REACHING AGREEMENT ON REGIONAL GROWTH STRATEGIES

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INTRODUCTION

The *Growth Strategies Statutes Amendment Act* (Growth Strategies Act), enacted in June 1995, provided a framework for coordinated planning among local governments, the provincial government and other agencies. These growth strategies provisions are now incorporated into the *Local Government Act* (Part 25). With the mechanisms for coordination and cooperation in place at the regional level, B.C.'s local government planning system can support integrated planning within and between regional districts.

This publication looks at ways local governments can reach consensus in the development of regional growth strategies. These methods include:

- Interest-based negotiation
- Facilitation
- Mediation

REGIONAL GROWTH STRATEGIES

The growth strategies provisions reaffirm a "made in B.C." planning system that encourages cooperation and explicitly recognizes that local governments have a vital role to play in developing long-term solutions to current challenges. Through a regional growth strategy, regional districts can address issues of a regional nature that reflect local circumstances and priorities. The effective preparation of a regional growth strategy requires a great deal of discussion and a thorough evaluation of issues facing the region. The legislation provides general goals to help local governments recognize regional issues (section 849(2)). These goals clarify the provincial government's interests and expectations.

(See Appendix A). All regional growth strategies should work towards these goals. The legislation also outlines the minimum content that all strategies must include (section 850(2)):

- a 20-year minimum time frame
- a comprehensive statement on the future of the region, including the social, economic and environmental objectives of the strategy
- population and employment projections
- a list of proposed actions to meet the needs of the projected population, including actions for:
    - housing
    - transportation
    - regional district services
    - parks and natural areas
    - economic development

A regional growth strategy may also include any other issues the regional district considers appropriate for its region.

Planning Issues are Community Issues
Regional planning should be a cooperative process between all jurisdictions within a geographical region. The cooperation of all critical interests in the region is essential to the success of a regional planning process. Regional growth strategies establish general principles to guide land-use decision making and provide mechanisms for resolving land-use conflicts. The preparation of a regional growth strategy is not an exercise in land allocation, in part because some of the land uses are not likely to take place until some time in the future, if at all. Instead, regional planning is about putting in place a framework that will guide future growth.

Planning cannot divide up land as if it were simply a geographic feature or an economic asset; planning has to address the issues of growth in terms of what future people want for themselves. For example, when conservation emerges as the central theme of land-use plans, it is not only to safeguard resources, it is to maintain a way of life. Therefore, planning examines how land-use decisions should be made to reflect the needs and aspirations of the region's residents. It is usually difficult to separate issues of land-use from those of community or economic development.

Once a regional growth strategy has been initiated by resolution of the regional district board, the regional district must:

- notify the Minister of Community Services of the initiation
- notify affected local governments
- prepare a consultation plan
- As well, it may want to:
    - notify the media
    - undertake a direct mailing to municipalities, adjacent regional districts, community organizations and other groups within the region that may have an interest in the preparation of a regional growth strategy.

This begins the long process of a regional district determining its future direction in cooperation with its member municipalities and adjacent regional districts. Ensuring an effective development process leading to consensus is a key element of success.

Once a regional growth strategy is agreed to and adopted by a regional district, all municipalities within the regional district must prepare a regional context statement within two years. This is undertaken to ensure there is consistency between a regional district's growth strategy and the official community plans of its member municipalities. The regional context statement preparation process is a collaborative one also where its content must be agreed to by the regional district. A development process that includes continued consultation with the regional district and members of the public is imperative.

MANAGING CONFLICT

Traditional Methods of Dispute Resolution

Most jurisdictions in Canada and the US have a top-down planning model that emphasizes vertical relations between levels of government; provincial or state goals and mandates; and planning approvals by the upper levels of government.

The means for resolving disputes in these planning models include:

- Voting
- Ministerial Approval
- Court System
- Adjudication Tribunals

- **Voting** - The traditional method of resolving disputes in a local government environment is voting, where a majority rules. This ensures a decision is made, but all parties may not be satisfied with the decision and may therefore throw up roadblocks during implementation.

- **Ministerial approva**l - Another traditional means of resolving local disputes involves higher government agencies or officials exercising their authority to decide, often imposing a solution that fails to satisfy some, if not all, of the disputing parties. An example of this approach is ministerial approval of local government legislative actions.

- **Court system** - Under extreme conditions, dispute resolution may be done through the court system. Judicial outcomes are not consensual and there is always a winner and a loser. Also, courts generally focus on procedural issues, therefore, decisions are often made on grounds that have little to do with the issues at stake. Court proceedings are typically costly and lengthy, and often viewed as a last resort.

- **Adjudicative tribunals** - In this approach, an appointed panel makes the decision. As with ministerial approval, this approach takes the decision-making power away from the disputing parties.

Alternative Dispute Resolution Models

Alternative dispute resolution (ADR) models differ significantly from traditional approaches to resolving disputes. ADR models are based on mutual agreement, which assumes that all parties support the decisions reached. This contrasts with traditional procedures such as voting, or where decisions are made by an authoritative figure or adjudicative body making a unilateral decision. Mutual agreement is often referred to as "consensus" or "collaborative" decision-making.

Alternative dispute resolutions models are based on all parties achieving mutual agreement on the decisions reached.

New process tools that emphasize multi-party interest-based negotiation and collaborative decision-making have been evolving over the last 10-15 years in B.C.. Alternative dispute resolution models are frequently used in labour, family and commercial disputes. Increasingly, resource and land-use conflicts are also being resolved through alternate methods of dispute resolution.

A New Approach to Reaching Agreement

- Horizontal relations between level of government
- Negotiation, mutual agreement and alternative dispute resolution techniques rather than traditional dispute resolution methods

British Columbia enacted growth strategies legislation in response to the need for a new approach to political decision-making and dispute resolution. The legislation introduces an "interactive regional planning" model emphasizing:

- horizontal relations between levels of government
- negotiation, mutual agreement and alternative dispute resolution techniques rather than traditional methods to resolve disputes.

The Growth Strategies Legislation
The growth strategies legislation is designed so that regional plans and municipal plans have a horizontal, rather than vertical, relationship; in other words, they have equal weight. Each jurisdiction has the responsibility for fulfilling its own authorities and responsibilities and the regional growth strategy provides the means for coordinating them. The legislation focuses on critical regional interests or matters which out of necessity must be managed at the regional scale.

