable Housing”*. The stated purpose of the guide is to “help local governments understand the risks, challenges, and recommended practices relating to obtaining community amenity contributions”. Key principles of the provincial guidelines are:

1. Avoid legal risk: negotiate, do not impose; avoid perception that zoning is for sale.
2. Plan ahead: identify potential amenities, ideally by neighbourhood.
3. Seek modest contributions: avoid impacts on housing affordability.
4. Apply DCC principles (e.g. link contributions to impact of new development, try to ensure equity).
5. Engage the development community: be aware of how CACs could impact projects and their viability.

A Board policy, based on the above, will clarify the principles and administrative process for applicants, the public, staff and elected officials and ensure fair and transparent discussions regarding the offer and acceptance of community amenities. Finally, adoption of, and adherence to, a clear board policy should help to protect the planning process and maintain public confidence in local government.

Policy Analysis

The basis for CACs in the CVRD is Bylaw No. 337 which includes the following policy:

- 72.(1) *“Consider voluntary contribution of a community amenity with an application for an amendment to the OCP or zoning bylaw when that amenity offsets the impact of the increased density on the recipient community and/ or broader community in accordance with sound planning practice. Negotiate a community amenity contribution if and when:*
- (a) The Board is satisfied that the proposal demonstrates sound planning practice;*
 - (b) The community amenities offered directly assist in mitigating impacts associated with the increased density and/ or the broader community; and*
 - (c) The amenities clearly benefit the community affected by the increased density and/ or the broader community.”*

The policy continues and states that a community amenity may include in kind or monetary contributions.

Through provincial planning legislation, local governments have a number of tools that can be used at the time of rezoning to acquire amenities that a community values. For example, Section 482, “density benefits for amenities, affordable housing and special needs housing” of the *Local Government Act* (RSBC, 2015, c. 1) (LGA) enables local governments to establish different density rules for a zone, one generally applicable for the zone (i.e. “base zoning”) and the other to apply if named conditions are met (i.e. “density bonus zoning”).

Section 483 of the LGA enables local governments to enter into housing agreements that may include mutually agreeable terms and conditions regarding occupancy of the housing units, the form of tenure, management of the units, sale or lease price, as well as identifying a specific group of residents (e.g. citizens with mobility challenges).

Section 516 of the LGA allows local governments to enter into phased development agreements with a landowner. These agreements can serve to insulate a development proponent from future changes to a zoning or subdivision servicing bylaw subject to terms and conditions. Such terms may include a requirement to include specific features in a development, provision of amenities, and phasing and timing of the development.

Section 219 of the *Land Title Act* (RSBC, 1996, c. 250) authorizes local governments to enter into covenants, of either a positive (i.e. you will) or a negative (i.e. you won’t) nature. A covenant can specify provisions in respect to the use of land or buildings, conditions for subdivision or building permits, as well restrictions on transfer of land.

None of the above specify a formula or process for acquiring a CAC: much is left to local governments and therefore there is some level of risk if the discussion of CACs appears arbitrary or inconsistent from one rezoning applicant to another. Staff recommends that a Board policy can provide transparency thus reducing risk.

Options

The board has the following options:

1. Adopt the CAC Board policy appended to this report.
2. Refer the draft policy back to staff with direction on revision.
3. Maintain the status quo (e.g. no Board policy).

Staff recommends option 1.

Financial Factors

There are no financial factors related to staff’s recommendation.

Legal Factors

The LGA provides a legal framework for community amenity contributions in the form of density bonus zoning and phased development agreements. Outside of these tools there is no legal authority to require that a rezoning proponent provide a community amenity contribution. As such, a Board policy that is rooted in the principles and best practices of the province’s guidebook is recommended. It is important to protect the planning process; making clear that zoning is not for sale and that discussion of CACs in no way impairs or fetters the discretion of the CVRD Board in its consideration of a zoning amendment application.

Regional Growth Strategy Implications

The Regional Growth Strategy (RGS) directs the majority of new development to core settlement areas. Staff suggests that opportunities for amenity contributions will most likely arise with rezoning applications in the settlement nodes. Acceptance of CACs within the settlement nodes may assist in achieving RGS goals and objectives that cannot otherwise be met through DCCs.

