

Legislated Impasse: Discursive Analysis of a Local Government ADR Process

by

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Bachelor of Environmental Studies, University of Waterloo, 2004

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**Supervisory Committee**

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## Abstract

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In 2006 the Capital Regional District (CRD) initiated an ADR process to resolve a regional dispute that arose from a proposed Regional Growth Strategy (RGS) amendment called Bylaw 3443. The ADR process itself is a provision within the RGS in the *Local Government Act, Section 860*. Bylaw 3443's ADR process began with an interest-based facilitation that identified overlapping interests; however, by the end of the facilitation the dispute persisted. Although the facilitated intervention was unable to bring the parties to resolution, the submission chosen by the arbitrator closely resembled the recommendation put forward by the facilitator. The shift in process from facilitation to arbitration, and the content of the resolution itself, led to the central questions of this research. Considering the eventual outcome of arbitration, why did this dispute remain unresolved after facilitation?

This qualitative research utilizes an inquiry-based methodology, a narrative interviewing technique and a discursive analysis. These combined methods enabled the examination of talk and text of participants. The analysis uses discursive notions of power, knowledge and agency to deconstruct descriptions and interpretation of events in the ADR process. The discursive analysis of participant's actions supports the thesis that people's conflict actions are shaped by discourse. In this instance, the actions of local governments in the dispute were shaped by the discourses of law, politics and facilitation. This research provides two recommendations. First, the ADR procedures outlined in *Local Government Act, Section 860*, should be revised to place a greater emphasis on a consensus model of ADR, such as mediation, and less emphasis on the command models of ADR, such as arbitration. Second, there is a sense in resolving political disputes through facilitation, however it recommends that those who facilitate and those that dispute need to be aware of the role discourse plays in shaping conflict and suggest incorporating discursive deconstruction as a practical tool to complement a conflict practitioner's technique.

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## Acronyms and Glossary

ADR: Alternative Dispute Resolution

CRD: Capital Regional District

OCP: Official Community Plan – a municipal statement of objective and policies to guide planning and land use managements decisions

RCS: Regional Context Statement – a requirement of the *Local Government Act* that describes how a municipality’s OCP is consistent with the RGS

RGS: Regional Growth Strategy - guidelines that together express a 25-year program of joint action by the CRD and its member municipalities that includes a set of eight strategic initiatives, incorporating actions and targets maps

RUCSPA: Rural Urban Containment and Servicing Area Boundary –includes lands adopted in the RGS bylaw, designed in official community plans primarily for urban development

S1: Narrative S1: Interview with Unelected Representatives from the CRD or a Municipality

S2: Narrative S2: Interview with Unelected Representatives from the CRD or a Municipality

S3: Narrative S2: Interview with Unelected Representatives from the CRD or a Municipality

M3: Narrative M3: Interview with Elected Representative to the CRD board or District of Highlands

MIA: Master Implementation Agreement – a means to establish procedures for the amending, updating and implementing the RGS.

N1: Narrative 1: Interview with Elected Representative to the CRD board or District of Highlands

N2: Narrative 2: Interview with Elected Representative to the CRD board or District of Highlands

N3: Narrative 2: Interview with Elected Representative to the CRD board or District of Highlands

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## Chapter One: Introduction and Research Outline

### 1.1 Introduction and Research Question

Alternative dispute resolution (ADR) prescribes methods for settling disputes by means other than litigation. Generally, disputing parties meet with a third party conflict professional that helps them to readdress the dispute and move towards resolution (Spangler, 2003). The province of British Columbia (BC) is one of the few Canadian jurisdictions (along with Nova Scotia, Alberta and Saskatchewan) with legislation in place that outlines ADR procedures for disputes within local governments (i.e., municipalities and regional districts) and between local governments and provincial ministries and agencies (Sharkey, 2009).

In 2006 the Capital Regional District (CRD) initiated an ADR process to resolve a regional dispute that arose from a proposed Regional Growth Strategy (RGS) amendment called Bylaw 3443. The ADR process is a provision within the RGS in the *Local Government Act*, Division 2 of Part 25. This ADR process unfolded over a period of three years. It began with an interest-based, non-binding negotiation process called facilitation. The facilitation identified overlapping interests among participants who were then able to form “a measure of consensus” (G. Sloan, personal communication, January 17, 2009); however, at the end of the facilitation process in June 2008 the dispute persisted. The ADR process then shifted to a legally-binding final proposal arbitration where the dispute was ultimately resolved in December 2008.

Although the facilitated intervention was unable to bring the parties to resolution, the submission finally chosen by the arbitrator closely resembled the recommendation put forward

by the facilitator. The shift in process from facilitation to arbitration, and the content of the resolution itself, led me to the central question of this research. Considering the eventual outcome of arbitration, why did this dispute remain unresolved after facilitation?

## **1.2 Theoretical Lens**

This paper utilizes Foucauldian discourse theory to gain insight into how people do difference. Discourse theory emerges from a social constructionist theory of meaning and representation (Fischer, 2003; Hall, 2001). This is the idea that objects and actions take on meaning and become knowable only through discourse (Hall, 2001). Discourse is “the specialized languages that develop and come to represent particularized knowledge and behaviour in every facet of social life” (Blank & Ney, 2006, p. 137). Social practices are discursively constituted and constructed systems of representation (Hall, 2001) that mediate the relationship between the potential inherent in social structures and the actual, resultant social event (Fairclough, 2003).

To explore the constitutive and constructive notions of discourse this qualitative research utilizes an inquiry-based methodology (Mishler, 1990; Stoltz & Uhlemann, 2003). This methodological approach is the framework that supports narrative interview methods (Mishler, 1986) and the discursive analysis (Blank & Ney, 2006; Mayer, 2009) that enabled the examination of participants’ talk. This methodology permitted an examination of the procedural system that generated and reinforced particular conflict practices and contributed to an elongated dispute resolution process. The discursive analysis of the actions of local government representatives in the dispute supports the thesis that people’s conflict actions are

shaped by discourse (Ney, Blank, & Blank, 2007). In this instance, the actions of local government representatives in the dispute were separately shaped by the discourses of law, politics and facilitation. This research identifies that the procedural problem that is legislated fails to account for discourse. As such, it effectively legislates an impasse to a more expedient resolution.

### **1.3 Significance and Overview of Outcomes**

The application of discourse theory of analysis to conflict has emerged in the last 20 years and remains an active area of research. A review of literature reveals that more research needs to be done using the notions of discourse to analyze a specific conflict and resolution occurring outside the formal legal system. Further, no current dispute resolution literature examines how discourses shape the path and success of an ADR intervention in this context. This research begins to address this gap by using narratives of participants in an ADR process, to show how peoples' conflict behaviours, talk, and interactions are discursively shaped. This allows for an examination of how different discourses come into conflict and contest which "conflict culture" is accessed to resolve the dispute.

The analysis concentrates on descriptions and interpretation of events in the ADR process from three stakeholder narratives. Each narrative text represents talk that connects to distinct values and patterns of reasoning associated with a particular discourse – legal, political or facilitative. These discourses clash, reproducing and contesting particular visions of the world throughout the ADR process, and these reproductions ultimately influenced the resolution of this dispute.

## 1.4 Organization of Thesis

This research set out to understand why this dispute remained unresolved after the facilitation. Chapter Two provides context, describing the enduring conflict, the manifested dispute and the implemented resolution process. Chapters Three and Four situate the research and researcher theoretically and methodologically. In Chapter Three I present a review of literature at the intersection of discourse and conflict studies, define discourse for the purposes of this research and describe the predominate discourses found in the data.

Chapter Four provides a recipe describing my use of an inquiry-based, emergent methodology and mixed methods to collect primary data. Chapter Five presents summaries of collected and constructed primary data. These data represent interviews as co-constructed discourse and are reduced into narratives that interpret and name the events related to the dispute. From these narratives multiple perspectives emerge that illustrate the dispute.

In Chapter Six, I present an analysis of talk from three participants to explore their varied presentations of the latent conflict, manifestation, preferred outcome and actual resolution of the Bylaw 3443 dispute. Interrogation of the dispute experience as described by the disputants reveals both constitutive and constructive effects of discourse. This expanded knowledge is intended to improve practitioners' understanding of these discursive effects. In particular, the discussion that follows provides two pieces of theoretical insight: there is a real connection between discourse, language and actions, and discourse actively constitutes stakeholders' talk about the dispute, effecting both their meaning-making and conflict actions. Together, they give insight about why the dispute remained unresolved after facilitation.

## Chapter Two: Context

This chapter contextualizes the thesis by describing the events pertaining to the Bylaw 3443 dispute. This research is bound temporally and geographically within a context<sup>1</sup>, and thus the chapter first introduces relevant legislation and then describes the unique geopolitical environment of the southern tip of Vancouver Island, British Columbia.

The context is understood through the public documents, print media texts and discussions I had with participants regarding the Bylaw 3443. Together they constitute the story of a region grappling to embrace sustainability. In 2003, Boyle *et al.* write about the experience of watching the CRD as it attempts to (herd) thirteen autonomous municipalities (cats) on the road to sustainability. This metaphor continues to be apt seven years later and is thematic of the context presented.

### 2.1 Legislative Context

#### 2.1.2 *Canadian Constitution Act and Local Governments*

The Canadian *Constitution Act, 1867* (formerly the *British North America Act*) is at the centre of intergovernmental relations (Sharkey, 2009). The Constitution does not grant local governments powers unto themselves, rather, section 93, sub-section 8 of the *Constitution Act* places local governments under the jurisdiction of provincial governments. Thus the powers of

<sup>1</sup> Context is not a “theory of everything”, instead the concept of context in this study is limited to properties of a communication situation that are relevant for the production and understanding of discourse (Dijk, 2009). Context is subjectively “defined to be relevant in the social situation by the participants themselves” (Dijk, 2009, p. 4).

local governments in Canada are provisions granted to them by provincial legislation (Sharkey, 2009).

### **2.1.3 Local Governance in British Columbia**

In 1896, after becoming Canada's sixth province, BC made it possible for municipalities to incorporate under the *Municipal Incorporation Act* and the *Municipal Clauses Act*. These two Acts created the framework for municipal government (Bish & Clemens, 2008). Today, less than 2 percent of the provincial land area is incorporated, with 87 percent of the population residing within these boundaries (Bish & Clemens, 2008). Local governments in BC are represented by municipalities (cities, towns, municipal districts, and villages), regional districts and special-purpose entities, including school districts, regional library districts and regional hospital districts, and the Island Trust (Bish & Clemens, 2008).

### **2.1.4 Local Government Act (2000) and the Community Charter (2003)**

The enactment of the *Local Government Act*<sup>2</sup> and the *Community Charter* form the backbone of the current legislative framework, providing rules that enable local self-government (Bish & Clemens, 2008). The *Community Charter* recognizes municipalities as an "order of government" giving broad powers to municipalities and more freedom regulate and to provide services (Bish & Clemens, 2008, p. 23). Local governments' powers are limited.

<sup>2</sup> The *Local Government Act* was formally known as the *Municipal Act*. This name change occurred in 2000 (Bish & Clemens, 2008)

These limitations often take the form of a legislated veto, for example, on land use (Bish & Clemens, 2008).

## **2.2 Latent Conflict: Regional Land-use Planning**

Jurisdictional protectionism has resulted in several substantial changes to the municipal and regional planning systems of British Columbia. In 1966, the province introduced legislation that created multi-tiered federations of municipalities and electoral areas known as regional districts (Boyle, Gibson, & Curran, 2004). The legislative intent was to create a coordinating body for municipal initiatives that required a regional perspective, for example, sewage treatment planning. This legislation required municipalities to comply with *Official Regional Plans* through amendments to their *Official Community Plan*. From the start, this planning structure was problematic. Conflicts frequently led to litigious challenges by municipalities claiming regional interference into local planning (Boyle, Gibson, Curran, & Foreman, 2003). The regional district's authority for regional planning was eliminated by the province in 1983 under pressure from municipalities. After 1983, repeated attempts by the province to assume authority over regional planning were abandoned after municipal hostilities entrenched.

### **2.2.1 *The Growth Strategies Statutes Amendment Act***

The *Growth Strategies Statutes Amendment Act* now incorporated into in the *Local Government Act* (Part 25), was introduced by the province in 1992 as a cooperative form of regional planning, to foster regional growth management while seeking to avoid the pitfalls and tension associated with centralized regional planning (Boyle, et al., 2003). The Act was adopted

in 1995 and establishes a framework for collaborative regional arrangements with the intention to “promote human settlement that is socially, economically and environmentally healthy and that makes efficient use of public facilities and services, land and other resources” (British Columbia, 1996). In all, this legislation attempts to foster regional growth through consensus. However, it also attempts to proactively address what to many was a foregone conclusion that instances of conflict will occur around general philosophy or specific management issues (Boyle, et al., 2003). The legislation (see Appendix A) devotes a significant portion, almost half, to outlining the potential alternative dispute resolution (ADR) processes available to the region in the development and implementation of the RGS. These processes include non-binding resolution, peer panel, two arbitration options and facilitation, and are also available to municipalities at any point during the consideration of amendments to the strategy (Sloan, 2008). While ADR processes increase the likelihood of reaching a general agreement around growth, what is contained within the strategy and the implementation of the strategy is largely voluntary and flexible.

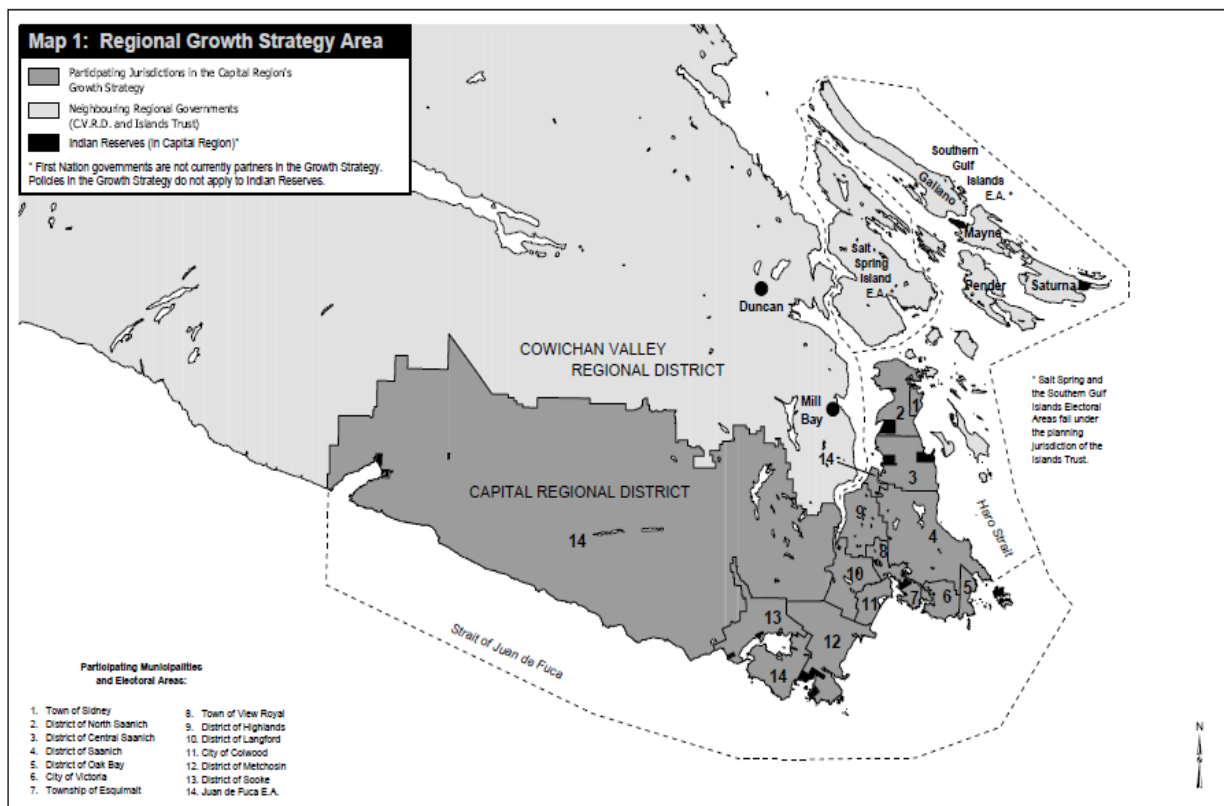
### **2.2.2 Capital Regional District Profile**

The Capital Regional District (CRD) is geographically situated in southern Vancouver Island, including the Saanich peninsula and the Juan de Fuca electorate area (Figure 2.1). The CRD Board of Directors consists of twenty-six delegates from the thirteen member municipalities<sup>3</sup>

<sup>3</sup> Town of Sidney, District of North Saanich, District of Central Saanich, District of Saanich, District of Oak Bay, City of Victoria, Township of Esquimalt, Town of View Royal, District of Highlands, District of Langford, City of Colwood, District of Metchosin, and District of Sooke

and three unincorporated electoral areas<sup>4</sup>. Each CRD member has at least one director; the two largest municipalities, Saanich and Victoria, have five and three directors respectively (CRD, 2008a). The Board is the collective decision-making body of the CRD, acting through resolution and bylaw. Not all members have a vote in all matters – each member can only vote in matters that relate to the district services their municipality receives.

