



FRASER VALLEY REGIONAL DISTRICT POLICIES AND PROCEDURES

POLICY: “First Nations Engagement on FVRD Land use by-laws and other matters with statutory requirement to engage”

Date Issued: May 23, 2012

Date Amended:

PREAMBLE

It is recognized that the FVRD and First Nations each have distinct governing authorities and responsibilities towards their residents and members. However, the impact of our decisions can be felt across political boundaries. It is therefore in the interest of both parties to work together in the spirit of cooperation to build a common future. Only then will we be able to best serve all persons living in our communities and our region.

Our objective is to build strong and respectful working relationships with First Nations which are based on meaningful communication and dialogue; foster an understanding of each party's governing structures, traditions, roles and responsibilities; and respect the views and authority of each party. Recognizing that we have a common interest in a sustainable and resilient future, this understanding is without prejudice to treaty negotiations or other negotiations with senior governments.

This policy relates specifically to statutory approvals or engagement required by legislation and should not represent the extent of the Region's engagement opportunities with First Nations. Since 2001, the Region has signed five Memoranda of Understanding with several First Nations for a range of purposes, from the sharing of bulk water to establishing and maintaining long-term cooperative relationships. First Nations are our neighbours and it is important for the Region to work with First Nations representatives to find innovative and effective ways to meet the future needs of both the Region and First Nations communities.

PURPOSE

To provide a consistent basis for consultation and engagement with First Nations on land use and other plans which:

- Satisfies legal requirements;
- Satisfies ministry expectations for engagement where senior government approvals are required; and,
- Meets requirements under Ministerial Order M038 for the exemption of various bylaws from the requirement for approval by the Minister of Community, Sport and Cultural Development.

SCOPE

This policy applies to all bylaws, plans and other matters that require ministerial approval or has a legislated requirement for First Nations engagement.

DEFINITIONS

First Nation:

Chief and Council

Consultative Areas Database:

Province of British Columbia Consultative Areas Database to be used to identify First Nations interests on the land base for engagement purposes (<http://geobc.gov.bc.ca/>).

Discretionary approvals:

Discretionary approvals are those in which the Regional Board may exercise judgment, or discretion, to either approve or refuse an application for any number of valid reasons. Discretionary approvals involve broad consideration by the Regional Board, often require public input, and usually involve the assessment and mitigation of impacts. The most common discretionary approvals are Official Community Plans and Zoning By-laws

Non-discretionary approvals:

Non-discretionary approvals are those in which the regional district has no discretion to approve or refuse an application. Building permits and development permits are examples of non-discretionary approvals.

POLICY AND PROCEDURE MATRIX

Plan/activity	First Nation Referral	Rationale	Procedure
Regional			
<i>Discretionary Approvals</i>			
Regional Growth Strategy	Yes	Per s 855 Local Government Act	FVRD's RGS Engagement Plan
Solid Waste Management Plan	Yes	Per s 27 Environmental Management Act	Per Govt. of BC "Guide to First Nations Engagement on Local Government Statutory Approvals"
Integrated Pest Management Plan	Yes	Per Integrated Pest Management Act and Regulations	Per MOE "Draft Guidelines for IPM Proponents Conducting Consultations with First Nations"
Electoral Areas			
<i>Discretionary Approvals</i>			
Official Community Plan	Yes	Per s 882 (4) Local Government Act; Ministerial Order M038	Per s. 879 LGA - consultation strategy that explicitly considers First Nations. Per OCP procedure set out in this Policy
Zoning By-law within OCP area	No	Per s 913 (3) Local Government Act	At discretion of Board; Based on considerations identified in step No. 1 of zoning and land use bylaw Procedure set out in this Policy
Zoning By-law outside OCP area	Yes	Per s 913 (1) Local Government Act; Ministerial Order M038	As set out in zoning and land use bylaw procedure set out in this Policy.
Subdivision Servicing Bylaw within OCP area	No	Per s 913 (3) Local Government Act	

Plan/activity	First Nation Referral	Rationale	Procedure
Subdivision Servicing Bylaw outside OCP area	Yes	Per s 913 (1) Local Government Act; Ministerial Order M038	Per Govt. of BC "Guide to First Nations Engagement on Local Government Statutory Approvals"
Development Variance permit	No	No statutory requirement	
<i>Non-discretionary Approvals</i>			
Building Permits	No	No statutory requirement – no discretion	
Development Permits	No	No statutory requirement – no discretion if meets DP requirements	
Others			
Crown Land applications (new and renewals).	Yes	Per Land Act [RSBC 1996] c. 245 and regulations (and others)	As defined by province
Municipal Sewage Regulation	Yes	Per Environmental Management Act [SBC 2003] c. 53 and Regulations	As defined by province
Operational Certificates (landfills, recycling operations)	Yes	Per Environmental Management Act [SBC 2003] c. 53 and Regulations	As defined by province
Canadian Environmental Assessment	Yes	Per Canadian Environmental Assessment Act (S.C. 1992, c. 37)	As defined by Government of Canada
BC Environmental Assessment	Yes	Per Environmental Assessment Act [SBC 2002] c. 43	As defined by province
Other consultation delegated by the British Columbia or federal governments from time to time.	Yes		As defined by senior governments

OTHER CONSIDERATIONS

HERITAGE CONSERVATION ACT

No matter what level of engagement occurs at the local government level, property owners need to be aware of their obligations under the Heritage Conservation Act. Archaeological sites in British Columbia's are protected under the Heritage Conservation Act (HCA). The Province recognizes the importance of these sites and controls damaging activities by protecting them by law and requiring a permit to develop within site boundaries. Damaging an archaeological site without a permit is unlawful, therefore property owners must ensure they comply with the Heritage Conservation Act.