This model aims to meet the unique circumstances, local governments and issues that affect B.C. regions facing the challenge of managing rapid population growth. It also aims to guide local governments in creating more sustainable forms of urban spatial patterns. It recognizes that the planning activities arising from its implementation will raise issues that cross geographic and jurisdictional boundaries and that may result in conflicting planning priorities and values.

Growth strategies legislation maximizes opportunities for local governments to reach agreement quickly and efficiently in the early stages of negotiation

The growth strategies legislation aims to acknowledge these potential conflicts and provides a process by which they may be resolved. It maximizes the opportunities for local governments to reach agreement quickly and efficiently in the early stages of negotiation by requiring them to work closely together on the development of a regional growth strategy and to make all efforts to reach agreement, with or without the assistance of a facilitator whose services are offered as a provision of the legislation.

The actual conflicts that do occur will vary depending on the geography and political make-up of a region. Every conflict situation will be unique and may require a different method of dispute resolution; therefore, the more options available, the better.

Cooperation and collaborative decision-making are the underlying principles of the growth strategies legislation

During the development of the growth strategies legislation, a set of nine principles were identified that reflected what local governments and others believed represented the direction the government should take in developing its growth management model. Two of the principles are directly relevant to resolving differences. They encompass the belief that coordination, compatibility and the resolution of differences are required elements of an effective model.

Coordination, compatibility and the resolution of differences are required elements of an effective regional planning model

The principles are:

- an interactive planning system, where participating local governments have the responsibility to identify mutual issues and goals, should lead to a high level of understanding and a greater commitment to achieve a mutually agreeable outcome and avoid unresolvable disputes.
- if an interactive planning system is to be effective, it must ensure that disputes that do arise between jurisdictions are resolved quickly and fairly, preferably by the parties themselves

British Columbia is progressive in developing a regional planning model that emphasizes local "buy-in" to the process; on-going involvement and political commitment at the municipal, regional and provincial levels of government; and, an emphasis on negotiation and alternative methods of dispute resolution. In support of the regional growth strategy process, the Ministry of Community Services considers effective collaborative decision-making and dispute resolution processes to be those that include the following fundamental elements:

(1) Local government involved in regional planning should be responsible for identifying mutual issues, avoiding unresolvable disputes and achieving a mutually acceptable outcome

(2) A regional planning system must try to ensure that any disputes that do arise between local governments are resolved quickly and fairly, preferably by the parties themselves.

- inclusion of all local governments affected by a regional growth strategy who choose to participate
- the treatment of regional districts and municipalities as equals
- flexibility and process design tailored to meet the particular needs of each case
- control and responsibility for process design and the shaping of agreements to rest with the parties
- decision-making by consensus
- a focus on the underlying interests of the parties rather than their positions
- respect for all diverse elements of participants and their constituencies
- a process structure that helps parties acquire and share information vital to decision-making
- a focus on mutually acceptable outcomes that meet the joint objectives of all participants
- a process structure that helps the parties build long-term relationships that encourage future cooperation and coordination

These principles should be adopted by all local governments and those who assist them in regional growth strategy development and dispute resolution.

CONSENSUS DECISION-MAKING

Gaining consensus around regional growth strategy issues is of utmost importance. A consensus-based approach will:

- provide an opportunity for people to gain a better understanding of diverse views
- lead to more "win/win" outcomes
- ensure participating local governments are not forced into a vote that commits them to a position
- provide the framework for establishing a united approach
- make implementation easier to achieve

Consensus means that all local governments involved in the development of a regional growth strategy agree on its content and policy direction. With a consensus-based approach, participants are motivated to seek solutions that meet the interests of the other parties, as well as their own, and to search for creative solutions in order to reach agreement.

Examining the Sources of Conflict

The first step in resolving differences is to discuss possible sources of conflict and effective methods of negotiation and dispute resolution. Conflicts are easy to see as "we/they" problems. Those in dispute often "dig in their heels" and do not stop to analyze the underlying causes of their conflict.

Proper conflict diagnosis is a prerequisite for finding the right way to overcome impasse. Typically, problems centre around "what's at stake" and the way people deal with one another.

- Different impacts upon those affected
- Different expectation about the outcome
- Different definitions of the issue
- Differences in values, fragility of relationships with others in conflict
- Different standards of behaviour

Conflicts that involve "what's at stake" can centre around such things as:

- Different impacts - Implementing a regional growth strategy will impact everyone differently. It will directly benefit some and impose costs on others. It is beneficial to look for ways to mitigate the problem or to provide compensating benefits that balance whatever costs will be imposed; compensation may involve helping opponents on an entirely different agenda.

- Different forecasts - Regional growth strategy disputes can be created or compounded when people have different expectations about the outcome. There may be disagreement and then optimism or pessimism about the forecasts of, for example, economic and environmental impacts of increased development. Opponents may foresee traffic congestion and environmental degradation while proponents expect economic benefit. Participants need to determine if they are operating from different facts, models or assumptions. Joint fact-finding, forecasting and model-building is helpful.

- Different definitions of the issue - Proponents of a proposal may contend that the only issues on the table are the specifics regarding implementation of that proposal, while others may raise broader questions. People's definitions of an issue may not change easily. A good approach is to focus on defining a mutually acceptable answer rather than trying to reach agreement on the definition of the issue.

- Different values - Value conflicts are the hardest to resolve. Many people will not compromise their values in any way. In order to deal with this, it is important not to back people into a corner from which they can escape only by rejecting their values. It is better to develop solutions that respect the basic values of all parties.

- Conflicts in the way people deal with one another may include:
    - Fragile relationships - Parties in inter-governmental negotiations are likely to know one another, but they may be dealing with details of issues with which they are not completely familiar. As well, they can be under time pressures and the scrutiny of others. In such circumstances, no one has full control over the process. Knowing that they will all have to live with the results and work with one another in the future should instil a sense of discipline in negotiations. It helps to break the large problems into smaller components so all parties can establish their trust for each other at a low risk.