Figure 2.1 Map of the Capital Regional District, (CRD, 2008b)



### 2.2.3 Regional Growth Strategy and the CRD

In 1995, the CRD Board officially committed to creating a Regional Growth Strategy (RGS) which was formally adopted in 2003. The strategy was developed around eight elements:

<sup>4</sup> Juan de Fuca, Southern Gulf Islands and Salt Spring Island

compact urban settlements, the integrity of rural communities, blue/green space protection, natural resource management and environmental sustainability, building complete communities, balanced regional transportation, promoting the regional economy and improved affordable housing (CRD, 2008b). Key features of the RGS include an urban and rural containment servicing area that encourages densification in the metropolitan core, major centres and in trans-linked towns along a rapid transit corridor (Boyle, et al., 2003).

The RGS feature most relevant to this discussion is the growth strategy's provision concerning urban expansion. The CRD chose to create the geographically-based Regional Urban Containment and Servicing Policy Area (RUCSPA, also known as the urban containment boundary) (see Appendix B) that indicates land available for development (Smart Growth BC, 2008). Areas within the RUCSPA are serviced with water and sewer; areas outside the RUCSPA are not<sup>5</sup>. This servicing policy is intended to promote higher density development and more efficient and planned infrastructure extensions within the RUCSPA while maintaining rural-level services and densities in the lands outside the RUCSPA (Sloan, 2008). The policy's intended function is to limit access to water as a barrier to further urban sprawl.

As a result of the RGS, each municipality develops and protects its own Official Community Plan and, with the exception of The District of Sooke, has submitted a Regional Context Statement (RCS).<sup>6</sup> According to CRD State of the Region Report (CRD, 2008b), the RGS

<sup>5</sup> Areas outside the RUCSPA are not serviced with water unless required by pressing public health interests or for agricultural purposes or fire suppression.

<sup>6</sup> The District of Sooke has refused to submit a Regional Context Statement. According to Mayor Janet Evans, "It's not fair that the local area won't have the final say" (Lavoie, 2007).

has overseen an annual growth rate of 1.0 percent in the urban core, 0.7 percent on the Peninsula and 2.7 percent in the Western Communities.

## **2.3 Manifest Dispute: First Amendment of the CRD's RGS**

### **2.3.1 The Initial Request**

The RCS submitted by the District of Highlands, as required by the *Growth Strategies Statutes*, was approved by the CRD Board in a contentious ten to nine vote on March 8, 2006 (Sloan, 2008). The Highlands' RCS advocated changing the vision for the municipality and the RUCSPA boundary in order to accommodate one mixed residential and commercial development (see Appendix C for a map of proposed RUCSPA expansion). This change would have been equivalent to ten years of growth, according to their Official Community Plan when the RGS was adopted. "The approval of the RCS will lead to diversification of our tax base in the south Highlands," according to Highlands mayor Mark Cardinal (Bell, 2006, p. C2). However, some residents were disappointed with this approval: "The Highlands is not in severe financial straits...Highlands has not raised property taxes in eight years...Development begets development. The myth that massive development in the south Highlands will save the Highlands both ecologically and financially is just that – a myth" (Bell, 2006, p. C2).

### **2.3.2 The Bylaw 3443 Amendment**

Once the Highlands RCS was approved, the CRD Board directed regional staff to prepare an amendment that would reconcile the RGS with the new Highlands RCS text. The proposed amendment (Bylaw 3443) sought to change the RUCSPA to reflect the new configuration set

out in the Highlands' RCS in order to facilitate changes in land use, development densities and servicing provisions. Primarily, this entailed extending regional sewer and water services to new developments along their southern municipal border, including the proposed Highlands portion of the Bear Mountain Comprehensive Development Project. Highlands' application to amend the RUCSPA as outlined in the 2003 RGS had to follow the same process as the original creation of the RGS.

### **2.3.3 Reception of Highlands' Proposal**

Early reception of the amendment varied. The advice from CRD staff highlighted concerns about water servicing capacity, which was insufficient to meet the potential change in demand. The amendment would require significant upgrades that ultimately would increase regional water rates (CRD, 2006). The CRD Board had 120 days to sign or reject the recommended resolution. Four councils voted to accept (Colwood, Langford, Sooke and Highlands) and ten voted against the amendment (Sydney, N. Saanich, C. Saanich, Saanich, City of Victoria, Oak Bay, Esquimalt, View Royal, Metchosin and the Cowichan Valley Regional District). Their reasons for not accepting the amendment mirrored those gathered in public consultation on September 13, 2007.

Public consultation yielded 176 submissions, 19 in favour of the amendment and 157 opposed. The result of public consultations submission were overwhelmingly opposed to the amendment (CRD, 2007a) and chiefly concerned the process and timing of the amendment, the issue of containment verses sprawl and the proportion of land to be included in the amendment (CRD, 2007a). Those who were opposed to the amendment and whose concerns

surrounded regional water shortfall also saw extending the urban containment boundary as a mistake. CRD water manager Jack Hall said that the Bear Mountain golf development, then under construction in Langford, “has been designed as if the municipal boundary between Highlands and Langford didn’t exist” (Lavoie, 2007, p. B2). Based on a previous servicing agreement between the developer and the district of the Highlands the golf course would draw substantial amounts of water from the reservoir without any legal obligation to conform to long-term water supply plans.

#### **2.3.4 A Lack of Consensus in the Highlands and CRD**

The council of Highlands’ was divided and the initial approval of the development was contentious. “In the latest Highlands vote, Cardinal, with councillors Ken Brotherston and Joe Kadar, voted to accept the Regional Growth Strategy change, while councillors Andrew Fall, Jane Mendum and Ken Williamson voted against and Councillor. Michelle Mahovich abstained because of a potential conflict” (Cleverley, 2007, p. B2). Eventually, Highlands’ council was able to endorse their application to amend the RUCSPA when Councillor Mahovich freed herself and declared that she was no longer in conflict. She was then able to vote in favour of Bylaw 3443 (Cleverley, 2007), but for Highlands’ council this internal dispute was far from over.

The draft amendment was both a golden ticket for the Highlands and a way to protect regional ground water. “A RUCSPA amendment would be extremely beneficial – both economically and for the protection of the precious ground water upon which all Highlanders rely” (District of Highlands, 2005). Most of the rationale provided to the CRD Board as justification, however, focused on the revenue associated with the Bear Mountain

Comprehensive Development from an increased commercial and residential tax base, approximately \$550,000 per year in net tax revenue (District of Highlands & Beckett, 2008). The early estimates of the development's composition included 150 residential houses, 250 tourist accommodations and light commercial/retail associated with the golf course (CRD, 2007b).

Unanimity on the CRD Board was not reached after the 120 days, thus the matter was declared stalemated and as legislated the CRD approached the Minister of Community Development to intervene using one of the ADR process outlined in the Act. Minister Lekstrom eventually responded by appointing Mr. Gordon Sloan in January 2008 to facilitate the negotiations between local governments and to assist in the resolution of specifically anticipated objections. I accompanied Mr. Sloan in his facilitation efforts, and began to study this dispute as an example of local governments accessing the ADR provisions of *Local Government Act*.

## **2.4 Emergent Alternative Dispute Resolution Process**

### **2.4.1 Appointment and Mandate of Facilitation**

The following section describes the facilitation process concerning the Bylaw 3443 amendment to the RGS in the CRD. The process employed by Mr. Sloan was the first of its kind. The Act does not prescribe methodology to the facilitator, so in acknowledgement of the lengthy history associated with proposed Bylaw 3443, and believing that the views of the municipalities had been well-articulated in writing, Mr. Sloan chose not to attempt large multi-

party negotiations (Sloan, 2008). Instead, he implemented a staged approach that resembled interest-based negotiation (Chicanot & Sloan, 2003).

#### **2.4.2 Facilitation Process**

##### **Stage One: Interviews with Member Municipalities**

First, Mr. Sloan conducted individual interviews with every municipality except for Langford, which declined participation. This round was completed by May 6, 2008. Mr. Sloan aimed to make clear the objectives and interests underlying each municipality's position. These sessions were open to whomever the municipality believed could best represent their position; these meetings were well-attended by participants ranging from senior staff to elected officials.

##### **Stage Two: Sounding Board**

On May 28, 2008, Mr. Sloan convened an informal group of senior municipal staff from various municipalities, along with several CRD staffers. Mr. Sloan was hopeful that the participation of unelected staffers would lead to a more productive opening discussion than a logjam of political interests. Mr. Sloan presented several possible scenarios based on the initial interviews and there was a vigorous discussion. Based on this discussion Mr. Sloan chose to alter some of the potential scenarios for resolution and presented them during the next stage of his process.

### **Stage Three: Final Facilitation**

Based on the discussion with senior staff Mr. Sloan convened the third stage of his approach and invited all interested mayors, council members and senior staff to the Ambrosia Centre on June 10, 2008. This meeting had “a lackluster turnout” (G. Sloan, personal communication, January 17, 2009). Mr. Sloan presented three scenarios for modifying the RUCSPA to aid resolution that were developed in consultation with the sounding board group and through specific discussions with the Districts of Highlands. Participation by representatives in the meeting was minimal and a path forward failed to coalesce. Many attendees reported to be bound by prior council resolutions.

### **Stage Four: Report by the Facilitator**

As a last attempt to facilitate resolution, Mr. Sloan submitted a report on June 19, 2008 to the CRD Board (Sloan, 2008). His report outlined the three suggested scenarios for resolution and articulated the shared values and interests represented throughout the CRD related to the RGS. The Sloan report articulated five main interests which he believed that any solution would have to satisfy: (1) aquifer quality – preserving quantity and quality of subsurface water, (2) urban creep – limiting northward development in the Highlands, (3) public health – concerned with soil and ground water contamination, (4) community economic gain – creating a better financial position for the District of Highlands, and (5) proportionality – limiting the land added to the containment boundary to that realistic for land development needs (Sloan, 2008).

### **2.4.3 Response to Facilitation**

Although the facilitated intervention was unable to bring the parties to resolution, there is much to be learned from these moments of process as it inevitably influenced how this dispute unfolded and how others may unfold, resolve and re-emerge (Bush & Folger, 1994; Della Noce, 1999). The fallout from Mr. Sloan's facilitation was minimal at first; neither the CRD nor any municipality involved attempted to facilitate further discussion. With one of Highlands' seven councilors on permanent leave, Highlands' council were deadlocked. Highlands' council failed a motion to discuss further Mr. Sloan's report. CRD Board directors remained divided. After participating in the last facilitation session and reading Mr. Sloan's report, Metchosin's Mayor Ranns and Saanich Councillor Vic Derman jointly remarked on the opportunity now available to solve this dispute locally (Cleverley, 2008b, p. A5). North Saanich Mayor Daly argued that the original notion of the RGS was not to veto the decisions of other CRD members, and Langford Mayor Young echoed Daly, insisting that the Highlands should be free to decide whether its residents require municipal water (Cleverley, 2008b, p. A5).

### **2.5 Final Proposal Arbitration**

Blair Lekstrom, then the Minister of Community Development, was made aware of the continued irresolution by a letter from CRD Chair, Denise Blackwell. The letter explained that the CRD Board passed a resolution on August 13, 2008 recommending the outstanding issue of Bylaw 3443 to be handed through the a non-binding process and specified the five-year RGS

review<sup>7</sup> as the appropriate venue. “I think it’s [the RGS five-year review] a far, far better process than having some sort of arbitrator dictate some outcome which may be less satisfactory to this board or...to the Highlands”(Cleverley, 2008b, p. A5). The Minister responded on September 25, 2008, refusing the request to handle this dispute through their five-year review process<sup>8</sup> and instead exercised the maximum authority granted to him under the Act and appointed an arbitrator, Mr. Glenn Sigurdson. “Highlands’ Mayor Mark Cardinal welcomed the decision... I’m please to hear that they’re going to send it to final proposal arbitration. I’m happy they did that as opposed to what the CRD had directed” (Cleverley, 2008c, p. A3). Minister Lekstrom determined that the settlement process was to be final proposal arbitration<sup>9</sup>. This decision transformed the intervention from a negotiation-based process to a decision-making process (G. Sloan, personal communication, January 17, 2009). Written submissions were to be received by the arbitrator no later than November 10, 2008,

<sup>7</sup> The RGS five-year Review is currently underway and is meant to update the strategy, better integrate sustainability (respond to Provincial climate-change targets and policy directions), and create a framework for sub-strategies and implementation initiatives. (CRD, 2010)

<sup>8</sup> The Minister determined that the RGS five-year Review was not a binding resolution process and therefore did not qualify as an appropriate venue to resolve this dispute.

<sup>9</sup>Final proposal arbitration process is defined in the *Local Government Act* (see Appendix A) as “a second option, the provisions of a regional growth strategy may be settled by final proposal arbitration by a single arbitrator as follows: (a) the arbitrator is to be selected from the applicable list prepared under section 862 (1);(b) the selection of the arbitrator is to be done by agreement between the proposing board and the local government or governments that refused to accept the regional growth strategy or, if the minister considers that these parties will not be able to reach agreement, by the minister; (c) subject to the regulations, the arbitrator must conduct the proceedings on the basis of a review of written documents and written submissions only, and must determine each disputed issue by selecting one of the final written proposals for resolving that issue submitted by one of the participating parties; (d) the provisions of the regional growth strategy will be as settled by the arbitrator after incorporation of the final proposals selected by the arbitrator under paragraph (c);(e) no written reasons are to be provided by the arbitrator” (*Local Government Act*, Part 25, section 861 (2)).

and the arbitrator was to award his decision within the subsequent three weeks. The deadline for arbitration submission was the day prior to municipal election held on, November 11, 2008.

### **2.5.1 Submission to the Arbitrator**

Mr. Sigurdson received 13 submissions<sup>10</sup> regarding the expansion of the Regional Urban Containment and Servicing Policy Area (RUCSPA) within the District of Highlands. The submissions to the Arbitrator varied. The CRD Directors were offered three options from which to compose their arbitration submission: no boundary extension, an extension consisting of 118 hectares or one of 146 hectares (Cleverley, 2008c, p. A3). The CRD Directors expressed frustration with Highlands council's lack of direction to the CRD Board, as they had yet to reach an agreement on how much land they wanted to service (Cleverley, 2008c, p. A3). The CRD Board approved a submission that proposed no boundary extension. Four submissions supported an expanded boundary, five opposed any change, three suggested it should be handled through the five-year review and one municipality chose to participate but did not submit a proposal. Importantly, these positions are practically unchanged from the start of the 120 days, with one exception: the Highlands.

<sup>10</sup> Submissions were received from: the CRD, The Corporation of the District of Central Saanich on behalf of Tsartlip's First Nation, City of Colwood, District of Highlands, City of Langford, The District of Metchosin, The District of North Saanich, The Corporation of the District of Oak Bay, The Corporation of the District of Saanich, Town of Sidney, District of Sooke, City of Victoria, and Town of View Royal (Sigurdson, 2008)

### **2.5.2 Highlands' Submission and Resolution**

The District of Highlands council, divided previously and perceived by other municipalities as divisive, came to an internal solution. Council members, who as of August 2008 were unwilling to discuss the facilitator's report, reached a unanimous decision. Their submission to Mr. Sigurdson closely resembled one of the scenarios presented by Mr. Sloan. "It just goes to show if we actually roll up our sleeves and put aside some political differences that council can work constructively... and come to a reasonable solution" (Cleverley, 2008d, p. A4), said Highlands Mayor Mark Cardinal upon reaching a unanimous decision within Council. On December 1, 2008 Mr. Sigurdson selected the District of Highlands submission as the most persuasive (see Appendix C2 for expanded RUCSPA boundary in the District of Highlands), signaling the end of this dispute and a jumping-off point for this research.

