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Final Proposal Arbitration:

Capital Regional District (CRD) and the District Of Central Saanich (District) in the matter of Bylaw 1736 to amend the District's Official Community Plan (OCP) to accommodate a 40,000 sq. ft. supermarket on lands in the vicinity of the Keating Cross Road and West Saanich Road intersection

Summary of CRD Final Proposal Submission

The Capital Regional District (CRD) submission provides legislative and planning rationale for the CRD's position that the amendments proposed to the District's Regional Context Statement (RCS) by Bylaw No. 1736 should not be accepted, as per the CRD Board resolution of August 10, 2011. The CRD's submission finds the Board's refusal to accept the proposed amendment within its mandate and consistent with the intent of the legislation. The submission also finds the District's proposed RCS amendments in Bylaw No. 1736 to be inconsistent with several policies of the Regional Growth Strategy, with no opportunity to achieve consistency over time. In addition, the RCS, as amended by Bylaw No. 1736, is not consistent with the rest of the District's OCP. The CRD's final proposal is to refuse Bylaw No. 1736 and leave the District's current RCS intact.

LEGISLATIVE

The CRD finds the legislation outlining the requirements for a RCS state an RCS must identify the relationship between the OCP and the RGS and if applicable how the OCP will become consistent with the RGS over time. In addition, the CRD notes the legislation also requires a RCS to be consistent with the rest of the OCP. Based on the legislation, on August 10, 2011, the CRD Board rejected the proposed amendment primarily because the RCS amendment is not consistent with RGS over time and the RCS is not consistent with the rest of the OCP.

The CRD submits that it has proceeded as required under Section 866 of the *Local Government Act*. As such, the CRD maintains it has acted within its jurisdiction reasonably and should not be interfered with or overturned. The CRD finds the recent case on this issue *Central Saanich Society v. Central Saanich (District)* provides the appropriate standard of review. As such, the same principles should be applied for this dispute, which indicates the same deference should be given to the Board's discretion. The CRD adds that a municipality should only seek to appeal a regional district decision under section 866 if the decision is based on a mistake or made in bad faith. Moreover, Section 866 cannot be used by municipalities indirectly to alter the RGS. The CRD concludes that, if a decision under Section 866 can be overruled for any reason whatsoever, a precedent is established allowing for every municipality to avoid the RGS by amending its RCS.

DISPUTED ISSUES

Beyond the legislative mandate, the CRD substantiates its position by providing specific detailed explanations of inconsistency. The CRD submission outlines how the proposed amendments to the RCS are inconsistent with the RGS with no opportunity for consistency over time. The submission further explains how the amended RCS is not consistent with the rest of the District's OCP. The CRD submission describes specifically how Bylaw No. 1736 is inconsistent with each of the following



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RGS policies:

- The Regional Urban Containment and Servicing Policy Area (RUCSPA),
- The servicing policies,
- Keeping Urban Settlement Compact,
- Protect the Integrity of Rural Communities,
- Build Complete Communities, and
- Increase Transportation Choice.

The CRD also notes that Bylaw No. 1736 would remain inconsistent with the RGS over time as it does not change the RGS nor address parts of the existing RCS that are consistent with the RGS. The CRD submission continues by describing specifically how Bylaw No. 1736 is inconsistent with each of the following fundamental principles of the District's OCP:

- Support Agriculture,
- Maintain Rural Character,
- Use Limited Land Supply Wisely,
- Manage Growth Carefully,
- Create Walkable Neighbourhoods,
- Support Economic Development and,
- Ensure Transportation Systems for All.

The CRD explains these principles are the foundation upon which the OCP policies are written. And, as with the RGS, the CRD submission describes how Bylaw 1736 is not consistent with the corresponding policies of the District's OCP.

Regarding the development site, the CRD notes that the subject lands were never contemplated for urban-level development as they are not pre-zoned, they contain no non-farm buildings or structures, they are not pre-serviced with sanitary sewer, they are within the one-kilometre radius of existing urban containment areas where urban-level development is restricted and over their history, these lands have only been used for agricultural production. The CRD also noted that recently the area in the vicinity of the Keating Cross Road/West Saanich Road intersection were contemplated for a new urban containment area during the District OCP review and this proposal was rejected by the District Council. The CRD finds from a planning perspective, the subject lands are not a good candidate for the site-specific exemptions and exceptions to regional and local planning policies, as proposed by Bylaw No.1736.

The CRD concludes its submission recommending Bylaw No. 1736 should not enable the District to rezone the land in the 6700 block of West Saanich Road as such an action would be contrary to Section 866 of the *Local Government Act* and against the standard of review of reasonableness established in common law.