- Different standards of behaviour - In regional growth strategy disputes, it can be easier to escalate conflict than to defuse it. Participants in negotiations have to keep asking themselves if they are holding others to higher standards of behaviour than they are meeting themselves. Negotiation tactics that may seem clever to one are seen as acting in bad faith when used by others. To ensure even negotiations, create a mechanism for clearing up misunderstandings before they become major disagreements. Continue to check that the process is moving forward.

INTEREST-BASED NEGOTIATION: A NEW APPROACH TO NEGOTIATING

Negotiation and Dispute Resolution

Approaches to dispute resolution that allow parties to resolve their own differences are becoming increasingly important in settling environmental, land-use and planning disputes and are viewed largely as an essential element of collaborative decision-making models. In the broadest definition, alternative dispute resolution processes include some form of consensus-building, joint problem solving, negotiation or neutral third-party intervention to assist in the resolution of a dispute. The most commonly referenced and utilized ADR processes include interest-based negotiation, facilitation, mediation and arbitration. However, arbitration is viewed differently from facilitation and mediation, as the ownership of the decision-making process moves from the parties in dispute to a neutral third party who makes a decision based on the facts and evidence, not on negotiation.

Negotiation based on reaching mutual agreement on the underlying interests of all concerned

Facilitation
Involves joint negotiations where someone neutral to the issue manages the discussion without becoming involved in matters of substance.

Mediation
Involves joint negotiations where someone neutral tot the issues manages the discussion and acts as the go-between among negotiating parties to help them achieve mutual understanding and agreement.

Arbitration
A formal process where a neutral third party makes a decision for the parties in dispute, based on facts and evidence, not negotiation.

The reason more and more individuals and governments are turning to ADR processes is a dissatisfaction with more traditional decision-making processes. A common complaint is the frequent inability of traditional dispute resolution processes to deal satisfactorily with the real issues in dispute. Parties also care about:

- the degree to which they will be able to influence the decision
- the fairness of the process, its efficiency and its effectiveness
- the ability to negotiate as equals

In addition, to the degree that the parties have or wish to have a continuing relationship, they care about the quality of that relationship and their ability to communicate with one another.

In inter-jurisdictional disputes, such as those that may arise through the regional growth strategy development process, fairness, efficiency, effectiveness and the ability to maintain a working relationship are of the utmost importance. Ensuring "buy-in" to the process, where all agree to participate and work towards agreement is another important factor. ADR processes allow broader attention to the real issues in dispute because the parties set the agenda and decide what the terms of the agreement will be. If the parties have mutually agreed to a decision, they are more likely to be satisfied with it and are therefore more likely to implement it.

Dispute Resolution and the Growth Strategies Legislation

"Buy-in" , fairness, efficiency, effectiveness and the ability to maintain a working relationship are key to a dispute resolution process.

As noted previously, many of the issues in conflict between local governments developing a regional growth strategy will arise because of different values, priorities and goals of each jurisdiction. These are often difficult to resolve and are often the very issues that lie at the heart of the authority of local government elected officials. They are the issues that give local officials the opportunity to exercise their mandate most visibly and that often lead to the most controversy in a community.

Use of alternative dispute resolution techniques such as interest-based negotiation, facilitation and mediation offer opportunities to address different values, priorities and goals of each local government and to reach agreement on a regional growth strategy.

The use of interest-based negotiation, facilitation and mediation offer opportunities to address different values, priorities and goals of each local government and to reach agreement on a regional growth strategy, which other methods of negotiation and dispute resolution do not offer. A focus on overcoming obstacles early on in the process helps to avoid escalation of differences into a complete failure to agree.

The growth strategies legislation also encourages the use of other alternative dispute resolution processes to encourage mutual agreement on issues in conflict. If parties cannot reach agreement through negotiations, with or without the assistance of a neutral third party, any outstanding disputes regarding the content of a regional growth strategy will be referred by the Minister of Community Services to one of three arbitration processes outlined in the legislation. Parties to a dispute would only be referred to one of the arbitration processes as a last resort, where the other methods of dispute resolution have failed.

Negotiation

The basis for reaching agreement on any issue is negotiation. Negotiation occurs when two or more parties sit down together to discuss common issues in an attempt to find some resolution to their actual or potential differences. Negotiation is a form of shared decision-making where those involved agree to look for an outcome everyone can accept. Negotiation is distinguished from adjudication because the participants themselves, not someone else, determine the result and they must agree to the outcome for it to be workable.

With interest-based negotiation, voting is replaced by a search for mutual accommodation of interests

Shared decision-making moves away from the standard democratic process of decision by majority vote or rulings of an elected leadership typified by local government structure. Voting is replaced by a search for mutual accommodation of interests. Minority interests are not submerged by majority ones but become important subjects for resolution. The group agrees to seek solutions

that are satisfactory to all parties, through invention of alternatives and negotiation of joint solutions among competing interests, with or without the assistance of a neutral third party such as a facilitator or mediator.

Interest-based Negotiation

The traditional method of negotiation is for each party to determine their own objectives and their "position" -- how the differences can be resolved to ideally satisfy their objectives. As negotiations continue, positions often become entrenched and parties come to an impasse, where further negotiation is unlikely and arbitration or court action is a likely alternative to resolving the dispute. With this type of negotiation there is little opportunity to explore joint gains, and those who suggest a cooperative strategy could be at a disadvantage. For example, some parties may assume that an offer to cooperate is evidence of a weak bargaining position, and could be interpreted as a lack of commitment to one's position.

There is a need to change the context in which disputes are addressed, and create environments where joint problem solving is rewarded. Interest-based negotiation, also known as principled negotiation, is an effective alternative to positional negotiation for a range of disputes, including land-use planning and environmental issues. Interest-based negotiation can be particularly effective in public policy disputes that occur when municipalities and regional districts are negotiating the content of a regional growth strategy or a regional context statement.

Growth strategies legislation emphasizes a process of discussion, negotiation and mutual agreement.