Figure 2.2: Timeline and Sections of Growth Strategies Statutes Amendment Act relevant to Bylaw 3443 Amendment Dispute

The corresponding legislation is found in Appendix A.



## **Chapter Three: Locating Foucault in the Space of Conflict**

### **3.1 Introduction**

To gain understanding about why this dispute remained unresolved after facilitation I have adopted conceptions of language, representation, power and knowledge using a Foucauldian approach to discourse theory. This research explores how language and symbols shape disputant's meanings of the conflict, specifically the latent conflict, manifestation, preferred outcome, and actual resolution of the dispute. Interrogation of the dispute experience as described by the disputants reveals both constitutive and constructive effects of discourse. Particularly interesting to this analysis is the effects and interplay of discourses of law, politics and facilitation. To understand these, we need first to understand social practices as discourse by identifying Foucauldian notions of power, knowledge and agency. As an analogy, this framework personifies discourse as a sculptor that shapes peoples' conflict actions.

### **3.2 Locating Foucault in the Space of Conflict**

Conflict researchers have applied Foucauldian discourse analysis mostly toward understanding the role of power in conflict cultures<sup>11</sup>. Three particular research areas became important to my research.

<sup>11</sup> A social systems used to resolve conflict are conflict cultures (Blank & Ney, 2006).

First, the notion of discursive power has been used to examine the role of mediators (Bagshaw, 2001; Brigg, 2003, 2007; Cobb & Rifkin, 1991; Pavlich, 1996). Cobb and Rifkin (1991) demonstrate how the rhetoric of neutrality in mediation practice is problematic as it legitimizes a reliance on law-related practices. Their research analyzes mediation as a discursive process and reorients neutrality to allow for an alternative description (Cobb & Rifkin, 1991). Bagshaw (2001) uses Foucault to introduce postmodernist and poststructuralist ideas to mediation practice, including the constructive power of discourse to reflect and shape the world, the rejection of dualistic thinking, and the assumption of universal truths, objectivity and neutrality. Brigg (2003) expanded the critique to intercultural mediation, citing the implicit, discursively-constructed underpinnings of Western mediation techniques.

Second, Foucault's theory of governmentality has been used to critique informal resolution processes to show that Western conflict cultures align and reinforce the neo-liberal state. Pavlich (1996) uses Foucault's notion of governmentalization and power to examine the role of community mediation in the creation of nondisputing selves. His article places community mediation as a type of secular confession that encourages disputants to reform, restoring order to the community and preserving the neo-liberal state (Pavlich, 1996). Brigg (2007) challenges the critique advanced by Pavlich (1996) and himself (2003) of the governmentality of ADR – that alternatives to the adversarial court processes constitute rather than challenge formal regulation. While Pavlich (1996) disregards the potential to transform governance from within ADR, Brigg presents the interplay of the technical capacity and susceptibility of mediators' selves and practices as the key to mitigating and transforming the power relations in conflict resolution (Brigg, 2007).

Third, research by Blank and Ney (2006) and Ney, Blank and Blank (2007) use notions of discourse and truth, power and knowledge, and subjectivity and agency to illuminate how discourse shapes conflict cultures. Precisely, conflict practices are constituted discursively (Ney, et al., 2007). For example, Blank and Ney (2006) provide evidence that psychological assessments are co-opted by legal discourse in high-conflict divorce litigation. This co-option often results in an escalation of conflict and often individuals at the centre of the dispute are marginalized (Blank & Ney, 2006). One of my first connections between analytical and theoretical constructions was realized when it turned out that the Bylaw 3443 ADR process was a discursive technology of both law and politics.

### **3.3 Defining Discourse for the Purpose of this Research**

#### **3.3.1 Origins**

This research builds from constructionist theory<sup>12</sup> that originates within the sociology of knowledge (Fischer, 2003). Constructionists refer to the multiplicity of meanings available to interpret or perceive reality in a given space and time (Fischer, 2003, p. 53). Especially because interpretations are fluid, people can take up contradictory positions, making it difficult to place the actions of any individual into a single category (Mayer, 2009).

<sup>12</sup> Constructionism vs. constructivism – constructionism is a sociological construct, and is concerned with the development of phenomena relative to social context. Whereas constructivism is a psychological construct that refers to individuals meaning making of knowledge within a social context. While distinct from one another both are complementary aspects of a single process through which humans in society create meaning about their worlds and, thereby, meaning of themselves.

To make a claim about the meaning of a certain word is to make a claim about how the word should be used, not to describe in certain terms how a word is used. So the exercise of defining discourse is dependent on the social context in which the term is evoked. Here, it is specific to how I have defined and used discourse in my research agenda (see, e.g., Carol Bacchi, 2000). Foucault<sup>13</sup> drastically altered the social sciences by recasting language as discourse (Bacchi, 2000; Bagshaw, 2001; Rigney, 2001). His approach to discourse differs from formal linguistics or literary studies. Foucault's emphasizes context rather than the text<sup>14</sup>(Bacchi, 2000). In this altered role, language is a political and social entity (Bagshaw, 2001). Discourse produces meaning, but is not just a mirror of reality. It instead profoundly sculpts our context in the first place (Bagshaw, 2001; Fischer, 2003). It is helpful to imagine discourse as a cultural idea, a metaphor shedding light on "how people's understandings of what is normal, acceptable, right, real or possible are constructed" (Mayer, 2009, p. 120). Discourse theory is the study of "order and pattern" (Wetherell, Yates, & Taylor, 2001, p. 6) in language negotiated in a dynamic cultural and psychological context. "Language both constructs and reflects the interpreted reality that is held in common" (Clark, 2002, p. 177)<sup>15</sup>.

Combining these threads, discourse for this research is "the specialized language that develops and comes to represent particularized knowledge and behaviour" (Blank & Ney, 2006, p. 137) at a point in space and time. In the following section, we will look at specific examples of language bounded by discourse: social practices.

<sup>13</sup> "The Archaeology of Knowledge", 1970

<sup>14</sup> See the work of Derrida as an example of emphasis placed on text (Bacchi, 2000).

<sup>15</sup> See Lakoff and Johnson (1980, 1999) for a detailed explanation of language, thought and primary metaphors.

### 3.3.2 Discourse is Constitutive and Constructive

Social practices<sup>16</sup> are interpersonal interactions constituted and constructed discursively (Blank & Ney, 2006; Mayer, 2009). Discourse works in cultural space, constructing what is spoken of or thought about (Bagshaw, 2001; Carabine, 2001; Mayer, 2009; Wetherell, 2001). For example, in the case of this research, different discourses produce different concepts about what caused the dispute and what resolution of the dispute should look like.

Discourse also establishes what is true at a particular moment (Carabine, 2001). In other words, according to Foucault, truths are framed by the normalized discourses (Bagshaw, 2001; Blank & Ney, 2006; Carabine, 2001; Mayer, 2009; Wetherell, 2001). In this research, multiple discourses produced multiple truths.

### 3.3.3 Power

“ Foucault ... sees power ... as an effect of discourse”(Blank & Ney, 2006, p. 138). Power is exercised as human action, but it is not a commodity, it cannot be held by an individual or an institution (Brigg, 2003). Power circulates through discourse fluidly according to the actions of self and others (Bagshaw, 2001; Brigg, 2003). The extent to which power can be exercised as human action depends of the resources, including knowledge and agency, available to social actors.

<sup>16</sup> Social practices are represented in linguistic objects (words or sentences), an action (such as a vote or assertion), a form of interaction (like a conversation, an interview or a city council meeting) , a mental representation (a metaphor), a communicative event (like a parliamentary debate or a dispute), a cultural product (like a regional growth strategy) or even an economic commodity that is bought and sold (like a carbon credits) (Dijk, 2009b).

### 3.3.4 Knowledge

Foucault writes power/knowledge as one word to imply that knowledge is always a form of power (Bagshaw, 2001; Hall, 2001). To quote Foucault “there is no power relation without the correlative constitution of a field of knowledge, nor any knowledge that does not presuppose and constitute at the same time, power relations”(Foucault, 1977 in Hall, 2001, p. 76). The connection he makes between power/knowledge means there is control over truth as well as the ability (power) to make something truth (Hall, 2001). For example, what we think we currently know about conflict impacts how we regulate, control, approach and resolve difference. Therefore, in order to study conflict resolution one must study how discursive power/knowledge has historically contributed to conflict cultures. Discursive knowledge has a real effect both on the disputants and those tasked with resolution, as well as how these concepts have been put into practice.

### 3.3.5 Agency

Agency is the self acting. Foucault sees identity (self) as being either constituted through or a user of discourse (Bacchi, 2000; Bagshaw, 2001; Blank & Ney, 2006; Mayer, 2009). To make this idea plain is to say that “no one stands outside of discourse” (Bacchi, 2000, p. 45). Yet subjective positioning is changeable. Therefore, we build a self through active meaning-making (Bagshaw, 2001; Blank & Ney, 2006; Pavlich, 1996). In Foucault’s words, “the subject constitutes himself in an active fashion, by practices of the self, these practices are nevertheless not something that the individual invents by himself. They are patterns that he

finds in his culture and which are proposed, suggested and imposed on him by his culture, his society and his social group” (Pavlich, 1996, p. 717).

Discursively, there is a relationship between power/knowledge and agency that impacts an individual's agentic capacity, their ability to act and effect outcomes. Power/knowledge can effect one's ability to act, yet one cannot act without power/knowledge. “If you do not know the language, you do not have the knowledge; whoever or whatever controls or administers — “owns” — the language, controls the inseparable knowledge/power axis”(Blank & Ney, 2006, p. 138).

## **Chapter Four: Research Design and Method of Inquiry**

### **4.1 Inquiry-based Methodology: Emergent Design and Bricolage**

From the beginning, this research has followed an emergent design (Taylor, 2001b), meaning that the methodology and methods employed to collect and analyse data were not fully predetermined. Instead, the sequence of methods was derived from coordinated phases of data collection and reflection. Specific methods were adapted from literature as necessary, following the evolving nature of the research question. This is also referred to as an inquire-guided approach (Mishler, 1990; Stoltz & Uhlemann, 2003).

The concept of *bricolage*<sup>17</sup>, as explored by Kincheloe (2001) draws connections between the way a researcher addresses the theoretical and philosophical dynamics present in their

<sup>17</sup> The origin of *Bricolage* is French, from *bricoleur*, and describes a person who uses the tools available to complete a task; it usually was in reference to a handyman or handywoman (Kincheloe, 2001).

research process and the ultimate influence of those dynamics on the nature of the knowledge produced by the researcher. Kincheloe describes a *bricoleur* as a methodological negotiator (Kincheloe, 2005, p. 325). This resonates with my own research philosophy in allowing the experience of the research to shape its methods.

By adopting a *bricolage* methodology, I am acknowledging the absence of an established methodology for conflict resolution research and analysis. The natural complexity and variety of conflict requires a broad conceptual range that supplants a single methodology. Without a dominant methodology, a conflict resolution researcher constructs a relevant analysis by being elastic and integrating methodologies as appropriate (Druckman, 2005). This, the ethos of *bricolage*, challenges a researcher to embrace an approach open to the multiple dimensions of understanding present in a given research context (Kincheloe, 2001).

## 4.2 Validation

Historically, a standard approach to research validity is based on the positivist experimental model with an emphasis on three criteria: reliability<sup>18</sup>, validity<sup>19</sup> and replicability<sup>20</sup>. The "truths" of modern experimental science are rhetorical strategies, embedded in complex networks of concepts and technical practices that construct a framework

<sup>18</sup> Reliability - the ability of a test or experiment to be accurately reproduced, by someone else working independently (Taylor, 2001b)

<sup>19</sup> Validity - refers to the truth, generalizations and accuracy of the research. There are many ways to test validity (Taylor, 2001b)

<sup>20</sup> Replicability - Is a combination of both reliability and validity and is a means to evaluate the entire project. To pass this test, the research must be well-designed and fully described in the research report (Taylor, 2001b)

of norms and values (Mishler, 1990). This framework fits a prototype model of experimental science dominated by hypothesis-testing, linking observation, statistics and empirical falsifiability. In contrast, the qualitative research experience is strengthened by an authentic perspective, not the “burden of proof” required by the classical scientific method (Mishler, 1990).

In an inquiry-guided research situation that speaks to human behaviour, there are no discoverable absolutes, only relative ones. Further, truth and reality are dynamic because knowledge is created through relational experiences interpreted as social life (i.e., discourse). Each experience is unique, and as a research situation its interpretations cannot be rationally falsified. In qualitative study, the three positivist criteria discussed above are not universal. They are neither trivial nor irrelevant, but rather represent important subsets of validity (Mishler, 1990). Thus, the positivist experimental model does not offer criteria to assess validity in this research context.

Mishler’s discussion of validity (1990) re-establishes the legitimacy of inquiry-guided research by suggesting that validation is a social construction of discourse (Kvale, 1996; Riessman, 1993). Mishler (1990) refined the three empirical criteria, in a way, and adapted them to the world of discourse and relative truth. As a result, “validation, the process through which we make claims for the trustworthiness of our interpretation, is the critical issue” (Riessman, 1993, p. 65). By focusing on trustworthiness rather than “truth”, validation is displaced from its traditional location and recast into the social world constructed through

discourse. The inquiry-guided researcher sees that validation and trustworthiness lead to clear explanations and shared understanding.

Instead of exploring the many ways in which this research can be received as valid, I have adopted a pragmatic structure (Kvale, 1996; Mishler, 1990; Riessman, 1993). Throughout this thesis and within this methodology chapter I have (a) described how the interpretations were produced, (b) made apparent what I did, (c) specified how I negotiated stages of research, (d) been honest about foundational assumptions and values, and (e) asserted that my primary data is available to future study. By adopting a pragmatic approach, I provide sufficient information for the reader to construct, at the time of reading, the trustworthiness of my work.

### **4.3 Summary of Methodology and Methods**

The following is a step-by-step, chronological guide to my methodological choices. These choices are further explained in the sections that follow.

- Adopted emergent, inquiry-guided approach, deriving methods from methodology as a *bricoleur* (Section 4.1)
- Conducted a pilot study, methodologically informed by grounded theory (4.4.1), after receiving University of Victoria's Human Research Ethics Board approval. Data in this pilot study consisted of written participant observations of the interactions between Mr. Sloan and representatives from local governments.
- In response to the data collected in the pilot study and the literature reviewed, clarified the research question (see 1.1), selected narrative interviewing as the next method for data

collection and wrote an interview protocol. To accomplish this step, consulted literature about narrative and constructivist theory (4.5.1)

- Contacted potential participants (see Appendix E for Letter of Information), conducted and digitally recorded 8 interviews ranging in length from approximately 16 to 150 minutes (4.5.2- 4.5.5)
- Transcribed first few interviews verbatim, reviewed them, then refined the transcription technique to improve efficiency and reflect the intended use of the data. Transcription resulted in approximately 108 pages of data, single-spaced, size 12 font. (4.6)
- Transformed interviews using a modified Labov (1987) structure to create narratives from interviews (see Appendix G), distilling their perspective (4.6.3)
- After another round of sorting, identified patterns in the data reflecting recurrent representations of discourse (4.6.4)
- Selected three narratives, from the seven distilled for analysis, representative of the pervasive discourses: law, politics and facilitation (4.7, 4.8, see Appendix H for complete narratives 1-3)
- Undertook a discursive analysis of text from N1, N2, N3 informed by Foucauldian theoretical framework (4.7)

#### **4.4 Phase One: Pilot Study**

On March 18th, 2008 I attended the first meeting conducted by the provincially-appointed facilitator (Mr. Sloan) with the CRD member municipalities (March 18, 2008 to June 10, 2008). At this early stage, I had an interest in conducting research from the perspective that

conflict is part of a human change process (Hoskins & Stoltz, 2003). In congruence with an emergent research design, my focus in the pilot study (participant observations<sup>21</sup>) was to conceptualize the dynamics of the dispute by studying the facilitator and participants. I avoided conducting reductionist, deterministic research by not forcing a research objective, instead provoking a negotiation between my initial research interests and what emerged from the data (Charmaz, 2006).