Intergovernmental Factors

The City of Courtenay, the Town of Comox and the Village of Cumberland have included language in their Official Community Plans (OCPs) pertaining to an interest in obtaining amenity contributions where increased density (residential and commercial/industrial) is proposed by a zoning amendment applicant. Courtenay and Comox have established formulae for determining community amenity contributions (e.g. Town of Comox’s “housing affordability calculator”).

Staff suggests that a prescriptive approach is likely to be less effective in rural areas given the greater economic variability on a project-by-project basis. Staff suggests that in the electoral areas the assessment of density bonus opportunities is best made on a project by project basis in consultation with the development proponent.

The purpose of the Board policy is to provide an operational framework. Should the board seek to prescribe specific amenities, staff will report back with an option to amend the OCP.

Interdepartmental Involvement

Planning staff has prepared the draft board policy. The negotiation of amenities, however, involves multiple departments depending on the amenity as well as the manner in which the amenity is to be transferred. Under current practice, through the inter-departmental referral of a zoning amendment application, input from community services and engineering services staff is solicited. Input from finance and legislative services staff is required regarding the acceptance and transfer of amenities (e.g. covenants, reserve fund set-up). The same collaborative approach is proposed in staff’s recommended board policy (Appendix A).

Citizen/Public Relations

CACs are negotiated through the rezoning process. The voluntary offer of amenity would be disclosed as part of the statutory public process that frames zoning amendment applications (i.e. public hearing). No public consultation on the draft policy is recommended as this is an operational policy: public consultation on the concept and principles of community amenity contributions was undertaken through the OCP review.

Attachments: Appendix A – “Draft Board Community Amenity Contribution policy”
Appendix B – “Density bonus zone example”

Subject: Voluntary Community Amenity Contributions at Time of Rezoning	
Category: Planning Services	Policy Reference: 6410-00

Purpose

Development often highlights a need for community amenities beyond what can be provided by development cost charges. To secure such community amenities, the Comox Valley Regional District (CVRD) may identify desired community amenities through density bonus zoning. Alternatively, the CVRD may accept voluntary community amenity contributions that are negotiated as part of a rezoning process when increased density is sought by a development proponent.

This policy is intended to guide discussions between CVRD staff and development proponents that are considering a voluntary offer of community amenities at the time of rezoning application. The policy may also be used to guide the board's consideration of density bonus zoning.

The CVRD recognizes the relationship between housing affordability and community amenity contributions and will strive to ensure balance and equity between the provision of community amenities and the supply of housing that can be affordably accessed.

This policy is based on the Ministry of Community, Sport and Cultural Development's March 2014 publication: "*Community Amenity Contributions: Balancing Community Planning, Public Benefits and Housing Affordability*".

Interpretation

"Community amenity" means any public benefit, improvement or contribution that can enhance the quality of life for a community and includes, but is not limited to, public spaces, land or an interest in land, affordable and/or special needs housing, and facilities, which meet a range of social, environmental, cultural, recreational and infrastructure needs of the community.

"Community amenity contribution" (CAC) means provision of a community amenity, or a contribution towards the capital cost of a community amenity, agreed to by the development proponent and the CVRD, as part of the development proponent's rezoning application process.

"Density bonus zoning" means zoning under Section 482 of the *Local Government Act* (RSBC, 2015, c. 1) and is intended to provide options to a developer to build at either a "base" density or higher density with the provision of community amenit(ies).

"Phased development agreement" means an agreement under Section 516 of the *Local Government Act* (RSBC, 2015, c. 1) and is intended to secure the zoning and/or subdivision servicing requirements of a development over a defined period subject to terms and conditions.

Policy

1. Planning staff are authorized to implement this CAC policy as part of the rezoning application process where applicants propose an increase in residential density or increase in commercial/industrial floor area.
2. Planning staff will inform applicants and potential applicants of this Board policy through the pre-consultation process and/or at the time of zoning amendment application.