The growth strategies legislation emphasizes early resolution of potential objections before a strategy is referred to municipalities and adjoining regional districts for acceptance. The approach taken in the legislation emphasizes a process of discussion, negotiation and mutual agreement, which follows the principles behind interest-based negotiation processes. The principles emphasized in the *Regional Growth Strategies: An Explanatory Guide* are([1]):

- respect all diverse elements of participants and their constituency
- shift the discussions from the positions each party is taking to the underlying interests each wants to accomplish
- look for mutually acceptable outcomes that meet the joint objectives of all the parties

Interest-based negotiation is a recommended approach to resolving conflict but not a requirement of the legislation

Although interest-based negotiation is not a requirement of the growth strategies legislation, it is a recommended approach to negotiating regional growth strategies. Its use is encouraged for addressing the varied priorities and objectives of, and potential conflicts between, the local government jurisdictions involved in the development of a regional growth strategy.

Interest-based negotiation as a way to reach an effective agreement in a joint problem-solving environment was first popularized in 1981([2]). It was designed to produce wise outcomes efficiently and amicably, as an alternative to positional bargaining. The approach concentrates on four key principles, each dealing with a basic element of negotiation.

1. Separate the people from the problem
2. Focus on interests, not positions
3. Invent options for mutual gain
4. Insist on objective criteria

Key Principles of Interest-based Negotiation

Separate the people from the problem	Focus on interests, not positions	Invent options for mutual gain	Insist on objective criteria
o understand others' points of view o don't blame others for your problem o discuss one another's perceptions o make proposals consistent with others' values o make emotions explicit and acknowledge them o allow others to let off steam o don't react to emotional outbursts o listen actively and acknowledge what's being said o speak to be understood	o realize each side has multiple interests o look for concerns that motivate people o talk about your interests in specific terms o acknowledge one another's interests o talk about what you want to happen in the future o be concrete but flexible o be hard on the problem, soft on the people	o invent options first by brainstorming o broaden your options by looking at the specific and the general o look through eyes of different experts o invent options of different strengths o identify shared interests o dovetail differing interests o do what you can to make the others' decision easy for them	o develop fair standards and procedures o frame each issue as a joint search for objective criteria o reason and be open to reason as to which standards are appropriate o never yield to pressure, only to principle

Principles complementary to those that form the basis of interest-based negotiation were also developed ([3]). These complementary principles can also be used satisfactorily in interest-based negotiations where shared decision-making and mutual gains are the objectives, whether or not negotiations involve a neutral third party. The additional principles are:

1. Encourage joint fact-finding
2. Accept responsibility, admit mistakes and share power
3. Act in a trustworthy way at all times
4. Focus on building long-term relationships

All eight principles complement one another and can be used together as an efficient and effective way to approach negotiations and conflict resolution.

- **Separate the people from the problem**. Because humans are emotional beings who often have different perceptions and difficulty communicating, emotions usually become inseparable from the objective merits of the problem during negotiations. This is intensified because people's personalities become identified with their positions. The key is for people to see themselves working together on a common problem, not attacking one another. Participants are encouraged to:
  - develop an understanding of others but not get personal when conflict emerges
  - remain task-oriented, respect differences and manage their own emotions

- **Focus on interests, not positions**. Focusing on positions and compromising between them is not likely to result in an outcome that will effectively meet the parties' underlying interests and needs. Focusing on interests and asking open questions allows people to express what their real concerns, needs, fears, hopes and desires are in relation to the problem.

- **Invent options for mutual gain before trying to reach agreement**. Setting aside time during negotiations to explore a wide range of possible solutions that advance mutual interests and reconcile differing interests can result in creative solutions. The intent is to avoid the problems of narrowed vision, lack of creativity and the pressure to find the one right solution where there is so much at stake.

- **Insist on objective criteria**. Often in positional bargaining, a person can obtain a favourable outcome by being stubborn and uncompromising. By requiring that the agreement must meet some fair standard agreed to by all negotiating, no one would have to give in to another. Instead, all can defer to a fair solution that meets the objective criteria.

- **Encourage joint fact-finding**. Any information generated by those in negotiation must be believable to all parties. For those used to operating under the premise of "information is power" or worried that it may be damaging to release certain information, this is a big step. Information that is gathered, analyzed, modelled and carefully packaged behind closed doors may have no credibility when it is shared, even if it is accurate. A better approach is to pursue fact-finding together, especially where parties tend to be skeptical of each other's information and intentions.

- **Accept responsibility, admit mistakes and share power**. This is a simple premise but one that may be hard for people to uphold. It means that local governments must take responsibility for pursuing reasonable goals for managing growth in their region, in consultation with the public. Also, it is important that they be flexible enough to shape a regional growth strategy and official community plan to meet the real needs of their communities, as expressed by the public affected, not just by "experts" who may think they know what's best. The ability to share power with others when developing a plan for a region will go far to creating a better strategy and building good working relationships.

- **Act in a trustworthy way at all times**. Usually trust, or the lack of it, is related to expectations. To build trust or hold on to the trust already achieved, expectations must be shaped by saying what is meant and meaning what is said, and never making promises not intended to be kept. In addition, do not ask for commitments that others will be unable to honour. It is important to be honest because once trust is lost it may be impossible to regain.

- **Focus on building long-term relationships**. Given that the regional planning process requires local governments to work together on long-term goals and expand their thinking beyond their municipal boundaries, it is imperative that a good long-term working relationship be nurtured.

When decisions are made through interest-based negotiation, decision makers depart from the adversarial model of dispute resolution found in positional bargaining. In the interest-based model of dispute resolution, it is no longer acceptable for negotiators to be content obtaining progress for themselves. The goal is the joint progress of all those at the negotiating table towards an outcome that accommodates the underlying interests of all concerned. The shift is from an outcome with "winners" and "losers" to an outcome where all win.

ESTABLISHING A PROCESS FOR NEGOTIATION

Negotiations regarding regional growth strategies and regional context statements will involve multiple parties. In establishing a process for negotiation, it is important to note that multi-party negotiations and dispute resolution processes are different from the more typical bilateral negotiations and dispute resolution:

1. **Complexity**. A multi-party process is more complex than bilateral negotiations because of the number of parties and issues involved.
2. **Participation**. Participation in a multi-party process is important. All who should participate should do so. There should be no limit to participation and no purposeful exclusion of others.
3. **Preparation**. There is usually more preparation involved in a multi-party process since there are numerous parties with differing views wishing to participate. There are also often differing levels of understanding regarding interest-based negotiation and dispute resolution techniques.