I recorded written notes during and after conversation with the facilitator following each session. These informal exchanges were extremely helpful in gaining a broader perspective. I continued to record observations until June 10, 2008. Mr. Sloan's report *Proposed Amendment Bylaw 3443: Report of the Facilitator* to the CRD Board marked the end of data gleaned from participant observations, though the dispute remained unresolved.

With my observations I set about to study literature regarding preliminary themes present in the data.<sup>22</sup> These themes were often expressed metaphorically. For example, I observed that for many participants the urban containment boundary was a dominant metaphor in speaking about the RUCSPA extension; so, I consulted theories about the connection between metaphor and conflict resolution (Cloke & Goldsmith, 2000; Docherty,

<sup>21</sup> The act of participant observation involves a researcher experiencing social practice as an onlooker (Kirby, Greaves, & Reid, 2006). In this study, I observed active discourse (Kirby, et al., 2006) present during Mr. Sloan's individual interviews with agents of the participating municipalities. Kirby, Greaves and Reid (2006) assert "any events described and thoughts recorded by the researcher become observations and reflection respectively" (2006, p. 149).

<sup>22</sup> The following themes permeated the data: identity and collective identity, autonomy, distinctions between regional and municipal interests, concepts of growth, economic fairness, the boundary, discursive principles, legislative process, and dispute resolution procedures.

1996, 2004; LeBaron, 2003; LeBaron & Pillay, 2006; Lederach, 2005). The data began to sort into metaphors (constructed perceptions, assumptions and interpretations) that helped to contextualize the path of the dispute. In response to the data collected in the pilot study, I cemented my research question<sup>23</sup>.

#### **4.5 Phase Two: Second Round of Data Collection**

In October, 2008 I received approval from the University of Victoria's Human Research Ethics Board to modify the research design and methods to include interviews with meeting participants. My first stage of observation, participation and interaction had also encouraged me to re-establish a connection to narrative methodology<sup>24</sup>. I prepared for the informant interviews by further investigating and refining a narrative technique.

##### **4.5.1 Interview Method and Construction of Narratives**

Before I designed and conducted interviews I needed to learn about the philosophy and practice of interviewing, so I again returned to academic literature. In the narrative tradition, interviewing is a form of discourse determined by the relationship, context and interaction of the interviewer and interviewee (Mishler, 1986). What emerges from the interview is a co-constructed narrative – data “never wholly reducible to what conversants bring to the conversation, but... emergent in the conversation itself” (Rigney, 2001, p. 196).

<sup>23</sup> From section 1.1, why did the regional dispute over Bylaw 3443 remained unresolved after facilitation?

<sup>24</sup> See work by Riessman (1996), Kvale (1990) and Mishler (1990) for a detailed description of how to conduct research using a narrative methodology.

In order to construct interviews as discourse, Mishler (1986) specifies four essential components: (1) interviews are conceptualized as speech events, (2) the discourse of interviews is co-constructed by the participants and the interviewer, (3) analysis and interpretation must be grounded in a theory of discourse and meaning, and (4) the interview event has meaning embedded in context. This research incorporated Mishler's (1986, p. 43) method of interviewing.

#### **4.5.2 Interview Method in Practice**

Acknowledging the multiple perspectives that emerged from the preliminary data, I designed an interview protocol that would allow me to compile data from numerous perspectives. The interview protocol included how I would conduct follow-up interviews as well as specify my opening statements about research context and objectives as well as ethical considerations (e.g use of data, confidentiality and relative anonymity).

#### **4.5.3 The Participants**

There were four layers of context from which I was interested in gathering data: elected representatives from the CRD Board, elected representatives from the District of Highlands, municipal and regional staff and Mr. Sloan. I refined my recruitment criteria further, stipulating that participants had attended at least two meetings with Mr. Sloan. This also implied that the participants had interacted with me as an observer and guest of Mr. Sloan. I contacted by e-mail (see Appendix D) eight individuals (one individual declined) who met my research criteria and who had indicated that they might be interest in being part of further research. Attached to

this email was a letter (see Appendix E) that provided the rationale for this research and information about participant privacy.

#### **4.5.4 Interview Timing**

The interviews were conducted from November 2008 to January 2009, after the municipal election. It was initially my intent to conduct these interviews before the arbitrator's decision; however, it became clear that the municipal election cycle dominated the attention of the participants. Interviewing participants during and after they received news of the arbitrator's decision affected the direction of our conversations, changing the way participants, including myself, contextualized the dispute. Interviews one through three happened after municipal councils had determined their submission to the arbitrator but before December 1, 2008, (when the arbitrator reported his decision). Interviews four through eight (the eighth interview was with Mr. Sloan) happened after the arbitrator's decision was released.

#### **4.5.5 Interview Situation and Protocol**

The interviews took place in locations convenient to the participants (at municipal and regional offices, participants' homes and the University of Victoria). During these interviews I took audio recordings and minimal written notes. These notes consisted of words or phrases that reminded me to further investigate themes and ideas, and metaphors that had significance. After each interview, I wrote short reflections to help better construct my role in the subsequent interviews.

Each interview started with a preface. I gave a brief introduction that defined the interview situation for the participant; I spoke to my purpose, referenced the use of a recording device and asked if they had any questions. In accordance with University of Victoria's Human Research Ethics Board policy, each participant was provided the opportunity read and sign informed consent forms (see Appendix F). Participants had previously received this information through the aforementioned Project Information Letter (see Appendix E)

In reviewing the transcripts I noticed a variation in my opening statements. I approached each interview with some contextual knowledge of the interviewee, based on prior interactions, and this affected the interview. I also modified my introductory statements after the arbitrator reported his decision. The arbitrator's decision fundamentally changed the landscape of the interviews. The introductions were similar, but not identical. My intent was to specify the same meaning in different ways, in the same manner that typifies a natural conversation. In doing so, I followed the advice of Mishler: "it is much more important that the question be fixed in its meaning, than in its wording" (1986, p. 43) .

All participants were asked the following five questions.

1. Can you describe what has happened since the facilitated sessions with Mr. Sloan?
2. What meaning does this conflict have for you, your municipality or the district?
3. At any point along the way has there been a shift in your perception of this conflict?
  - A. At what point did the shift occur? B. Have you noticed a shift in others?
4. At this point, looking back, what sense can you make of this conflict?
5. What future does the conflict have in terms of the RGS?

My intent when crafting these questions was to help participants externalize the dispute, following suggestions from Winslade and Monk (2000). I conducted the interviews with conversational metaphor in mind. This produced eight encounters that varied in metaphor, thematic emphasis and duration (16 to 150 minutes).

#### **4.6 Recording and Transcribing**

The recording of the conversations was done on a computer with an internal microphone and a program called Audacity<sup>25</sup>. I listened to the recorded interviews, transcribed them, and then carefully reviewed the transcriptions while listening to the recordings for error-checking. At certain points, I could not overcome the sound quality issues, and made notations in the transcriptions accordingly. I started to transcribe verbatim, but soon realized that pauses, false starts and word repetition did not affect my analysis, so I began to omit remarks that clearly would not enter into my analysis (e.g. a-a-a or uhmm...mm). As well, the initial transcripts had minimal punctuation because I was uncomfortable assuming often implicit theories of language or speech (Sandelowski, 1991).

##### **4.6.1 First Analysis**

The method of analysis, much like the research design, was emergent. The transcription of the recorded interviews initiated my analysis. I recorded metaphors or data that re-presented the sometimes hidden nature of the dispute. I continued to reread the transcripts. I made notations

<sup>25</sup> see <http://audacity.sourceforge.net/>

of metaphors that emerged from each interview. I then compiled the metaphor data from each transcript.

#### **4.6.2 Mind-Mapping**

The initial phase of transcription and analysis was overwhelming. To break the logjam, I turned to mind-mapping as a method of organizing and reorganizing the data. The observations I recorded and the narratives interviews wove many layers of context and relationships into a complex web. The stories that resulted from the interviews were not linear. In fact, they were disjointed. I found the linear presentation of data in the transcripts unhelpful in my efforts to piece the stories together. Mind-mapping helped me to embrace the lack of order, arranging the data visually and allowing me to examine the whole as well as the parts. I began to see patterns, relationships and themes. I constructed the maps with a free, open-source computer program called XMind<sup>26</sup>

#### **4.6.3 Re-transcription and Further Data Construction**

To satisfy this frustration, I turned again to the methodological literature and decided to present that data as distilled narratives, each consisting of approximately 25 percent of the original transcribed text, after the sociolinguist Labov (1982). The process of condensing each narrative is like:

<sup>26</sup> see <http://www.xmind.net/>

...offering someone a drink of water and the only vessel you have is one you make by cupping your hands together. You cup your hands carefully, forcing your fingers tight together, but nonetheless too much of the water seeps in between the fingers. The seal is never good enough. A certain amount will spill from the source to the mouth. The thirst will never be satisfied. Or will it? Is what makes it into the cupped hand enough? (Zepeda, 2009, p. 31)

Labov's (1982) paradigmatic method (Mishler, 1986; Riessman, 1987, 1993)) for textual analysis follows six structural categories:

An abstract (summary of the substance of the narrative), orientation (time, place, situation, participants), complicating action (sequence of events), evaluation (significance and meaning of the action, attitude of the narrator), resolution (what finally happened) and coda (returns the perspective to the present). With these structures a teller constructs a story from a primary experience and interprets the significance of events in clauses and embedded evaluation (Riessman, 1987, p. 19).

These categories help researchers to locate in transcripts the discrete stories presented in response to specific interview questions (Riessman, 2000). Each category and its representative clauses serve to inform the reader. I constructed seven narratives first by following and then modifying Labov's (1982) structure. The modified structure presented here aligns with my interview protocol (Section 4.5) and resonates with the reviewed narrative conflict resolution literature.

The purpose of this modified structure is to clearly negotiate the co-constructed context of each interview. In my structure truth represents personal reality in relation to the overall purpose of the story. Perception familiarizes the reader to the specific situation (time, place, situation and participants). Meaning explores the significance of the storied events. Perspective presents a reoriented point of view, relative to truth, perception and meaning, implying a distance from events narrated. The coda adds assorted final thoughts that carry to the future.

#### **4.7 Discourse Analysis**

I then realized that further reduction of the data was necessary to accomplish a focused analysis. In consultation with my supervisor, I chose three narratives (Appendix H) that represented the pervasive discourses of law, politics and facilitation. It was apparent that patterns in the data reflected recurrent representations of these discourses. These patterns were the key to my analysis, providing insight into discursive tensions during the facilitated interventions. I then undertook a discursive analysis of the texts informed by a Foucauldian theoretical framework (Section 3.4). By grounding the data in this theory (Taylor, 2001b), my analysis began to distinguish itself from other analytical techniques. As a methodology, discourse analysis searches for patterns in language that display recurrent features of discourse (Ney, et al., 2007). My analysis became a practical application of these principles.

To assess and delineate the effects the discourses had on the dispute, I again consulted the literature. This time I concentrated on a broad reading of discourse theory (Bacchi, 2000; Fairclough, 2003; Fischer, 2003; Rigney, 2001; Wetherell, et al., 2001; Yates, Taylor, & Wetherell, 2001). I then undertook a more focused reading of the intersection of discourse

theory and analysis with conflict studies (Bagshaw, 2001; Blank & Ney, 2006; Brigg, 2003, 2007; Cobb & Rifkin, 1991; Mayer, 2009; Ney, et al., 2007; Pavlich, 1996; Van Krieken, 2001). Learning from these theorists I was able to deconstruct each narrative, focusing on representation of Foucauldian notions of power/knowledge and agency (3.4). This deconstructive analysis (Blank & Ney, 2006; Mayer, 2009) allowed for the exploration of the language and symbols that shaped participants experience.

During analysis, I was most interested in metaphoric features of talk. The examination of metaphors is clearly important; however, people often use them with such familiarity that they are unquestioned, unnoticed or unremarked (LeBaron, 2003), leaving the embedded assumption unexamined. Participants use of metaphors made apparent the discourses working within, as metaphors give our world order and structure (Cloe & Goldsmith, 2000). Interestingly, Mr. Sloan also noticed that metaphors were significant in this dispute “people in this instance and every instance live in their metaphors... you get a really good take from those metaphors about how they see their worlds. It just has to be interpreted” (G. Sloan, personal communication, January 17, 2009). This examination reveals participants’ perceptions differed about the latent conflict, manifestation, preferred outcome and actual resolution of the dispute. The data suggests that participants’ dispute experiences were constructions dominated by different discourses.

#### **4.8 Discourses Found in the Data**

By identifying notions of discourse (3.4.4) in the bylaw dispute, we are able to recognize a multitude of discourses with non-trivial roles. Discourses are distinguishable from one

another by projected values and characteristics. Text and talk about social events provides information about how different discourses structure worldviews (Fairclough, 2003). A summary Table 4.1 has been placed at the end of this section for easy reference.

#### **4.8.1 Law**

Legal order is both a pervasive metaphor to describe society (Rigney, 2001) and a privileged discourse (Blank & Ney, 2006). For those who embrace this metaphor, rules and laws constitute human society (Rigney, 2001). Law, as an institution and a professional discipline, establishes societal norms, restores and orders society and presides over truth (Bagshaw, 2001). Law uses the language of rights to legislate meanings and practices that constitute societal conventions (Blank & Ney, 2006). The implementation of rights through adjudication creates a normative pattern that positions law as an authority that manages disputes in a rational, reasoned, efficient and consistent manner (Macfarlane, 1999).

The language practice of law resembles an argument, and “communication is structured by attack- blame- defend” (Ney, et al., 2007, p. 322). It is binary; it determines winners and losers, right from wrong, and good from bad (Macfarlane, 1999). The consequence of legal discourse in producing an outcome (i.e. ruling) is that the loser is rejected, their story is discredited, marginalized and worse, determined false, while the winning narrative becomes accepted, respected and fact (Ney, et al., 2007).

### **4.8.2 Politics**

The creation of shared meaning is a critical dimension of politics (Fischer, 2003, p. 55). Meaning-making is the result of social interaction, which is in turn shaped by the dominant and normalizing discourses (Bagshaw, 2001). So, political discourse can be described as a contest over narrative, “grounded in the dispute about the good life, and the means to realize it” (Fischer, 2003, p. 26). Competing moral or ideological positions establish notions of the good society, drive social meaning and negotiate political discourse.

Thus politics, in an effort to shape meaning-making, communicates through metaphors and analogies (Lakoff, 2008). Political discourse is often metaphorically described, for example, in terms of an athletic competition or warfare (Rigney, 2001). By exploring these two metaphors some underlying characteristics of political discourse become plain. For example, metaphors about an athletic competition connect to an idea that politics is about gamesmanship, where one faces an adversary as an opposition. The warfare metaphor connects more closely to the moral and ideological positioning that occurs in politics – warfare like sport speaks about victory, but also implies a more serious jockeying for ideological or moral superiority.

### **4.8.3 Facilitation**

Facilitation is part of a larger continuum of processes known as alternative dispute resolution (Emond, 1999). These processes have been developed outside adjudication with the intent of delivering dispute resolution services that acknowledge the variety and complexity of

conflict, recognizing conflict as an opportunity for empowerment and personal transformation (Brigg, 2003; Macfarlane, 1999; Van Krieken, 2001). The implicit goal of facilitation is to encourage consent within the process and to reach consensus among disputants (Brigg, 2003; Van Krieken, 2001). The role of a third party is to provide impartial support, to guide not direct the process, with no authority to impose an outcome on participants (Macfarlane, 1999).

Foucault's critique of governmentality is also useful here to explore facilitation as discourse. Facilitation can be understood as an act of governance, producing preferred forms of behavior in a population by exercising power in the lives of disputants (Brigg, 2003, 2007; Mayer, 2009; Pavlich, 1996; Van Krieken, 2001). From this critique the facilitator exercises power, by asking questions, directing the process path and even shaping disputants communication (Mayer, 2009). The facilitator is also adrift in the sea of Bagshaw (2001) and Brigg (2003) (3.2) – every utterance is positional, based on a set of assumptions, and therefore cannot be neutral.