3. The board may refer to this policy in its consideration of density bonus zoning for amenities as provided for in Section 482 of the *Local Government Act* (RSBC, 2015, c. 1); in the preparation of a phased development agreement that includes the provision of amenities as provided for in Section 516 of the *Local Government Act* (RSBC, 2015, c. 1); or upon the voluntary offer of community amenity by a development proponent.
4. This policy will be publicized on the CVRD's website.
5. One or more of the following sources may provide guidance with respect to the type of CAC to an applicant considering a voluntary offer of CAC:
 - a. Regional Growth Strategy
 - b. Comox Valley Sustainability Strategy
 - c. Rural Comox Valley Official Community Plan (and associated Local Area Plans)
 - d. Rural Comox Valley Parks and Greenways Strategic Plan
 - e. Comox Lake Watershed Protection Plan
 - f. Other board adopted plan or strategy
 - g. Cash contribution to a board endorsed initiative
 - h. Capital contribution to a board strategic priority
6. Upon the voluntary offer of a CAC, the CAC will be negotiated on a case-specific basis as each development proposal is unique, generating different community impacts. Negotiation will be based on the following principles:
 - a. Nexus: in that there is a demonstrable link between the CAC and the community that is receiving the proposed increase in density;
 - b. Proportionality: in that the CAC is proportional to the anticipated impact that the new development generates; and
 - c. Equity: in that the CAC is comparable to CACs made by other rezoning applicants.

Acceptance:

7. Proposed CACs will be referred to the CVRD's Electoral Areas Services Committee for consideration and a recommendation made to the board regarding acceptance.
8. An agreed-upon CAC would be obtained by the CVRD if, and when, the board approves the Zoning Amendment Bylaw.
9. The board may opt to accept a CAC where it considers that the CVRD's future budgets will be able to support the estimated life cycle costs of operating, maintaining and repairing the community amenity.
10. Where it is anticipated that a new community amenity will benefit both existing and new residents and businesses, an estimate may be made of the proportion of costs that is attributable to new development. In determining the proportion of costs attributable to new development, the development cost charge policies and procedures of the CVRD may be applied.
11. In establishing the value of a proposed community amenity, hard costs, soft costs, land costs and life cycle costs may be considered, such as:
 - a. Hard costs – all material and labour costs for the construction of the community amenity;
 - b. Soft costs – all fees and costs for the design of the community amenity;
 - c. Land costs – eligible only where land or an interest in land comprising the community amenity is transferred to the CVRD; and
 - d. Life cycle costs – all recurring costs over the lifespan of the community amenity.
12. The provision of CACs may be secured through one or more of the following methods, prior to final reading of the relevant Zoning Amendment Bylaw. All costs associated with preparation, review and registration of any of the following will be at the expense of the applicant.
 - a. Phased development agreement (Section 516 of the *Local Government Act* (RSBC, 2015, c. 1));
 - b. Housing agreement for affordable or special needs housing (Section 483 of the *Local Government Act* (RSBC, 2015, c. 1));
 - c. Covenant (Section 219 of the *Land Title Act*);
 - d. Transfer of land or an interest in land to the CVRD.

13. The transfer of a voluntary CAC to the CVRD will occur only if and when the CVRD Board adopts a Zoning Bylaw Amendment.

Transparency, Monitoring and Board Discretion:

14. The CVRD will maintain a public record of all CACs that the CVRD Board has accepted.
15. The CVRD will monitor affordable housing supply and annually assess whether acceptance of CACs is impacting housing supply trends.
16. Nothing in this CAC policy shall impair or fetter the discretion of the CVRD Board in its consideration of an application to amend a Zoning Bylaw.

Approval History

Adopted by CVRD Board	Mmmm DD, YEAR
Amended:	

DRAFT

802.1 Rural Twenty Density Bonus (RU-20DB)

1. PRINCIPAL USES

- i) **On any lot:**
 - a) Single detached dwelling;
 - b) Agricultural use.

2. ACCESSORY USES

- i) **On any lot:**
 - a) Home occupation;
 - b) Domestic business;
 - c) Domestic industrial;
 - d) Riding academy;
 - e) Silviculture;
 - f) Aquaculture (finfish and shellfish);
 - g) Fish hatchery (including community-based);
 - h) Animal kennel;
 - i) Carriage house;
 - j) Secondary suite;
 - k) Secondary dwelling.