PROCEDURES

1, OFFICIAL COMMUNITY PLANS

Efforts to consult with First Nations respecting official community plan bylaws should generally follow these steps:

Step	Considerations
1. Consultation Strategy	A consultation strategy that explicitly considers the matters required under LGA s. 879 should be adopted by the Regional Board early in the process; i.e. as an initial step in an OCP update process or, in the case of development applications or minor amendments, with receipt of application by Board or at first reading.
a. identify potentially affected first nations	If available, the following may be considered when identifying potentially affected First Nations: <ul style="list-style-type: none">• traditional territory;• aboriginal use sites;• archaeological sites;• treaty settlement lands; and,• location of reserves and their proximity to the subject lands.
b. determine scope and methods	The nature of the OCP bylaw will influence the scope of consultation required. Pertinent considerations include whether the OCP bylaw: <ul style="list-style-type: none">• designates Crown land for certain purposes or establishes policies that impact crown land (including access to crown land/resources; i.e. does it identify potential parks on crown land, potential ROWs on Crown land• applies to crown resources• applies to large parcels of undeveloped, uncultivated, unfenced vacant rural lands• pertains to existing or proposed treaty settlement lands, including properties identified for future consideration in treaty agreements• pertains to lands subject to aboriginal rights/title claims <p>If the answer to these questions is primarily yes – which is often the case with major OCP updates – early and/or</p>

	<p>ongoing consultation may be appropriate. If the answers are primarily <i>no</i>, it may be sufficient to use a 'notice and referral' approach.</p> <p>Existing policies or agreements may influence the scope and methods of consultation with First Nations (i.e. OCP policy, agreements, etc.)¹</p>
<ul style="list-style-type: none"> • early and/or ongoing 	<p>Where early and/or ongoing consultation is required, the methods and means of consultation will be determined on a case-by-case basis. Presumably, <i>early</i> consultation involves providing one or more opportunities to identify issues or concerns before a Plan is substantially developed, ideally before first reading. <i>Ongoing</i> consultation may involve the provision of consultation opportunities throughout the process, or providing a forum for continual involvement in shaping a plan (such as participation in an Advisory Planning Commission, where appropriate).</p>
<ul style="list-style-type: none"> • notice and referral 	<p>In most cases involving site-specific OCP amendment applications, 'notice and referral' of the matter to potentially affected first nations will be appropriate.</p> <p>The notice/referral letter should include:</p> <ul style="list-style-type: none"> • description of the proposed activity, including a copy of the development plan or other documentation; • location map; • request for response; • timelines for response; • general outline of the approval process; and, • invitation to meet.
2. Follow-up & Tracking	<p>When possible, written communications should be followed up with a phone call. If no response is received within the referral time period, an additional phone call and/or letter is advisable to enquire whether the First Nation will be responding.</p> <p>Records of all correspondence, phone calls, emails and other communications – including attempts at communications such as unanswered phone calls or voice messages - should be recorded.</p>
3. Consideration of Responses	<p>The Regional Board should consider all consultation responses and make decisions about any resulting actions. Board consideration of consultation results, along with any resulting accommodation or action, should be documented and demonstrated through staff memos, receipt of correspondence, etcetera.</p> <p>Staff may prepare accompanying advice which:</p> <ul style="list-style-type: none"> • considers whether the concerns are within the ability of the Regional District to address; and, • identifies option for addressing concerns.

¹ At the time of writing, FVRD has entered into Memorandums of Understanding with Spuzzum First Nation (2001, see Doc # 109,926); In-SHUCK-ch First Nation (2005, see Doc # 143,604) and Yale First Nation (2006, see Doc # 146,957). These, and any future, agreements will be filed under 2280-50.

If a first nation does not respond to consultation efforts, a notice should be sent to advise that the Regional Board will proceed with its consideration of the bylaw and may seek provincial approval for it (if required).

2. ZONING AND LAND USE REGULATION BYLAWS

Where engagement is required with First Nations respecting zoning and land use regulation bylaws should generally follow these steps:

Step	Considerations
1. Identify potentially affected first nations	<p>If available, the following may be considered when identifying potentially affected First Nations:</p> <ul style="list-style-type: none"> • traditional territory; • aboriginal use sites; • archaeological sites; • treaty settlement lands; and, • location of reserves and their proximity to the subject lands.
2. Referral	<p>In most cases involving a site-specific zoning amendment, 'notice and referral' of the matter to potentially affected first nations will be appropriate. The notice/referral letter should include:</p> <ul style="list-style-type: none"> • a description of the proposed activity, potentially including a copy of the development plan or other documentation; • location map; • request for response; • timelines for response; • a general outline of the approval process; and, • an invitation to meet. <p>In some instances, such as a major extension of an area covered by a zoning bylaw or significant changes in the way crown land is zoned, a consultation process similar to the OCP consultation and referral process may be warranted.</p>
3. Follow-up & Tracking	<p>When possible, written communications should be followed up with courtesy call. If no response is received within the referral time period, an additional phone call and/or letter is advisable to enquire whether the First Nation will be responding.</p> <p>Records of all correspondence, phone calls, emails and other communications – including attempts at communications such as unanswered phone calls or voice messages - should be recorded.</p>
4. Consideration of Responses	<p>The Regional Board should consider all consultation responses and make decisions about any resulting actions. Board consideration of consultation results, along with any resulting accommodation or action, should be documented and demonstrated through staff memos,</p>

receipt of correspondence, etc...

Staff may prepare accompanying advice which:

- determines whether the concerns are within the ability of the Regional District to address; and,
- considers options for addressing concerns.

If a First Nation does not respond to consultation efforts, a notice should be sent to advise that the Regional Board will proceed with its consideration of the bylaw and may seek provincial approval for it.