The power of a facilitator is not necessarily negative; their professional knowledge assists disputants to approach resolution with a flexible curiosity, a collaborative willingness and with a relational outlook (Brigg, 2007; Mayer, 2009). From this perspective, facilitation as a discourse assists individuals to act. It expands the agency of participants to exercise power in a process that encourages their active participation. Through the act of dialogue, shared knowledge increases, creating the opportunity for an improved relationship, perhaps even freeing participants from the institutionalized order (Bush & Folger, 1994; Pavlich, 1996).

#### 4.9 Summary and Limitations

This chapter introduced and explored the methodology and methods employed in this research. The process embodied the concept of reflexivity (Taylor, 2001a), and I sought to explain (here) how my presence, choices and actions influenced the research situation. By describing exactly what was done I hope to enable the reader to assess the coherence and validity of the preceding methodology (Kvale, 1996; Mishler, 1990; Riessman, 1993; Taylor, 2001a). The research produced here, like all socially-constructed research, is relative and partial (Taylor, 2001b). This research is further limited because I did not contact or collect data from all relevant stakeholders<sup>27</sup> and furthermore could not meaningfully include and analyze all of the compiled data. Also, the institutional turbulence in the Dispute Resolution community at the University of Victoria had an adverse effect on the consistency of opportunities for engagement with peers during stages of the inquiry-guided approach, resulting in a strong dependence at times on literature more often theoretical than practical.

The following chapter marks a shift in this thesis. Going forward you will read about the data collected (Chapter 5), its analysis, a discussion, and final conclusions and recommendations (Chapter 6)

<sup>27</sup> Stakeholders that could have provided additional data are; Minister Blair Lekstrom, provincial bureaucrat's, Glen Sigurdson, the major land owners and the Bear Mountain developers.



## Chapter Five: Narrative Data

Storytelling, to put the argument simply, is what we do with research and clinical materials, and what informants do with us. The story metaphor emphasizes that we create order, construct texts in particular contexts (Riessman, 2000, p. 3).

This chapter presents summaries of three accounts of the Bylaw 3443 dispute experience. The accounts reflect most prominently the participants' roles – as CRD Board Member and Mayor (N1, N2) or municipal Councillor (N3) – in the dispute, expressed through layers of self-interpretation and external (my) reinterpretation that characterize and persistently contextualize each individual's dispute experience. To read the complete narratives summarized in this chapter see Appendix H.

The purpose of this chapter is to provide tangible evidence that each narrative represents inherent values of a specific discourse. N2 is primarily constituted by legal discourse, N1 is reflective of political discourse, and N3 is best characterized by facilitative discourse. Table 5.1. establishes the links between a specific discourse and its representative narrative.

### 5.1 Summary of Discursive Characteristics Found in the Narratives

The characteristics presented in Table 5.1 are simplified terms that emerge from Table 4.1 and reflect the discussion of legal, political and facilitative discourses found in Section 4.8. Within Table 5.1 each dot (●) represents an appearance of corresponding value or characteristic in the narratives (N1, N2, N3). The appearance of an asterisk and a letter (\*A) represents a value or characteristic that is accompanied by an example provided in the narrative summaries.

Table 5.1 Summary of Discursive Characteristics Found in Narratives

Characteristics of Discourse				Appears in Narratives			
				N1	N2	N3	
Legal	Intent	Purpose / Objective	Ordering of Human in codified Rights		●		
			Restoration of social order	●			
			Resolving conflicts		●	●	
	Social Actors	Actors	Adjudicators		●		
			Prosecutors				
			Defendants				
			The public		●		
			Impersonal		●		
			Self-referential		●		
			Time / Space	Prescribed		●	
		Oriented past events		●			
		Language activities	Arguments		●*A		
			Blame	●	●*A		
			Accuse	●	●*A		
			Defend	●	●*A	●	
			Win	●	●		
			Attack		●		
			Interaction	Indirect		●	
		Codified by Rights			●*B		
		Statements			●		
		Rhetoric		●	●		
		Persuasive		●	●		
		Oppositional		●	●		
		Binary language		●	●		
	Process and means	Approach	Adversarial	●	●		
			Institutionalized		●		
			Top-down		●	●	
			Tradition and ritual				
			Fair	●	●	●	
			Fact-based	●	●		
			Outcome focused	●	●*B		
		Negotiation	Usually behind closed doors	●	●		
			Often outcome is public		●		
Outcome		Precedence		●	●		
		Binding ruling	●	●*B	●		
		Alienation		●	●		
		Disrupted relationships	●	●	●		
		Sometimes institution		●			
		Win-lose	●	●			
		Zero-sum		●			
Political		Intent	Purpose / Objective	Governance	●	●	●
				Re-election	●*E	●	
				Populist decision-making	●*C		
	Greater good			●*C			

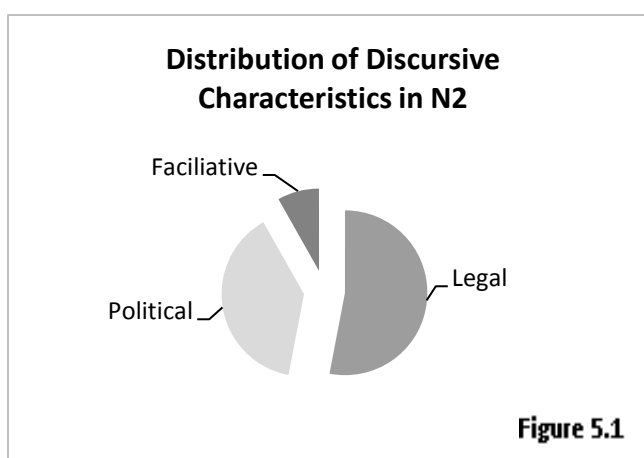
Characteristics of Discourse			Appears in Narratives			
			N1	N2	N3	
Social Actors	Actors	Compromise	● *E	●	●	
		Constituents	●			
		The people	●			
		The other	● *D	●	●	
	Time / Space	Election cycles	● *E	●	●	
		Gamesmanship	●	●		
	Language activities	Debate				
		Position	● *C,D	●		
		Face-saving		●		
		Statements		●		
	Interaction	Rhetoric	● *C	●		
		Oppositional	●	●		
		Coalition			●	
		Binary language	●	●		
	Process and means	Approach	Adversarial	●	●	
Persuasive			● *C	●		
Motions and voting			●	●	●	
Legislated			●	● *B	●	
Top-down			●	●	●	
Negotiation		Out of sight	●			
		Secrets	●			
		bargaining	●			
Outcome		Win – lose	●	●		
		Outcome focused	●	●		
		Zero-sum		●		
		Plural			●	
	Implementation			●		
Facilitative	Intent	Purpose / Objective	Consensus		● *F	
			Collective interest	●	● *G	
			Information sharing		●	
	Social Actors	Actors	Participants as decision makers		● *F	
		Time / Space	Participant driven		● *F	
		Language activities	Dialogue		●	
			Conversation		●	
			Reframing		●	
		Interactions	Direct		●	● *F
			Agency	●	●	●
	Emotional				● *G	
	Relational				● *G	
	Process and Means	Approach	Interest-based		● *G	
			Flexible		●	
			No fixed design		●	
			Bottom-up		●	
		Negotiation	Transparent			●
			Explicit			●
Outcome		Win-win		●	●	
		Improved relationships			●	
		Resolution	●	●	●	

### 5.3 Narrative Summaries

#### 5.3.1 Characteristics of Legal Discourse Found in N2

The text of N2 is primarily constituted in legal discourse<sup>28</sup>. Legal discourse<sup>29</sup> orders human relations using institutionalized rights. These rights are codified by statutes, acts and legislation and are often expressed through text and talk in the form of a persuasive argument.

N2's narrative<sup>30</sup> references legislation to justify choices made during the escalation and resolution of this dispute. The interviewee accomplishes this by using arguments that feature blaming, or by attacking the actions made by others



while defending his actions and the actions (\*A) of The Highlands. For example, he defensively states that moving the RUCSPA would improve Highlands' finances. "We're doing our part and more... we don't have a commercial core or an industrial core, we're not asking for the region to let us pave paradise; we're just asking to have a little piece of what everyone else has – financial sustainability." According to N2 the dispute could have been avoided. "There should never have been a conflict. The CRD dropped the ball two years ago. We're missing the RGS

<sup>28</sup>Figure 5.1 "Distribution of Discursive Characteristics in N2" is a pie chart that visually represents the relative amounts of talk attributed to three discourses of interest. The slices were determined by averaging the results of Table 5.1.

<sup>29</sup>See "Characteristics of Discourse" Table 4.1 for a detailed summary of the characteristics of legal discourse.

<sup>30</sup> See Appendix H for the full text of N2 Narrative distilled from interview transcripts.

Master Implementation Agreement (MIA). We should have had that tool but, unfortunately the CRD Board burned making a decision”. He refers to the MIA a *tool* that would have specified the procedure for amendments to the RGS without the requirement of 100-percent agreement by the CRD Board. In the preceding quotation N2 also accuses the CRD Board of purposely depriving Highlands of a legislative tool.

A second example of legal discourse in N2 is his talk of a preference for arbitration over facilitation (\*B). “When I read Sloan’s report that the status quo was not acceptable and neither was the full-blown boundary extension. If we went to arbitration I never doubted that we would get something. Sure, we were taking a gamble. [But] I [knew] what the legislation said.” Based on the potential resolutions contained in the Sloan report, N2 was willing to gamble that the outcome of arbitration would satisfy the Highlands interests. Arbitration is clearly outlined in legislation that includes efficient timelines and results in a binding outcome. In these arguments he is outcome-focused, uses adversarial language and makes repeated references to rights contained in Provincial legislation.

### **5.3.2 Characteristics of Political Discourse Found in N1**

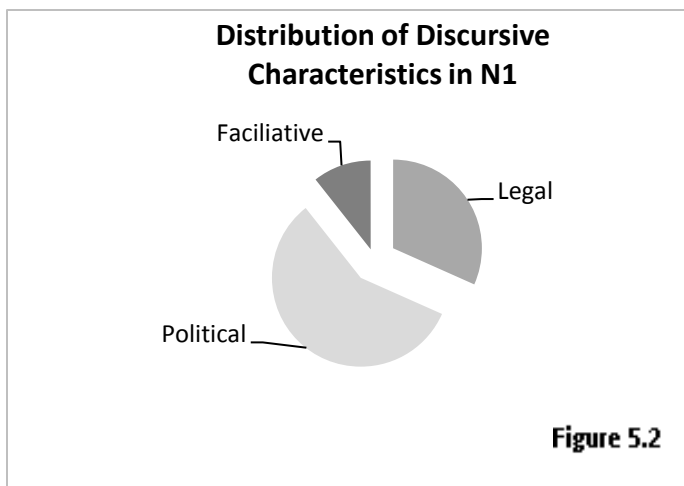
N1’s talk is predominately constituted in the dominate political discourse of the CRD<sup>31</sup>. Political discourse<sup>32</sup> is characterized generally by decision-making that represents the majority or populist opinion, as that is most likely to get the individual elected and re-elected. This

31 Figure 5.2 “Distribution of Discursive Characteristics in N1 ” is a pie chart that represents the relative amount of talk attributed to three discourses of interest. The slices were determined by averaging the results of Table 5.1.

32 See “Characteristics of Discourse” Table 4.1 for a detailed summary of the characteristics of political discourse.

discourse is about winning and gamesmanship, which utilizes oppositional positioning and often binary language.

N1's narrative<sup>33</sup> centres largely around political positions. These positions are clear examples of the values and characteristics described in Table 5.1. For example (\*C), regional land-use planning needs to serve the *greater good*. Mitigating sprawl within



the CRD serves the greatest good and can be accomplished by honouring the Regional Growth Strategy, focusing development in the core municipalities and within the RUCSPA. “[Changing the boundary is] not what I call ‘for the greater good’. If you ask anyone ‘do you want sprawl?’ Ninety-nine percent would say no. But does Bear Mountain want to develop? Absolutely yes”. The end of the following quotation follows nicely into another example of the N1 eliciting political discourse in is his talk regarding the dispute cause (\*D). His talk suggests the dispute was driven externally, by *Bear Mountain* and *outsiders from Vancouver*. “One of the issues here [is] the elephant in the room, a bear. When a guy from Vancouver comes over and wants to invest in forty-two stories at the top of Bear Mountain, you should say, ‘wow – the world is coming apart’ ”. The final example (\*E) in this section of the constitutive effect political discourse on N1 talk surrounds the importance of elections. “Well, you better show you can

<sup>33</sup> See Appendix H for the full text of N1 Narrative distilled from interview transcripts.

compromise if you want to get re-elected. A unanimous decision ten days before the elections tells me that elections focus minds. [That] is why they didn't need the arbitrator." Elections ultimately determine decision-making, as evidenced by a Highlands' consensus ten days before the vote. Elections have the ability to resolve disputes.

Of course political discourse is not the only discourse with constitutive impact on this narrative, see Table 5.1 for a breakdown. There are clearly statements that relate legal, facilitative and cultural subtexts; thus, this text demonstrates the interdiscursive nature of conflict. Notice the colluding effect politics and law have on this narrative. For example, both N1 and N2 were unconvinced that facilitation could resolve the dispute, and therefore neither embraced the process wholeheartedly. These discourses will be shown to contrastingly represent the core of the dispute and where each suggests resolution will come from.

### **5.3.3 Characteristics of Facilitative Discourse Found in N3**

N3's narrative is significantly constructed in facilitative discourse<sup>34</sup> and explores the possibility of resolution by building consensus through open, transparent dialogue with interested community members<sup>35</sup>. Facilitation as a discourse<sup>36</sup> assists stakeholders with communication. Interaction between stakeholders within the facilitations is direct, intended to be relational and encourages participants to collaborate in the process to create a shared outcome.

<sup>34</sup> Figure 5.3 "Distribution of Discursive Characteristics in N3" is a pie chart represents the relative amount of talk attributed to three discourses of interest; see Table 5.1 "Characteristics of Discourse".

<sup>35</sup> See Appendix H for the full text of N3 Narrative distilled from interview transcripts.

<sup>36</sup> In Table 4.1 is a detailed summary of the characteristics of facilitative discourse.

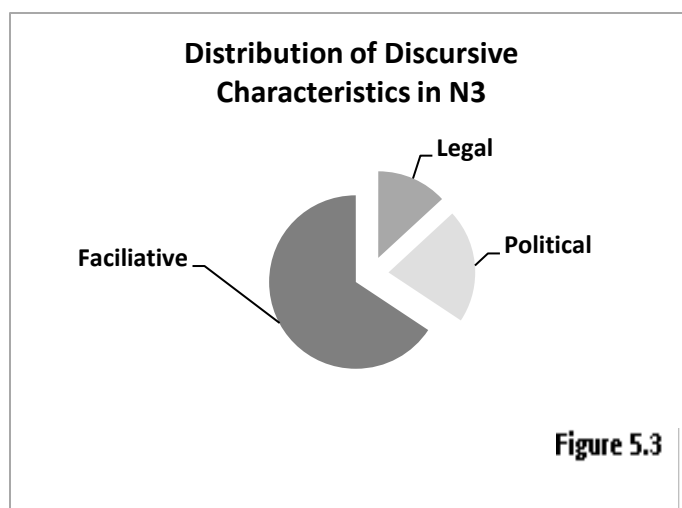
In this first example(\*F), N3's talk values the intervention of Gord Sloan as a third party, face-to face interaction and decision-making by consensus. "He got [us] to a point where [we were able] to articulate possible solutions [and] the map in Gord's report represented the consensus

of the region. I think a bit more facilitation would have been good or a step that said 'it's back in your court Highlands'."

In the next example (\*G) N3's talk represents an approach to this dispute and its ADR process that is characteristics of facilitative discourse. "The underlying conflict comes from different views of how [the] Highlands' future should progress. It's not that the [other council members] didn't want [the Bear Mountain Comprehensive Development], it was about the way to achieve it. And [it] led to different levels of sympathy or empathy around how much land was needed." N3's talk is inclusive and connects to a common goal, but acknowledges the multitude of possible ways to reach their goal. His talk also connects these interests to emotions, perhaps because this municipality is a small community with a strong connection to place.