Some measure of orientation and training regarding the multi-party process is therefore necessary. It is worthwhile for each group coming to the table to be trained separately, as this provides everyone with the chance to learn with their own people on their own turf, and also provides an opportunity to "sniff out" issues.
There are generally five steps to reaching agreement consensually:

1. preparation
2. assessment
3. establishing process and procedure
4. identifying and revealing interests
5. generating options and solutions([4])

Preparation

The first step in establishing a process for negotiation is to establish a list of those who may want to participate. In multi-party dispute resolution processes, this is an important issue because there may be people who want to limit participation. An important element of the growth strategies legislation is that all those local governments affected by a regional growth strategy are to be provided with the opportunity to participate in any dispute resolution process in relation to that strategy. At this stage, the parties would clarify any information that currently exists and any gaps that need to be filled. If assisting, a facilitator or mediator would help

1. This refers to the Ministry of Community Services Regional Growth Strategies: Explanatory Guide first published in 1995 and subsequently updated in 2006.
2. see Fisher & Ury, ed., Getting to Yes: Negotiating Agreement Without Giving In. (Boston: Houghton Mifflin Co., 1981).
3. see Lawrence Susskind and Patrick Field. Dealing with an Angry Public: The Mutual Gains Approach to Resolving Disputes. (New York: Free Press, 1996).

in this process. Each group that will be participating also has to determine "effective representation" -- who will represent them at the negotiating table and what criteria they will use to choose their representative(s).

Assessment

Each local government participating in negotiations needs to:

- determine how their representative(s) at the table will communicate with the local government they represent and vice versa
- clarify any assumptions made about the other participants
- look at issues from the others participants' perspectives, rather than establishing conditions for staying at the table before negotiations even begin (for example, rather than stating "we'll only stay at the table if x, y and z stay also," each party should say "how can we ensure that x, y and z stay at the table?")
- determine if education regarding the negotiating process and effective participation is required

Establishing Process and Procedure

It is important to establish “ground rules” for negotiation before you begin.

All parties, including any experts, if invited, should jointly establish the process and procedure for negotiations before negotiations begin. This could take place at a "convening event". Parties begin developing protocols to govern the negotiations, in other words, establishing the ground rules. This is of vital importance to ensure that the participants and any neutrals involved (e.g., facilitator/mediator) understand their respective roles and responsibilities. These can cover such things as:

- the decision-making rules that the group would follow
- interactions with the media
- summaries of the meetings
- whether or not the assistance of a facilitator/mediator is required
- limits on a facilitator/mediator's activities, if one is involved.

The key in establishing process and procedures is to encourage mutual understanding and to establish an atmosphere of joint problem solving.

The key in establishing process and procedures is to encourage mutual understanding and to establish an atmosphere of joint problem-solving.

Agreement is also needed on when and where to meet. Consistency and frequency is helpful. If there are a number of issues that need to be resolved, it is useful to focus on one or two issues at each meeting rather than trying to address all issues at the same time. Therefore, negotiating the ground rules for the negotiations shows the participants that the outcome is ultimately theirs to control. Each representative can see how his or her contribution can affect the outcome. It is also worthwhile for participants to understand the impact of not reaching agreement -- they would ultimately lose the ability to control the process and outcome themselves; an arbitrator would take that control away from them.

Early discussions allow a group to establish why everyone is at the negotiating table and to what degree they are committed to the process. How the outcome of the negotiating process will be dealt with by decision makers should also be determined and approved by each participating local government. Early discussions allow parties to list an agenda of concerns that incorporates all the interests and concerns raised by the participants. This provides a focus for future meetings and discussions. Local government representatives at the negotiating table should discuss how, after resolving their

Participants need to understand that if they cannot reach agreement they will lose control of the process and outcome to an arbitrator

differences and agreeing on the content of a regional growth strategy, all parties to the strategy will be accountable. A suggestion is that each local government would agree to be accountable to the others. An agreement can also be made that any amendments required once local governments begin implementation would be discussed amongst the affected parties to determine if they are absolutely necessary.

If requested, the preparation and assessment process could be convened by the provincially appointed facilitator. Then, after the process issues are worked out, the parties can decide if they want another facilitator or other neutral to assist them with the negotiating process.

Imperative for the success of the negotiations is early agreement on process and procedure.

It is imperative for the success of a regional growth strategy negotiation to ensure that there is early agreement on process and procedure. The parties may find it helpful to establish a committee to develop the process that the negotiations will follow. A process agreement can be prepared and agreed to, and referred to as necessary. Ensure that any terms of reference that are imposed by the *Local Government Act* or other legislation, such as the *Freedom of Information and Protection of Privacy Act*, are included. Such an agreement should be flexible, and upon agreement by all parties, open to amendment as proceedings progress. However, criteria for how and when changes to the agreement can be made should be established.

Key interests need to be identified and indicators for getting objective measurables in interests should be determined and clarified

Identifying and Revealing Interests

This is the stage where issues are identified and resolved by mutual agreement of all parties participating in the negotiation process. One of the first steps is to establish a work plan for addressing issues and generate any information required for discussions. This will involve identifying tasks (e.g., undertaking studies, preparing growth projections), deciding who will do these tasks and determining when these will be done. All key interests need to be identified, and indicators for getting objective measurables of interests need to be determined and clarified. In order to get participants to think "interests" not "positions", it may help to:

- Establish a historical context (e.g., make use of the wisdom of "elders" who can provide relevant background).
- Develop a joint vision statement (e.g., what participants believe the region should look like 20 years down the road; the objectives they want met at the table; and, what is vital to their local government and why). Parties to the negotiation may have undertaken this exercise individually at the assessment stage prior to coming to the table.
- Use a model for expressing interests. (Appendix B contains an interest template that may be helpful.) This may help participants to explore their interests in a way they can describe objectively to others. This template can be used to develop interest statements, which is the next step in this process.
- Prepare a summary of interests (interest statements) where all individual interests expressed are condensed. This allows parties to look for commonalities and then combine similar interests. This can usually be done

Endnotes

4. *Adapted from Commission on Resources and Environment (CORE), "Public Participation" The Provincial Land-use Strategy (1995) Volume 3, p. 47-48, and CORE Public Interest Negotiation Training Program, 1996.*

- several times to delete overlap and ensure all interests are encompassed. At the end of this exercise, joint and individual interests and what an agreement needs to address should be clear. It may also help to develop indicators, for example, how the table would know when a concern regarding water quality is met.