3. DENSITY

Residential density is limited to two dwelling units:

- i) On any lot: one single detached dwelling and one of either a carriage house, or a secondary suite, or a secondary dwelling.
- ii) On a lot greater than 10.0 hectares: two single detached dwellings.

4. CONDITIONS OF USE

Riding academy, silviculture, aquaculture, fish hatchery, and animal kennel uses are subject to the following:

- i) No merchandise to be displayed outdoors.
- ii) Loading areas to be screened to a height of 2.5m by coniferous vegetation or solid screen fence, or combination of the two.
- iii) Refuse and recycling facilities to be housed within a building or within an outdoor screened enclosure. Outdoor, screened enclosures are to be a minimum 2.5m in height.
- iv) No parking, loading or storage areas to be located within 4.5m of a property line.

5. **FLOOR AREA REQUIREMENTS**

- i) The maximum combined gross floor area of all accessory buildings (does not include carriage house or secondary dwelling) shall not exceed 400m²;
- ii) No single accessory building shall exceed 200m².

6. **SITING OF BUILDINGS AND STRUCTURES**

Type of Structure	Height	Required Setback				
		Front yard	Rear yard	Side yard		Side yard abutting road
				Frontage <31m	Frontage >31m	
Principal	10.0m	7.5 m	7.5m	3.0m	4.0m	7.5m
Accessory	4.5m or less	7.5m	3.0m	1.75m	1.75m	7.5m
Accessory	6.0m-4.6m	7.5m	7.5m	1.75m	3.5m	7.5m

7. **WATERCOURSE SETBACK**

15m setback to a watercourse.

8. **LOT COVERAGE**

The maximum lot coverage of all buildings and structures shall not exceed:

- i) on a 4.0 hectare lot: 25%;
- ii) on a lot greater than 4.0 hectares: 15%.

9. **SUBDIVISION REQUIREMENTS**

- i) Minimum lot area: 20.0 hectares.
- ii) For property described as Lot 4, District Lot 12 (situated partly within District Lots 31G, 33G and 40G of Section 2) Nelson District, Plan 46828, Except Part in Plan VIP68043 and a portion of Lot 33, Section 2A Nelson District except Plan VIP66877, except part in District Lots 12, 23 and 27 and except part in Plan VIP69915:

A density bonus to permit a maximum of 11 lots (each with a minimum lot area of 4.0 hectares) with provision of all community amenity contributions listed below:

Community Amenity Contributions	
a)	Donation to the CVRD of the approximately 1.8 hectare portion of Lot 4 east of the E&N rail corridor accessed from Rayne Road (Mystery Beach extension) for use as a public park.
b)	Construction of a gravel parking area in the southeast corner of the park space designed in accordance with CVRD specifications.
c)	Registration of a conservation covenant over Hindoo Creek and its area as defined through a RAR assessment prepared by a qualified environmental professional. To be registered over all proposed parcels, or part thereof, located within the riparian area of Hindoo Creek. The covenant will be held by a third party qualified to hold a conservation covenant to the satisfaction of the CVRD.
d)	Provision of a rainwater management plan (prepared by a qualified professional), to ensure that rainwater is managed on-site to prevent increases in potential flooding and erosion risks on adjacent and downstream properties, as required by provincial guidelines. The report should achieve Ministry of Transportation and Infrastructure design requirements, including reference to Stormwater Planning, A Guidebook for British Columbia, and the Water Balance Model for British Columbia. The report will be registered via restrictive covenant on the property (and on the titles of the future subdivided parcels).
e)	Construction of approximately 1.6 km of multi-use trails within existing road rights-of-way (i.e. “roadside greenway” on Brean and Rayne/Mystery Beach Roads) and proposed internal public road right-of-way, including rail crossings and a trail crossing over Hindoo Creek and culverts and/or crossings over the smaller watercourses that are identified on the CVRD sensitive habitat atlas, as required. Note that failing Ministry of Transportation approval for roadside greenways, the trails would be located adjacent to the public right-of-way on the subject property and public access secured through a statutory right-of-way.
f)	Construction of a 1km section of multi-use trail within the E&N rail corridor (i.e. “off road greenway”) including watercourse crossings and culverts as required. Trail to be constructed in accordance with CVRD specifications.

End – RU-20DB