#### 5.4 Summary

Each narrative is constituted by varying discourses; as such, the events of the dispute are represented differently. For example, the legally constituted narrative N2 blames the CRD



Board for the legislative failure, and this failure represents the manifestation of the dispute. N1's narrative is politically constructed and uses *the other* to manifest the dispute. The final narrative, N3, is primarily associated with facilitative discourse and describes the lack of dialogue around a shared goal as the manifest dispute. These different portrayals of the dispute led each narrative to different conclusions about how the dispute should resolve.

## **Chapter Six: Discourse Analysis and Implications**

### **6.1. Introduction**

The theoretical premise of this thesis is that people's conflict behaviours are shaped by discourse (Ney, et al., 2007). The narratives previewed in Chapter Five show how discourses constitute actions. These texts make visible the discursive interplay of power/knowledge and agency between actors in the dispute. Legal, political and facilitative discourses have been shown to have non-trivial roles. The analysis provides three discursively unique conflict profiles and these profiles give structure to the analysis so that in the end I may address the research question. The conflict profile is chronological in that it begins with participant's impressions of the latent conflict and the manifest dispute. Analysis then shifts to presents variant preferred outcome and actual resolution of the dispute according to participants. The discursive notions of power/ knowledge, agency are used here to probe narrative descriptions and interpretation of events in the ADR process.

This discussion connects the different discursive constructions to their capacity to shape participants' dispute experiences. I suggest that disputants were unable or unwilling to shed

their discursive roles and expectations throughout the ADR process. The majority of participants did not embrace the facilitation process as a means to an end. Even though the eventual outcome was provided for by the facilitation process, arbitration proved to be the legal, apolitical eventuality.

The interactions between discourses, seen through the discursive lens of power/knowledge and agency, led to a prolonged resolution process. Given the political climate, in which the discourse privileges autonomy, municipalities chose not to unnecessarily involve themselves in the business of other municipalities. Participants see the dispute having a regional nature but maintain that the onus of resolution is on the Highlands' rather than the CRD Board. Even if this dissonance did not solely undermine the perceived legitimacy of facilitation, the facilitative discourse is effectively overpowered by the legislative requirement of the ADR process. Further, the politicians are preoccupied with re-elections and so such a dissonance is doubly damning.

## **6.2 The Latent Conflict**

This section brings forward what is at the heart of this dispute. Participant talk about the latent conflict reveals their connection to a specific discursive lens: legal, political or facilitative.

N2's narrative uses the projected knowledge and language of legal discourse to recast the dispute as a persuasive argument: *there are flaws in the growth strategy*.

this is the first test of the waters/ it's obvious from my perspective and from a number of other municipalities that there are flaws in the growth strategy [legislation]

The narrative accesses the legal notion of a *test*. A legal test represents language that implies a rational, truth-based evaluation. By applying a specific legal *test*, he relays factual information about the dispute. What he believes to be a fact is attributable to the outcome of the test – the RGS failed to resolve disputes and is therefore flawed. This truth claim is made stronger by his assertion that other municipalities share his opinion that *the growth strategy is flawed*. Thus, this knowledge becomes normalized.

N1 understands the dispute to be about enforcing the RGS which he equates to the regional consensus *greater good*.

My stand is principled / it's that this was an agreement / and why shouldn't this still stand / I actually don't agree that you change it ever / I wouldn't change it / it's part of the old deal

This quotation is characteristic of political discourse – a reliance of principled agreements; it represents a normalized pattern of speech and vocabulary that relays truths constructed by politics. See Table 4.1 for further examples and particular phrases.

He answers a question with a question, *why shouldn't this still stand?*, and without an answer. His story questions the proposed deviation from the specific course outlined in the Regional Growth Strategy RUCSPA (see Appendix B for map of original RUCSPA). By making

reference to *the old deal* he accesses a pattern of negotiation that is political, and implies that a previous bargain should be upheld. His *principled stand* asserts a subjective position. This is a political position projected through virtuous rhetoric. “Politics is grounded in disputes about the good life, and the means to realizing it” (Fischer, 2003, p. 26)

[Changing the boundary is] not what I call ‘for the greater good’ / I don’t believe in policy that only affects select individuals or companies / that is not what I call ‘the greater good’ /

Here, his political rhetoric is made more powerful by appealing to fundamental governmental discourse (Pavlich, 1996).

N3 first uses language characteristic of interest-based negotiation to speak about the dispute and assesses that meeting the changing needs of the Highlands community is at the heart of the dispute.

the underlying conflict comes from different views of how [the] Highlands’ future should progress / it was about the way to achieve it / and then that led to different levels of sympathy or empathy around how much land was needed

When introducing these divergent views he uses non-judgmental phrasing. Although he had been a member of the Highlands Council during the dispute, his position was undetectable in this passage. Instead, he chose to speak about emotions — *sympathy* and *empathy* — to connect with the meaning his community associated with this dispute.

### 6.3 The Manifest Dispute

N2 presents the cause of the dispute in the form of an argument that involves blame and accusations.

There should never have been a conflict / [the] CRD dropped the ball two years ago / we're missing the RGS implementation agreement / we should have had that tool / and unfortunately [the] CRD Board burned making a decision on that / and I believe that was done purposely so that we didn't have that tool in place

The dispute is blamed on the CRD. He introduces the *dropped ball* metaphor to produce a distinct representation of who is to blame, which highlights a missed opportunity by a political body that failed to deliver on the legal requirements of the RGS. His argument continues with an accusation: this was *done purposely*, implying that politicians are manipulating the law. He values legal agreements but recognizes the powerful agency politics has to make and enforce agreements.

His use of the word *tool* is a unique intersection between knowledge, power and agency. Tools are aids in accomplishing human actions. Here the *tool* is the Master Implementation agreement (MIA); as a legal *tool* it would have helped municipalities act by creating a process for minor amendments<sup>37</sup>.

<sup>37</sup> As of 2009, there is now a subsection of the *Local Government Act*, Part 25 Regional Growth Strategies (s. 857.1) that outlines how minor amendments can be made to the RGS.

N1's narrative fragments emerge from political discourse and construct a power-laden *other*, an unaddressed influence. "An 'other' is identified within one's social world as the putative cause of 'the trouble' " (Clark, 2002, p. 273).

I think one of the issues here [is] the elephant in the room / a bear /

The *truth* about what caused this dispute is revealed in his modification of a common English idiom. This idiom describes the instigator as known but unacknowledged, ignored whether out of embarrassment or taboo. The elephant in this dispute represents the Bear Mountain Resort and Golf Course developers, who were not a part of the ADR process, which makes this an apt idiom.

He continues to externalize the dispute in a binary manner that reflects his discourse. The problem is the other – just because it is another. The metaphors position the *external bear* with the power to *drive* the dispute as well as to divide the Highlands' community.

It looks like it is being driven by a few select developers/ I don't think the conflict was internally driven / I think it was externally driven / I think you've got this spill over from Bear Mountain that has created this friction in a community /if you ask anyone / do you want sprawl? Ninety-nine percent would say no / but / does Bear Mountain want to develop? Absolutely yes/ I don't think they will add to the Highlands community / what they've done is divide a community /

The construction of the other is an on-going process that also establishes perceptions of the self. Interaction and discourse are influenced by the active creation of categorizations and

judgment by participants about participants (Dijk, 2009a, p. 71). This quotation is consistent with the rhetoric introduced in the previous section to position himself within the dispute, as a politician he utilizes his knowledge about looking out for the greater good. This quotation asserts the *select few developers* are not developing land in the Highlands for the greater good, or even with the best interest of Highlands' community in mind, and clearly assigns blame.

Emotions are an essential part of being human and are critical to meaning-making (Edwards, 2001). N3 as narrator uses emotions to relate and make sense of the events of the dispute. He ascribes emotions to the Highlands community, specifically fear. This emotion helps to account for the disputes path and provides evidence about what kind of events occurred (Edwards, 2001). From a facilitative discourse, awareness of emotions is valued; it can help make interconnection between disputants and their non-material interests. In particular, it can make overt the interconnections between knowledge, power and agency that define discursive interaction between parties.

It was something we were unable to talk about let alone resolve after three years/ when you don't have [a] discussion like we eventually did / you don't know what someone else is thinking / Fear causes people not to see any solutions /

The dispute from this perspective was caused by uncertainty which manifested in fears about Highlands' future. The fears of Highlands' community were intensified as the dispute persisted and community dialogue diminished. In this dispute, as well as, in this narrative emotions are powerful, escalating the dispute both locally and regionally.

I think the conflict works on many levels of fear people who are open to the development / fear / that the community is stopping the community from being viable/ fear / that they don't understand the potential for financial revenue

Fear / what we have is getting diminished / in a way that is irreversible / like the night sky / during the election I knocked on probably two-thirds of the houses / there's this very sweet women / up a hill / widowed / lives in this house / and she, watched the whole thing happen / it just devastated her / before / she used to look at the mountain skirt /she didn't own the land but nonetheless she had to watch it all come down / big piles / piled up / burning debris / then came the crane / and the hotel / she used to look out upon Mount Finlayson / now she sees Bear Mountain

these people had their house there / they had all this forest / now it's about a fifty to one hundred meter buffer / they hear all this noise / some guy on the ninth hole drinking this beer / whatever / the blasting / those are direct impacts / they see the visuals / the loss of the night sky

This passage is relational, full of metaphors that connect with feelings. Emotionality is valued in facilitative discourse. These metaphors are a conceptual resource, the literal images that structure human thought process (Lakoff & Johnson, 1980, 1999; LeBaron, 2003) and are deployed discursively to increase the potential for shared meaning and common context. His evocation of fear and uncertainty conveys a lack of agency on the part of Highlands' municipal council and community. This feeling can be unpacked discursively.

The Bylaw 3443 amendment dispute, primarily a concern of the district of Highlands, was being resolved outside of their community – first regionally in CRD and then by the Province. This reduced Highlands' capacity to intervene or participate in the decision-making process. Further, the knowledge necessary to follow the intervention or participate in the ADR process is detailed in Provincial legislation, a technology of legal discourse that is inaccessible to the populace<sup>38</sup>. Thus, within the Highlands' community feeling of agency continued to diminish, and fear abounded. The feeling of agency continued to deteriorate as community and council dialogue dwindled after facilitation. There was a gap in knowledge about, for example, what *someone else thinks* are the potential solutions available. These factors made the resolution process less accessible and fettered Highlands' action.

There is one last narrative fragment that provides further evidence of Highlands' deteriorating agency at the hand of political and legal discourses.

it's unusual / a land owner / financially a magnitude bigger than the municipality  
 / It sets up a dynamic which is difficult to deal with / because we don't have the  
 power / there is power in politics / in this case the developer has more power to  
 lobby / more power to pay for lawyers / more power to spend money / making  
 sure the wording is in favour of the developer / compared to Highlands small  
 budget / a part-time staff

<sup>38</sup> A participant early on in the facilitation process described her efforts at understanding this piece of legislation as trying to punch at clouds.

This quotation creates the image of an agentic developer who is financially, politically and legally stronger than his small rural municipality. By acknowledging by both the power of politics and law he positions himself and his community as a victim.

#### 6.4 Preferred Outcome and Actual Resolution

Each participant through the course of their narratives was able to explain both their preferred resolution process as well as their perspective about how resolution was actually reached. In examination of their accounts of both the preferred and actual resolution process, the constitutive and constructive effects of various discourses are apparent.

N2 preferred process is mixed in with his evaluation of resolution process. His talk emphasizes values constructed by legal discourse.

When I read Sloan's report and his comment that the status quo was not acceptable / and as far as the region was concerned neither was the full-blown boundary extension / I never doubted that even if we went to arbitration that we wouldn't get something / sure we were taking a gamble / That is why I was more in favour / of an arbitration process / I [knew] what the legislation said

Arbitration is part of the adjudication process, a technology of legal discourse. "Disputants are adversarial" is a fundamental assumption of legal discourse (Riskin, 1999, p. 47). His talk about *taking a gamble* reflects this adversarial assumption and although gambling implies a risk he was assured in his knowledge of the law, that he *would get something*. This assuredness is traceable to an underlying assumption of legal discourse "that dispute may be resolved through

application, by a third party, of some general rules of law” (Riskin, 1999, p. 47). These two assumptions (adversariness of parties and solve-ability of dispute) are visible in the next fragment of his talk.

[Sloan] suggested the / two polarized sides come to a consensus on an acceptable compromise / which we did end up doing / because we had to / we had no choice/ we had to put something forward or our position wasn't going to be represented / the question / whether arbitration produced any result / yes it did / there is going to be an end / and it a gave some timelines / I think even if we had come up with that [a resolution] / the problem with going back to the steps Sloan suggested was timelines / gone through this whole process / to a vote again / had someone say no/ and gone back to final arbitration anyway / we were two years down the road already / it didn't seem fair

The talk above begins with a defence that relies on the assumption that parties to a dispute are adversaries (Riskin, 1999). He continues with a plea to efficiency; arbitration had specific mandated timelines where as *going back to Sloan's steps* implied an open ended process which *didn't seem fair*. His talk implies that the requirements of law compelled him to participate in the arbitration. N2 had *no choice*, the legal discourse had power over his individual actions.

N1 declares a preference to resolve the dispute through the RGS five-year review process. The evidence he provides for this position is that this was a minority position on the CRD Board and now represents the majority position. This statement positions him as both persuasive and legitimate, implying he was able to change the mind of those on the Board.

All along the position I have taken is that this should be taken to the five year review / which used to be the minority position / which then became the majority position of the board /

In reality, however, he was willing to compromise his principles because the municipal election led to a majority decision in Highlands, and, therefore, an acceptable outcome.

the fact of an election is / people say / well you better compromise now / or you better show you can compromise / if you want to get re-elected / which is why I made the point that they didn't need the arbitrator / because the election would focus peoples minds / a unanimous decision ten days before the election tells me that elections focus minds not the mediations

As a construction of political discourse, elections are a discursive practice, a discursive technology. By accessing this practice he relies on this discourse and its values (compromise, majority decisions and re-election) as insight into how to best resolve the dispute. *Elections focus minds* – with this declarative statement he positions himself with the facts, (thereby using talk-power to create knowledge). This statement assumes elections provide agency, truly reflecting citizen's preferences. His talk also clarifies the best way to make decisions is with a vote, dismissing a path to resolution that emerges from a facilitative approach.

And you know Gord Sloan's idea was pretty good you know / I think the mediation gave them some ability to zero in / which I think is good / that's good work to do / [and it resulted in] a reasonable compromise / I've said / that I

would accept a compromise if it was unanimous in the Highlands' / and It's up to the Highlands' to get a unanimous compromise /then I think the [majority of the CRD] board will naturally accept it /

With the above quotation he seems to imply mediation is a mean to an end, not an end in itself. Instead, he places emphasis on a *reasonable compromise* that is *unanimous in the Highlands*. This works from an assumption: if there is a solution that suits the majority, then this solution has the power to direct the outcome of the dispute. Further by placing emphasis on a majority position, and how he *would accept...it if it was unanimous*, he is positioned with agency, as representative of the legitimate majority with the power to act in manner that resolves the dispute.

Intertwined with N3's telling of the final events of the resolution process was talk about his preferred process. His talk juxtaposes the choices made by the Province to resolve the dispute with his preferred option. His ideal process is designed to empower participants.

I think there are other ways to design [a resolution process] to get the same context to happen with it being more of a bottom-up as opposed to it coming from the province / missing was a mediation step / or a step that said it's back in your court Highlands /

The transition from a facilitative process to an adjudication process displeased this participant.

he [Minister Lekstrom] imposed a binding resolution / I didn't agree with him / I think it wasn't the arbitration per se that helped us create a solution / I think in

my mind it would have been for any of the two sides virtual political suicide to come out and say / I think we're better off not submitting [a proposal to the arbitrator] /

The above quotation acknowledges the dominance of both law (*imposed binding resolution*) and politics (*virtual political suicide*) over the process. It explains that Highlands' was *forced* to resolve or face the end of their (Highlands' mayor and council) political careers. Here the compelling effect of legal and political discourse on Highlands' conflict behaviour is apparent.