Generating Options and Solutions

This stage begins with parties jointly confirming and summarizing areas where they already have agreement. During this phase it is always important to keep in mind areas of interest that must be met (as agreed upon in the previous stage). It is imperative to create and evaluate options before developing solutions to issues in conflict.

- look at options that parties have brought forward to determine if the elements of each can be put together to achieve joint interests and goals. Options need to be listed and evaluated so parties can select fair solutions.
- encourage brainstorming that allows originality to come forward but does not address specific solutions. Parties can go back and see if there are links between the ideas that can create a practical approach to resolving the conflict(s).
- establish committees, each with the task of working on imaginative solutions for a particular area of interest and returning to the table with recommendations. Committees can work well at the solution stage.

> Ensure that you create and evaluate options based objective standards prior to developing solutions that address mutual interests.

A key to successful negotiations, at all stages in the process, is trust. Each party at the table must be trustworthy and be trusting of the others. As the document takes shape participants must work together on refining its content.

> To trust others and be trustworthy is a key to successful negotiations

Options can be developed through multiple scenarios, where each party develops its own scenario for resolving the issue(s), or by working together on generating options for mutual gain right from the first day of this phase. If the multiple-scenario approach is taken, participants will need to invent options for mutual gain when the table comes together again. Proposed solutions can be tested by discussing hypothetical situations that may arise in the region.

During negotiations there may be many conflicts in attitude that are not of major significance to the regional growth strategy. Such minor conflict can be addressed through an "agree to disagree" provision, which is provided for in section 853(2). For example, if a local government objects to a provision of the proposed regional growth strategy that the regional district does not consider to be critical to the overall strategy, these parties can "agree to disagree" and the local government can accept the regional growth strategy on the basis that the provision does not apply to them. Such a provision would be noted in the regional growth strategy and at any time in the future the local government could choose to accept the provision. Once the local government chose to accept the provision it would apply to that jurisdiction.

> Parties can “agree to disagree” on issues not critical to the regional growth strategy.

"Log rolling" is another way of working around minor conflict. In "log rolling", parties trade concession(s) on insignificant issues, i.e., "We'll give up on this if you'll give up on that."

ASSISTED NEGOTIATION

Interest-based negotiation makes good sense. Participants view themselves as problem-solvers. They separate the personalities involved from the problem to be solved. They seek to learn what the others need and avoid taking a hard and fast position. The goal is to develop a list of options and then arrive at a final solution that relies on objective standards rather than on the will of any individual. However, interest-based negotiation can seem impossible if any of the negotiators refuse to abide by the aims of this style of negotiation. This is where the assistance of a person who is neutral to the issues can be very useful.

How the Ministry Can Help

Staff at the Ministry of Community Services are working with local governments on the development and implementation of regional growth strategies and regional context statements. The growth strategies legislation emphasizes consensus, "buy-in", negotiation and facilitation for reaching agreement on these strategies and context statements. Various ministry staff have day-to-day contact with local governments regarding interpretation of the legislation, compatibility of provincial policies with growth strategies, and planning grants. In addition to the diverse roles of staff within the ministry, the legislation includes a provision for the minister to appoint a facilitator.

Role of the Provincially Appointed Facilitator

Ministry of Community Services staff can help make the development of regional growth strategies and regional context statements a successful experience.

A neutral person, such as a facilitator, does not communicate the views and opinions of one side of a negotiation but can speak for a diverse group of stakeholders working together to resolve their differences. This person acts as an advocate for the process the parties to a dispute have jointly undertaken. A neutral can express the perspective of the entire group -- acknowledging not only differences but areas of agreement as well.

Facilitation refers to the task of managing discussions in a joint negotiation session. A facilitator keeps discussions on track but does not usually assist in finding a settlement between parties on an issue where agreement is required. In practice, the facilitator must maintain neutrality with regards to the issues under discussion and in this respect is independent of instructions from any parties other than the group negotiating at the table once negotiations have begun. In some circumstances, a facilitator is asked to assist parties in finding mutually acceptable solutions to an issue in dispute. This would take a facilitator into the realm of mediation. The line between facilitation and mediation is becoming more blurred as these processes are more frequently utilized.

A facilitator can help to keep discussions on track and lines of communication open and can act as an advocate for the process the parties to a dispute have agreed to undertake.

As noted in the previous section, the growth strategies legislation provides for a provincially appointed facilitator whose primary role is to try to improve communication between parties in a dispute. The legislation outlines the provincially

appointed facilitator's responsibilities during the development of a regional growth strategy. They include:

- monitoring the development of a regional growth strategy (s856(1)(a))
- facilitating, where requested, negotiations between local governments (s856(1)(a)(I))
- facilitating the resolution of anticipated objections (s856(1)(a)(ii))
- assisting local governments, where requested, in setting up and using other non-binding dispute resolution processes, such as mediation (s856(1)(a)(iii))
- facilitating the involvement of the provincial and federal governments and their agencies, First Nations, school district boards, greater boards and improvement districts (s856(1)(a)(iv))
- convening a meeting of local governments to clarify issues, determine potential objections and encourage their resolution (s858(1)&(2))
- extending the 120-day acceptance period for acceptance or refusal if resolution of outstanding issues appears imminent (s858(3))

The provincially appointed facilitator can be an important catalyst to designing options for the dispute-resolution process. However, the participating local governments have ultimate control over the mandate, agenda and issues. The role of the facilitator is to get the parties to the table, ensure that lines of communication remain open and to clarify all that is being said to ensure equal understanding and participation.

Mediation

In any facilitator – or mediator – assisted dispute resolution process, participating local governments maintain ultimate control over the mandate, agenda and issues.