Throughout his description of the resolution process is expressions of frustration and displeasure. Yet, regardless of the diminished power Highlands had, he believes that the agency afforded to the Highlands during facilitation is the reason this dispute resolved.

Our submission / the one picked in the end was virtually identical to Gord's report / just refined / the eighty-twenty solution / eighty percent of the development on twenty percent of the land/ The map in Gord's report represented the consensus of the region / [or] as close as he could get / in retrospect how could you call it a failure when in fact the option chosen by the arbitrator was almost identical to the one in Gord's report /

## 6.5 Discussion

### 6.5.1 The Role of Discourse

This research strengthens discourse theory by providing evidence of a real connection between discourse, language and action. In the analysis of participants experience of the Bylaw 3443 dispute talk is discursive and effects the way meaning and action is constructed.

This research shows that each identified discourse privileges and accesses discursive notions differently. Legal discourse emphasizes its authority and its capacity to determine truth. It wields power/knowledge to determine right from wrong and in so doing limits the scope of agency. Since the stated purpose of legal discourse is to ensure the collective wellbeing, it is oriented to the collective in a manner often dismissive of an individual's agentic capacity. Thus it minimizes agency to some extent because of its egalitarian foundation. Political discourse, unlike legal discourse, does not emphasize a single truth or knowledge. In this way, it is adaptive and postmodern. The political discourse tends to manipulate power and agency to accomplish its means. In this dispute, N1 is constituted by political discourse. He only exercises agency as suits cause; other times, he is intentionally passive. The facilitative discourse privileges the opportunity to create shared knowledge. In accessing shared knowledge, there is the potential for agency to ignite. Together knowledge and agency work to resist the dominate operations of power, thereby creating a more open space for truth and resolution.

### 6.5.2 The Conflict

Discourses are active in constituting stakeholders talk about the dispute and resolution process (see Table 5.1 for a summary of discursive characteristics). In terms of conflict behaviour, this research provides evidence that people's conflict actions are discursively shaped. Stakeholders, all members of the CRD, all part of the same ADR process, communicated differences in experience and perception of the latent conflict and manifest dispute as well as the preferred outcome and actual resolution. These are summarized in Table 6.1. By deconstructing stakeholder talk it becomes plain that legal, political and facilitative discourses reproduce or contest a particular conflict culture throughout the ADR process. These reproductions and contestations ultimately influenced the resolution of this dispute. Below I will discuss the effects constructed by the preceding annotated excerpts, contesting which conflict culture is accessed to resolve the dispute.

Table 6.1 *Conflict Profiles* provides a summary of the analysis. The table below illustrate how discursive lens attributes meaning and effects ones actions.

Table 6.1 *Conflict Profiles: Constitutive Discourses Shape Disputants Perspectives and Actions*

	<b>N2 (Legal)</b>	<b>N1 (Political)</b>	<b>N3 (Facilitative)</b>
<b>Latent Conflict</b>	The enactment of flawed legislation (RGS) specifically, the requirement of 100 percent approval at CRD Board to amend the RGS without a (MIA)	Enforcing the RGS consensus about the regional <i>greater good</i>	Determining how to best meet the changing needs of Highlands community
<b>Manifest Dispute</b>	CRD did not create a MIA, therefore did not deliver on the legal requirements of the RGS	Greedy outsider (Bear Mountain developers), self interested dividing Highlands' community	Lack of dialogue around what Highlands' could accept, this made the potential implications of the amendment uncertain
<b>Preferred Outcome</b>	An adjudication process (arbitration was a good gamble)	RGS five-year review or the election will sort it out	A bottom up approach, mediations or facilitation
<b>Actual Resolution</b>	Compelled by adjudication process (Final Proposal Arbitration)	Elections are the ultimate decision-makers, as confirmed by a Highlands' compromise ten days before the vote	Compelled by Politics and Law Highlands reached a consensus, the arbitrator chose their submission which mirrored the Sloan's Report

### 6.5.3 Intent Revisited: Why was this Dispute Prolonged?

The legal discourse dominates actions of N2. His narrative suggests political discourse had a significant effect on the resolution path of this dispute. During the initial meeting with Mr. Sloan, he was outwardly hostile and remained a reluctant participant. As a member of the facilitation he presented an argument to support the Bylaw 3443 amendment. His argument blamed and attacked the actions of the CRD Board while defending his actions and those of the Highlands. “We’re not asking for the region to let us pave paradise / we’re just asking to have a little piece of what everyone else has / financial sustainability” (N2). Upon the completion of the facilitation he was publically dismissive to the options presented by the facilitator (“Sloan’s report offers little” (Cleverley, 2008c, p. A.6)).

With facilitation finished, his expressed preferred option, arbitration looked likely. Arbitration awards a binding decision that declares a winner, and follows a formalized process that includes timelines. “I never doubted that even if we went to arbitration that we wouldn’t get something / sure we were taking a gamble / I [knew] what the legislation said”(N2). Sloan’s report gave him further evidence that there would be a boundary extension. Holding out for arbitration was the path of least resistance to victory (for him a RUCSPA extension).

From his perspective, resolution resulting from facilitation was unlikely because the proper legislation was not in place. “We could have [come to resolution without arbitration] with different legislation” (N2). Without a Master Implementation Agreement in place, amendments to the RGS follow the requirements set out in legislations to create an RGS (see Figure 6.2 Flow Chart of RGS Amendment Process). “I wasn’t opposed to an amended position

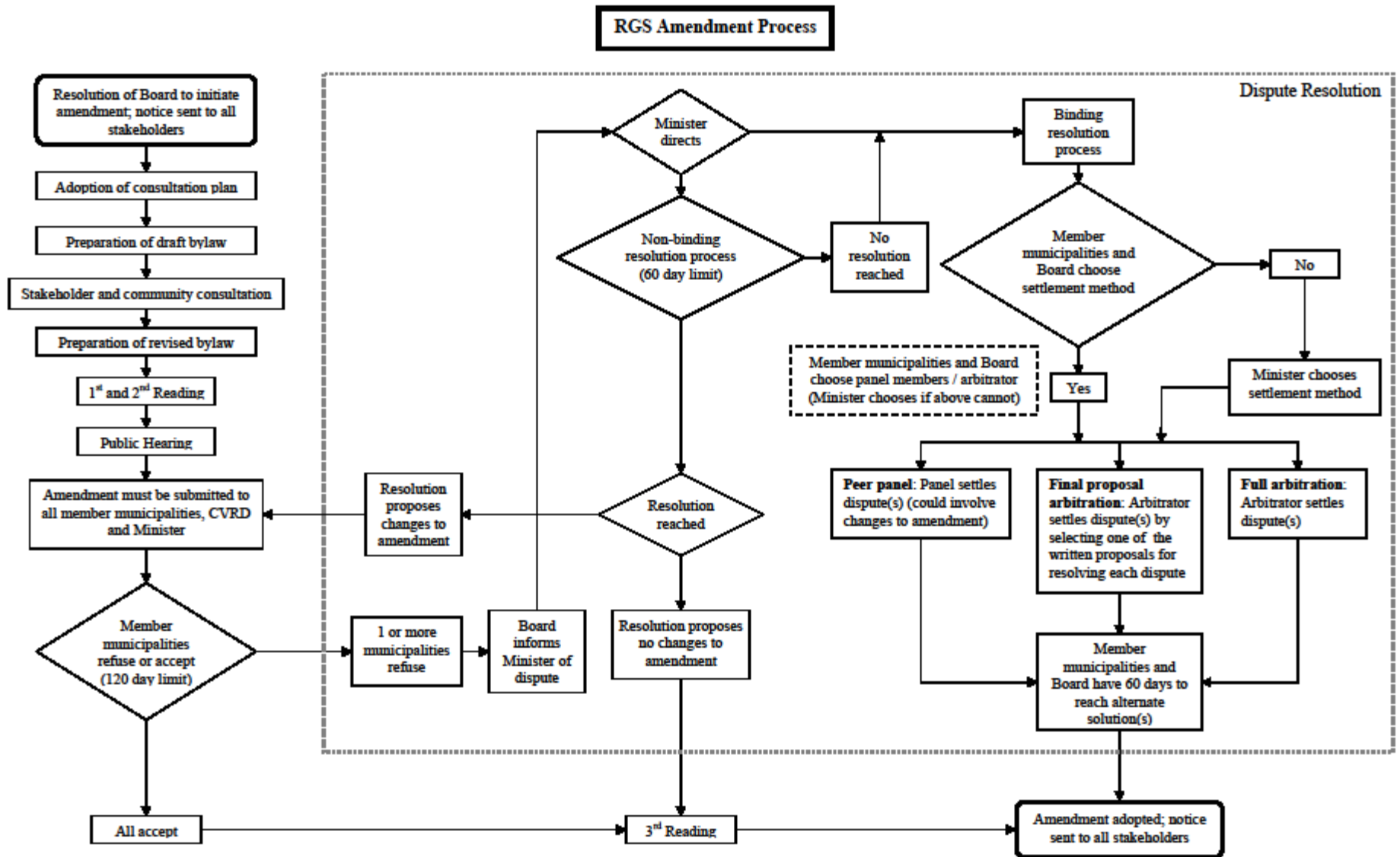
for expansion, I just didn't want to see it kicked back into the facilitation process...referred back... for another 120 days, only to find...one municipality that says 'no' and...right back into the arbitrated process" (Cleverley, 2008d, p. A4). From N2's experience the political discourse dominates the actions of the CRD and within this dispute.

N1's talk privileges and reproduces political discourse as such, acts powerfully. He participated in the facilitation, although N1 would have preferred to resolve the dispute through the RGS five-year review. The CRD Board voted to handle the dispute locally, in the five-year review. The review is a feature of political discourse, a normalized practice, familiar, and known. This preference is further evidence that actions are constituted discursively. "I think it's a far, far better process than having some sort of arbitrator dictate some outcome" said Saanich Director Vic Derman (Cleverley, 2008b). However, this discursive position only begins to explain why the dispute remained unresolved after facilitation.

N1 participated in the facilitation and was able to acknowledge the work done by the facilitator <sup>39</sup> "I think the mediation / [is] good work to do / [and it resulted in] a reasonable compromise" yet, was unwilling to push for a resolution to emerge from facilitation, "because it is up the Highlands' to get a unanimous compromise" (N1). "There was no appetite to go in [after facilitation]" (S1) to push for resolution. This lack of action implicates political discourse in two ways.

<sup>39</sup> although he incorrectly identifies facilitation as mediation

Figure 6.2 RGS Amendment Flow Chart (CRD, 2008)



First, their previous experience with facilitation produced knowledge about the process. “He [previous facilitator] was completely incapable of controlling the meeting / obviously [he] was not equipped to deal with these Type A mayors / Stew Young just drove over him like a truck”(S1). Thus, facilitation was unsuccessful at resolving this dispute. This unsuccessful experience carried forward effecting the perception of Gord Sloan’s ability to resolve this dispute. “His process has been unfairly characterized by the media and by politicians”(N3). Regardless of the work accomplished through Sloan’s process, facilitation according to the dominant discourse does not resolve disputes. “I think I was very difficult to get councilors to the table because they had made up their minds” (M2).

Second, the desire to resolve through the five-year review is an avoidance strategy ( G. Sloan, personal communication, January 17, 2009). Because this dispute connects to a broader fundamental ideological conflict “between those wanting... collaboration and regionalisation on the one hand, and those wanting total autonomy... on the other” ( G. Sloan, personal communication, January 17, 2009). The political discourse in this context has been grappling with this ideological conflict for some time (see 2.2). Privileging municipal autonomy over everything else is a normalized practice. Even during the creations of the RGS, municipal autonomy could not be overcome. “[T]hey didn’t trust each other to do a regional [strategy] / they were not acting in a collective way / it was compromised / that framework [the RGS] is really a collection of local visions of themselves” (S2). By choosing to do nothing after the facilitation, municipalities avoided “interfering with other council decision” (M2). Maintaining municipal autonomy was their priority, and this led to an elongated process.

N3's talk was constructed by facilitative discourse. He embraced the facilitation process and was invested in any opportunity to increase dialogue around this dispute and the path forward. "I was meant to be on council to solve this issue / it was something we were unable to talk about let alone resolve after three years" (N3). His talk also exemplifies the powerful effect legal and political discourses had on the resolution process. His narrative describes how both discourses stifled talk. Those constituted by the legal discourse refused to engage in further dialogue because without it the province was likely to move the process to binding arbitration. "He had resisted talking about the Sloan report all summer / we actually voted on trying to talk / that got crushed until the arbitration process came up / then the mayor... was talking about it" (N3). Political discourse stifled talk to avoid interfering with Highlands autonomy or to avoid addressing the on-going regional conflict. Especially, given the ADR processes' proximity to municipal elections. "The hypocrisy level was astounding/ people who would never have defended the RGS suddenly got religion around this/ others who had always been supportive suddenly got much quieter / if they thought they had been living in a glass house"(S2). The refusal to talk did not make sense to N3 "we were always trying to figure out what was going on / how did this happen?".

N3 disliked the Provincial decision to move the ADR process to final proposal arbitration perhaps because it embodies characteristics of law that are intentionally not part of facilitation (see Table 4.1). However, the arbitration and the municipal elections compelled the Highlands to talk again. "[T]he timing of the election has to have some relevance of the six that were sitting there 3 where running [for re-election] / two of whom were running for mayor / they

couldn't get their on their own for whatever reason the arbitration forced them to compromise" (S3).

In the end, all of the participants I spoke with were pleased with the outcome of the arbitration because it resolved the dispute, regardless of the method used to get there. The facilitation process, although discredited by those constituted by political and legal discourse, succeeded "a hundred percent/ extracted it beautifully / boiled down the issues / represented the consensus of the region" (N3) and was the submission chosen by the arbitrator to resolve this dispute.

## **6.6 Summary**

Through investigation of participant's talk about the Bylaw 3443 ADR process it is evident that participants' speak from within different discourses. Because discourse shapes conflict behaviours, discursive communication shaped the outcome of this dispute. Facilitation in this dispute was the site of communication; it was the conduit for dialogue and therefore resolution. Yet, the dispute persisted beyond facilitation because the powerful discourses of law and politics co-opted and subjugated the collective talk.

This analysis provides two insights. First, legislation got in the way of a facilitated resolution. Without an MIA in place, amendments to the RGS were required to follow legislation to create a RGS and that process is time-intensive. Second, the avoidance strategy employed by political discourse is the reason there is no MIA and this rendered legislation ineffective and inefficient. Thus, it appears that political discourse is the dominant discourse in

this dispute and is the most compelling reason this dispute was prolonged. The dispute persisted because resolution from this discourse resides the technologies of politics: in elections, the five-year review process, or legislative command that included arbitration, which is determined by politics.

## **6.7 Recommendations**

There is a sense in resolving political disputes through facilitation. The legal outcome, resolution determined by arbitration, provides evidence of the effectiveness of facilitation. Facilitation “is a tonic that causes people to talk in ways they wouldn’t otherwise do voluntarily” (G. Sloan, personal communication, January 17, 2009). In this instance, the dispute around a particular chunk of land has been resolved. Though a resolution was decided, an ideological rift persists. Precisely, because of this on-going conflict, future disputes will happen<sup>40</sup> and it is important to have “a robust capacity to resolve disputes” (G. Sloan, personal communication, January 17, 2009). Therefore, this research makes two recommendations.

First, the ADR procedures outlined in *Local Government Act*, Division 2 of Part 25, and Section 860, should be revised to place a greater emphasis on a consensus model of DR, such as mediation, and less emphasis on the command models of DR, such as arbitration. This particular dispute was resolved, but it is clear that the elected officials from the CRD have not increased their internal capacity to work out difference among themselves and this is important

<sup>40</sup> For example, Ian Vantreight, a well known daffodil grower wants to erect an 86-unit residential development that is not consistent with Central Saanich’s Official Community Plan, their Regional Context Statement or the RUCSPA outlined in the current RGS.(Youmans, 2010)

given the complexity of issues they are asked to make decisions about. Their work could be made easier if open dialogue were part of their normalized interactions. Their capacity for dialogue is unlikely to increase if the political discourse continues to normalize the practice of having disputed issues decided by a third party. The problem with defaulting to command model DR, as in this case, is that participants get a resolution no matter their commitment to the process. This study shows that under current legislation participants are more likely to maintain their latent discursive roles than voluntarily embrace the consensus path. By amending the legislation to make explicit the importance of relationships, the legislated ADR process could begin to change the dominate discourse, and in so doing could eventual lead to more efficient and satisfying solutions to complex problems.