Where the role of facilitator evolves into that of mediator, the person becomes involved in the issues, but only as a go-between among the negotiating parties and for the purpose of achieving mutual understanding and agreements. A mediator can be described as someone who assists disputing parties in voluntarily reaching their own mutually acceptable settlement of issues in dispute, but has no authoritative decision-making power. This characteristic distinguishes a mediator from an arbiter or judge, who is required to make a decision for the parties.

A mediator can help parties reach a mutually acceptable settlement.

The mediator works to reconcile competing interests of the parties in dispute, and many practitioners contend that even the most long-standing and difficult disputes can be resolved with mediation techniques. The goal is to assist parties in examining the future and their interests, and negotiating an agreement that is mutually satisfactory and meets their standards of fairness. As the mediator has no decision-making power, the parties are more likely to seek mediation in order to resolve a dispute because they can retain ultimate decision-making power; as opposed to other alternatives, such as arbitration, where parties lose their decision-making authority.

The use of mediation as an effective means of resolving complex, multi-party conflicts is increasing substantially. Mediation is a less formal and more fluid, efficient, timely and inexpensive dispute resolution process as compared to an arbitration or a court proceeding. Governments at all levels are recommending the use of mediation in legislation and day-to-day practice to address complex issues involving numerous parties, whether they are inter-agency, labour, commercial, landlord-tenant, environmental or land-use conflicts. For example, mediation in Canada is used substantially in treaty negotiations between the federal and provincial levels of government and First Nations; cost-sharing discussions between federal, provincial and local governments; negotiations between local and provincial

governments and the public on land use and planning; and, labour negotiations. In addition, provincial governments have used mediation as an alternative form of dispute resolution in various policy and legislation initiatives undertaken in recent years (e.g., B.C.'s *Residential Tenancy Act*, reform of the *Planning Act* in Ontario, and B.C. Hydro regulations).

Selection of a Mediator

The decision to mediate and the selection of the mediator is in itself the outcome of a complex negotiation. To make the selection easier, local governments who have the responsibility for choosing a mediator should have a clear idea of the role that person will play. They need to understand the mediation process and the particular skills they are looking for in a mediator. The mediator must be independent from the parties and the particular issues in dispute, and mutually acceptable to all parties. The selection of a mediator is largely dependent on four major factors:

- the type of negotiation the parties have been conducting up until now
- the nature of the problem that is interfering with the negotiation process
- the type of negotiation the parties want to conduct to resolve the dispute
- whether special expertise or unusual credentials are required

A mediator should have extensive experience in mediating disputes, but not necessarily be an expert in regional planning.

In certain circumstances, the reason(s) negotiations have broken down may not be clear. In this case, a mediator who has experience analyzing conflict and impediments to settlement is needed, to help the parties develop the proper approach to restoring the viability of the negotiation process. The mediator should be a well-trained, reliable and thoughtful generalist with extensive experience in dispute resolution and not necessarily a substantive expert in that particular area.

Mediators often work as a team, with expertise in both consensus-building processes and the issues that are being negotiated. This allows the mediators to develop the consensus-building process to fit both the specifics of planning issues and preexisting assumptions about public policy making. Not only does the process have to be open and fair, it has to be perceived as such. There is a fine balance between addressing the substance of issues and political feasibility when developing public policy. Mediators perform a wide range of tasks -- from getting the participants to delve deeply into the substance of the issues, to developing proposals in work group sessions, to managing personality problems. Throughout it all, the mediator must work hard to keep participants focused on the particular agenda items of the meeting. The mediator must also continue to stress the group's goal and the intent of the legislation to keep the participants focused on addressing the regional problem. It is recommended that in developing a mediation process, the parties build in time for reflection, research, legal advice and so on. This should occur after agreement is reached but before it is finalized.

Complete control over outcome of negotiations rests with the participants, not the mediator.

Mediators have to gain the complete trust of the participants and have to make it absolutely clear that their role is to facilitate discussions, not to impose solutions. Complete control over the outcome of negotiations always rests with the participants, not the mediator.

Mediators help the participants look for mutually beneficial outcomes that further their varied interests. Mediators also avoid getting involved in political disputes or making judgements. Instead, they help untangle such disputes or show that they are

not useful to the discussions. This is particularly important when strong value differences among the participants threaten to hinder negotiations.

Expectations of a Mediator

It is expected that a mediator involved in regional growth strategy negotiations will become familiar with:

- the provincial *Local Government Act* and any related acts, regulations and provincial policy guidelines in relation to regional growth management planning
- the regional growth strategy planning process within a regional district where mediation services have been requested
- the history of negotiations and relationships between the regional district, member municipalities and others that are parties to the dispute resolution process

Mediators are expected to maintain the confidentiality of information obtained through the process except:

- with the consent of all parties
- where required or allowed to disclose information by law or by contract
- non-identifying information for research, education or consultation purposes

When entering into a contract with a mediator, the regional district will be establishing standards of conduct. The following standards should be included:

- Mediators should be neutral in relationship to all parties involved in mediation. Mediators should reveal any and all affiliations with any parties that may cause a conflict of interest or affect perceived or actual neutrality.
- Mediators should remain impartial and objective during the mediation process. Mediators should be free from bias in either words or actions and should aid all participants in reaching mutually satisfactory agreements.
- The mediator's role is that of a facilitator, i.e., to assist the parties reach an informed and voluntary agreement that is consistent with the goals and requirements of the *Local Government Act*.
- The primary responsibility for the resolution of a dispute rests with the parties. At no time shall a mediator coerce the participants into agreement or make a substantive decision for any participant.
- Mediators will avoid any activity that could create a conflict of interest. They will not become involved in relationships with clients that might impair their professional judgment. They will not mediate disputes involving close friends, relatives or colleagues.
- Mediators will enter into an "Agreement to Mediate" with the parties to mediation.
- It is a duty of the mediator to actively encourage the participants to make decisions based upon sufficient information, knowledge and advice and in this respect the mediator shall encourage full disclosure of all relevant information by all parties.
- The mediator has an on-going obligation to advise participants of the availability of independent legal advice.
- The mediator will suspend or terminate mediation whenever continuation of the process is likely to harm or prejudice one or more of the participants or when its usefulness is exhausted. In the event the mediator believes that an agreement being reached is unreasonable, he/she shall so advise the parties and would then consider withdrawing from the mediation.

A key to agreement is finding a set of principles that all the participants can endorse, and then refining those general principles to take account of the special and different needs of each participant. The success of a complex multi-party, multi-issue negotiation hinges on creating a sense that the process, as well as the outcome, is fair to everyone involved.

Throughout a negotiation process, it is important for a neutral to work hard to keep the representatives focused on the particular agenda items of the meetings. Creating and sustaining a positive atmosphere and momentum, so participants can emphasize what they can do rather than what they cannot do, is also a key role for a neutral.

Mediation probably does not produce significantly higher rates of settlement. However, mediation substantially changes the character and timing of settlements as these tend to be more truly collaborative and help maintain an ongoing working relationship between the parties. As well, settlement tends to occur earlier than might otherwise be the case, which is a goal of the dispute resolution provisions of the growth strategies legislation.

When to Use a Neutral

An interest-based approach to regional growth strategies negotiations where parties negotiate on their own is the preferred approach. However, in certain circumstances, it may be difficult for parties with differing interests involved in complex disputes to resolve their differences without the assistance of a neutral. Typically, there are three preconditions for the success of unassisted negotiations, that is, where there is no neutral to help manage the process of negotiating(5). Without the existence of these preconditions, assisted negotiation is often necessary. The preconditions are:

1. the issues in dispute, and the number of parties participating in the negotiations, should be relatively few and easily identified
2. the parties to the negotiation must be able to communicate with each other effectively enough to allow joint problem-solving
3. the uncertainty surrounding the outcome of individual action must be quite high for all parties

Facilitation and mediation can help parties resolve differences where communication between parties is poor; parties have become intensely emotional about the conflict; there are misperceptions, stereotypes, or perceived value differences hindering productive exchanges; and multiple issues are in dispute and parties cannot agree on the procedure for addressing them.

EVALUATING THE SUCCESS OF A DISPUTE RESOLUTION PROCESS

The ultimate goal of a dispute resolution process with respect to regional growth strategies is the agreement of all affected local governments on a workable regional growth strategy. However, to ensure that all local government participants are committed to the strategy and its implementation, the following elements of a successful dispute resolution process should be evaluated.

Elements of A Successful Dispute Resolution Process

Factors that illustrate a successful dispute resolution process include:

- approach was fair
- approach allowed free expression
- there was equal opportunity for participation
- participants felt they had control over the process
- participants understood one another's interests
- participants felt satisfied
- participants are committed to supporting settlement
- participants did not feel exposed to personal criticism
- approach held promise of producing outcomes that can be measured and monitored
- process dealt with real concerns of participants
- process ensured all issues of concern were discussed
- agreement met all identified joint objectives

FOR FURTHER INFORMATION:

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Endnotes

5. *see Lawrence Susskind, Breaking the Impasse: Consensual Approaches to Resolving Public Disputes. (New York: Basic Books Inc., 1987).*

APPENDIX A

Provincial Goals

The following are provincial goals outlined in Part 25 of the *Local Government Act*, section 849(2) which all regional growth strategies should work towards:

- avoid urban sprawl and ensure that development takes place where adequate facilities exist or can be provided in a timely, economic and efficient manner.
- settlement patterns that minimize the use of automobiles and encourage walking, bicycling and the efficient use of public transit.
- the efficient movement of goods and people while making effective use of transportation and utility corridors.
- protect environmentally sensitive areas.
- maintain the integrity of a secure and productive resource base, including agricultural and forest land reserves.
- economic development that supports the unique character of communities.
- reduce and prevent air, land and water pollution.
- adequate, affordable and appropriate housing.
- adequate inventories of suitable land and resources for future settlement.
- protect the quality and quantity of ground water and surface water.
- settlement patterns that minimize the risks associated with natural hazards.
- preserve, create and link urban and rural open space including parks and recreation areas.
- plan for energy supply and promote efficient use, conservation and alternative forms of energy.
- good stewardship of land, sites and structures with cultural heritage value.

APPENDIX B

Interest Template

Interests have been described as:

- NEEDS (things a party finds **imperative**)
- DESIRES (things a party **wants**)
- CONCERNS (things a party is **anxious** about)
- FEARS (more **immediate** time-limited concerns)
- HOPES (**expectations** and future desires)

Every multi-party dispute resolution process should include time for the parties at the table to develop and explore their interests.

This segment comprises five steps.

1. Describe an overall vision.
2. Document the interests at the table party by party, keeping in mind the sort of vision held generally by the table. This involves each local government exploring its needs, desires, concerns, fears and hopes for its constituency. Each local government needs to understand the interests of each other local government as well.
3. Parties at the table should work at "translating" these interests into interest-based criteria. These can be used to gauge to what extent any solution meets various local governments' objectives.
4. Parties should consider what sorts of "on the ground" characteristics will be needed to meet their interests.
5. Having considered characteristics in the abstract, the table as a whole begins to locate those characteristics in a way that meets their collective interests.

Why explore interests for each individual local government?

Before the table as a whole can explore interests, it is important for each local government steering group to have catalogued its own. A thorough consideration of "what is important to our local government" will be most helpful to each spokesperson in educating the rest of the table about each constituency.

The table's exploration of interests is also a critical opportunity for each local government to question others. This allows assumptions to be confirmed or altered and misconceptions to be corrected.

How each local government wants to organize its understanding of its interests is up to the local government. Some may want to graph interests or organize them on a matrix. Others may want to provide a written document. Others may wish to deliver interests to the table orally.

Ultimately, solutions to issues in multi-party negotiations may best be made by accurately understanding what is important to each other and why.

Questions to help determine interests

1. What are our local government's most important interests? Can we prioritize them? How much do we care about each?
2. Why are we doing this negotiation? What do we hope to gain from this? What could we lose if this process does not succeed? What are the key factors of success for us?

3. What local government(s) share interests with us? What do we think other local governments' interests may be? Can we prioritize them?
4. How will our knowledge of other local governments' interests assist us in achieving our goals?
5. How have our local government's interests changed over time and how might they change in the future? (Adapted from Gordon Sloan's Interest Template prepared for a 1995 course on multi-party mediation.)

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