Second, those who facilitate need to be aware of the powerful role discourse plays in shaping conflict and society. The act of discursive deconstruction is a powerful practical tool that can complement a conflict practitioner's technique (Mayer, 2009). Those that develop the capacity to think deconstructively will become apt at making discourse visible in every conversation (Mayer, 2009). This deconstructive practice will helps practitioners to see how disputants are discursively constituted and that disputants are possibly unaware of these constructions (Mayer, 2009). These invisible constructions limit and constrain the range of knowledge and possible responses available to disputants. A deconstructive practice can help participants gain awareness of the discourses they access and by doing so the disputants can find a greater range of position available, encouraging greater agency in the process and the potential to resist the power of acting discourse.

## 6.8 Conclusion

This thesis represented my journey into qualitative research and my quest to understand why the Bylaw 3443 amendment dispute remained unresolved after the facilitation. This research utilized an inquiry-based methodology, implemented a narrative method of interviewing (Mishler, 1986) and a discursive analysis (Blank & Ney, 2006; Mayer, 2009) to examine talk in action.

The ADR intervention became my initial window into the complex discursive systems that constitute and construct the interactions between local and provincial governments. What unfolded is the realization that discourses are not just an abstract or academic construct but are embodied in everyone, implicit in our metaphors and actions. This research furthers the cannon of conflict theory by using discourse analysis to the make clear the role discourse has on legislated ADR processes. Further, in terms of conflict behavior this research provides further evidence that people's conflict actions are discursively shaped and this affects the effectiveness of facilitation. The defining legislation must take this into account and make plain the role of discourse in society for the legislated ADR processes to have there intended outcome.

Through analysis of participants' narrative talk about the latent conflict, manifestation, preferred outcome and actual resolution of the dispute, dominant discourses are made visible. Participants in this dispute are constructions, representing values, characteristics and patterns of reasoning associated with a particular discourse: legal, political or facilitative. These discourses clashed while contesting and reproducing particular visions of the world throughout the ADR process and these reproductions ultimately influenced the resolution of this dispute.

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This Act is Current to February 3, 2010

## **LOCAL GOVERNMENT ACT**

### **[RSBC 1996] CHAPTER 323**

## **Part 25 — Regional Growth Strategies**

### **Definitions**

**848** In this Part:

**"affected local government"**, in relation to a regional growth strategy, means a local government whose acceptance of the regional growth strategy is required under section 857 or would be required if that section applied, and includes the South Coast British Columbia Transportation Authority continued under the *South Coast British Columbia Transportation Authority Act*;

**"facilitator"**, in relation to a regional growth strategy, means the facilitator designated by the minister under section 856;

**"improvement district board"** means the board of trustees for an improvement district;

**"initiate"**, in relation to a regional growth strategy, means initiation under section 854;

**"municipality"** includes the City of Vancouver;

**"official community plan"** includes

- (a) an official settlement plan under section 809 (3) of the *Municipal Act*, R.S.B.C. 1979, c. 290, before that section was repealed by section 4 of the *Municipal Amendment Act, 1985*,
- (b) Part 1 of a rural land use bylaw, and
- (c) an official development plan under the *Vancouver Charter*;

**"regional context statement"** means a regional context statement referred to in section 866;

**"regional matter"** means a matter that involves coordination between or

affects more than one municipality, more than one electoral area, or at least one of each, in a regional district.

## **Division 1 – Application and Content of Regional Growth Strategy**

### **Purpose of regional growth strategy**

**849** (1) The purpose of a regional growth strategy is to promote human settlement that is socially, economically and environmentally healthy and that makes efficient use of public facilities and services, land and other resources.

(2) Without limiting subsection (1), to the extent that a regional growth strategy deals with these matters, it should work towards but not be limited to the following:

- (a) avoiding urban sprawl and ensuring that development takes place where adequate facilities exist or can be provided in a timely, economic and efficient manner;
- (b) settlement patterns that minimize the use of automobiles and encourage walking, bicycling and the efficient use of public transit;
- (c) the efficient movement of goods and people while making effective use of transportation and utility corridors;
- (d) protecting environmentally sensitive areas;
- (e) maintaining the integrity of a secure and productive resource base, including the agricultural land reserve;
- (f) economic development that supports the unique character of communities;
- (g) reducing and preventing air, land and water pollution;
- (h) adequate, affordable and appropriate housing;
- (i) adequate inventories of suitable land and resources for future settlement;
- (j) protecting the quality and quantity of ground water and surface water;
- (k) settlement patterns that minimize the risks associated with natural hazards;
- (l) preserving, creating and linking urban and rural open space including parks and recreation areas;
- (m) planning for energy supply and promoting efficient use, conservation and alternative forms of energy;
- (n) good stewardship of land, sites and structures with cultural heritage value.

### **Content of regional growth strategy**

**850** (1) A board may adopt a regional growth strategy for the purpose of guiding decisions on growth, change and development within its regional district.

(2) A regional growth strategy must cover a period of at least 20 years from the time of its initiation and must include the following:

(a) a comprehensive statement on the future of the region, including the social, economic and environmental objectives of the board in relation to the regional district;

(b) population and employment projections for the period covered by the regional growth strategy;

(c) to the extent that these are regional matters, actions proposed for the regional district to provide for the needs of the projected population in relation to

(i) housing,

(ii) transportation,

(iii) regional district services,

(iv) parks and natural areas, and

(v) economic development;

(d) to the extent that these are regional matters, targets for the reduction of greenhouse gas emissions in the regional district, and policies and actions proposed for the regional district with respect to achieving those targets.

(3) In addition to the requirements of subsection (2), a regional growth strategy may deal with any other regional matter.

(4) A regional growth strategy may include any information, maps, illustrations or other material.

### **Area to which regional growth strategy applies**

**851** (1) Unless authorized under subsection (2) or required under section 852, a regional growth strategy must apply to all of the regional district for which it is adopted.

(2) On request by the applicable board or boards, the minister may authorize a regional growth strategy that

(a) applies to only part of a regional district, or

(b) is developed jointly by 2 or more regional districts to apply to all or parts of those regional districts.

(3) The minister may establish terms and conditions for a regional growth

strategy authorized under subsection (2) or required under section 852.

(4) If the minister considers this necessary or advisable for a regional district service in relation to a regional growth strategy referred to in subsection (3), the minister may by order give directions respecting the operation of the service, sharing of costs, voting on bylaws and resolutions relating to the service, the intergovernmental advisory committee and other matters relating to the regional growth strategy.

(5) To the extent of any inconsistency between this Act and an order under subsection (4), the order prevails.

### **Requirement to adopt regional growth strategy**

**852** (1) On the recommendation of the minister, the Lieutenant Governor in Council may, by regulation, do one or both of the following:

- (a) designate areas for which a regional growth strategy must be developed and adopted;
- (b) specify a time within which the regional growth strategy must be adopted.

(2) The minister must not make a recommendation referred to in subsection (1) unless, in the opinion of the minister, the area to which the regional growth strategy is proposed to apply has been experiencing significant change in its population, its economic development or an aspect of growth or development that involves coordination between local governments or affects more than one local government.

## **Division 2 — Preparation and Adoption Procedures**

### **Requirements for adoption**

**853** (1) The following are required before a regional growth strategy is adopted:

- (a) the regional growth strategy must be initiated in accordance with section 854;
- (b) consultation must be conducted in accordance with section 855;
- (c) the regional growth strategy must be accepted by affected local governments in accordance with section 857, except in relation to an amendment under section 857.1 [*minor amendments to regional growth strategies*].

(2) As an exception to subsection (1) (c), a regional growth strategy may be adopted without acceptance in relation to a specific provision if

- (a) the provision is included on the basis that it is not binding on the jurisdiction of a local government that has refused to accept it, and
- (b) the board considers that it is not essential to the regional growth

strategy that the provision apply to that jurisdiction.

(3) A provision included under subsection (2) becomes binding on a jurisdiction if, at any time after adoption of the regional growth strategy, the local government for the jurisdiction indicates to the board that it accepts the provision.

(4) This Part, as it applies to the initiation, development and adoption of a regional growth strategy, applies to the amendment and repeal of a regional growth strategy.

### **Initiation of regional growth strategy process**

**854** (1) The preparation of a regional growth strategy must be initiated by resolution of the board.

(2) If a regional growth strategy is to apply to less than the entire regional district or is to be prepared jointly with another regional district, this must be authorized under section 851 (2) or required under section 852 before the regional growth strategy is initiated.

(3) If, at the time of initiation, the board proposes to deal with an additional regional matter referred to in section 850 (3), the initiating resolution must identify the matter.

(4) The proposing board must give written notice of an initiation under this section to affected local governments and to the minister.

### **Consultation during development of regional growth strategy**

**855** (1) During the development of a regional growth strategy,

(a) the proposing board must provide opportunity for consultation with persons, organizations and authorities who the board considers will be affected by the regional growth strategy, and

(b) the board and the affected local governments must make all reasonable efforts to reach agreement on a proposed regional growth strategy.

(2) For the purposes of subsection (1) (a), as soon as possible after the initiation of a regional growth strategy, the board must adopt a consultation plan that, in the opinion of the board, provides opportunities for early and ongoing consultation with, at a minimum,

(a) its citizens,

(b) affected local governments,

(c) first nations,

(d) school district boards, greater boards and improvement district boards, and

(e) the Provincial and federal governments and their agencies.

(2.1) In adopting a consultation plan under subsection (2), the board must consider whether the plan should include the holding of a public hearing to provide an opportunity for persons, organizations and authorities to make their views known before the regional growth strategy is submitted for acceptance under section 857.

(3) A failure to comply with a consultation plan under subsection (2) does not invalidate the regional growth strategy as long as reasonable consultation has been conducted.

(4) and (5) [Repealed 2008-23-16.]

(6) For certainty, at any time during the development of a regional growth strategy, additional regional matters may be included in accordance with section 850 (3).

### **Facilitation of agreement during development of regional growth strategy**

**856** (1) The minister may appoint facilitators for the purposes of this Part, whose responsibilities are

(a) to monitor and assist local governments in reaching agreement on the acceptance of regional growth strategies during their development by

(i) facilitating negotiations between the local governments,

(ii) facilitating the resolution of anticipated objections,

(iii) assisting local governments in setting up and using non-binding resolution processes, and

(iv) facilitating the involvement of the Provincial and federal governments and their agencies, first nations, school district boards, greater boards and improvement district boards, and

(b) to assist local governments in entering into implementation agreements under section 868.

(2) On being notified that a regional growth strategy has been initiated, the minister may designate a person appointed under subsection (1) as the facilitator responsible in relation to the regional growth strategy.

(3) At any time until the end of the period for acceptance or refusal under section 857 (4) (b), the facilitator is to provide assistance referred to in subsection (1) (a) of this section if requested to do so

(a) by the proposing board or an affected local government, or

(b) by an electoral area director of the proposing board, if the request is supported by at least 2 other directors.

(4) Once a facilitator becomes involved under subsection (3), the proposing

board and affected local governments must provide information as requested by the facilitator and must otherwise cooperate with the facilitator in fulfilling his or her responsibilities.

### **Acceptance by affected local governments required**

**857** (1) Before it is adopted, a regional growth strategy must be accepted by the affected local governments or, failing acceptance, become binding on the affected local governments under section 860 (6).

(2) Acceptance of a regional growth strategy by an affected local government must be done by resolution of the local government.

(3) For the purposes of this section, before third reading of the bylaw to adopt a regional growth strategy, the board must submit the regional growth strategy to

(a) the council of each municipality all or part of which is covered by the regional growth strategy,

(a.1) the board of directors of the South Coast British Columbia Transportation Authority if the regional growth strategy is for the Greater Vancouver Regional District,

(b) the board of each regional district that is adjoining an area to which the regional growth strategy is to apply, and

(c) the facilitator or, if no facilitator for the regional growth strategy has been designated, the minister.

(4) After receiving a proposed regional growth strategy under subsection (3), each affected local government must

(a) review the regional growth strategy in the context of any official community plans and regional growth strategies for its jurisdiction, both those that are current and those that are in preparation, and in the context of any other matters that affect its jurisdiction, and

(b) subject to an extension under section 858 (3), within 120 days of receipt either

(i) accept the regional growth strategy, or

(ii) respond, by resolution, to the proposing board indicating that the local government refuses to accept the regional growth strategy.

(5) An acceptance under subsection (4) (b) becomes effective

(a) when all affected local governments have accepted the regional growth strategy, or

(b) at the end of the period for acceptance or refusal under that subsection if, at the end of that period, all affected local governments

have not accepted the regional growth strategy.

(6) If an affected local government fails to act under subsection (4) (b) within the period for acceptance or refusal, the local government is deemed to have accepted the regional growth strategy.

(7) If an affected local government refuses to accept the regional growth strategy, its resolution under subsection (4) (b) (ii) must also indicate

(a) each provision to which it objects,

(b) the reasons for its objection, and

(c) whether it is willing that a provision to which it objects be included in the regional growth strategy on the basis that the provision will not apply to its jurisdiction, as referred to in section 853 (2).

(8) All affected local governments are entitled to participate in any non-binding resolution processes used to resolve an objection or anticipated objection by an affected local government.

(9) If an area in a regional district is incorporated as a new municipality and the regional district has adopted a regional growth strategy for all or part of the area of the new municipality, the regional growth strategy is binding on that new municipality.

### **Minor amendments to regional growth strategies**

**857.1** (1) As exceptions to the requirements of section 857 that would otherwise apply to the amendment of a regional growth strategy, a regional growth strategy may be amended

(a) in accordance with provisions under subsection (2) of this section, or

(b) if the regional growth strategy does not include provisions under subsection (2), in accordance with subsection (3).

(2) A regional growth strategy may include provisions that establish a process for minor amendments to the regional growth strategy, which must include the following:

(a) criteria for determining whether a proposed amendment is minor for the purposes of allowing the process to apply;

(b) a means for the views of affected local governments respecting a proposed minor amendment to be obtained and considered;

(c) a means for providing notice to affected local governments respecting a proposed minor amendment;

(d) procedures for adopting the minor amendment bylaw.

(3) A board may proceed with a proposed amendment to a regional growth strategy as a minor amendment in accordance with the following:

- (a) the board must give notice, including notice that the proposed amendment may be determined to be a minor amendment and the date, time and place of the board meeting at which the amending bylaw is to be considered for first reading, to each affected local government at least 30 days before the meeting;
- (b) before first reading of the amending bylaw, the board must allow an affected local government that is not represented on the board an opportunity to make representations to the board;
- (c) if at first reading, the amending bylaw receives an affirmative vote of all board members attending the meeting, the bylaw may be adopted in accordance with the procedures that apply to the adoption of a regional growth strategy bylaw under section 791 and the board's procedure bylaw;
- (d) if at first reading, the amending bylaw does not receive an affirmative vote of all board members attending the meeting, the bylaw may only be adopted in accordance with the procedure established by section 857 [*acceptance by affected local governments required*].

(4) The following may not be considered a minor amendment for the purposes of this section:

- (a) an amendment to a regional growth strategy to establish or amend a process referred to in subsection (2);
- (b) an amendment to anything that the minister has established or directed under section 851 (3) or (4) or the Lieutenant Governor in Council has required under section 852;
- (c) an amendment to a regional growth strategy proposed as a result of a resolution process under section 859 (2) (a);
- (d) a type of amendment prescribed by regulation.

### **Resolution of anticipated objections**

**858** (1) Before the end of the 120 days referred to in section 857 (4) (b), the facilitator may require the proposing board and the affected local governments to identify any issues on which they anticipate that acceptance may not be reached.

(2) If an issue is identified under subsection (1),

- (a) the facilitator may require the proposing board and the affected local governments to send representatives to a meeting convened by the facilitator for the purpose of clarifying the issues involved and

encouraging their resolution, and

(b) the proposing board and the affected local governments must provide information as requested by the facilitator and must otherwise cooperate with the facilitator in fulfilling his or her responsibilities.

(3) For the purposes of this section, the facilitator may extend the period for acceptance or refusal under section 857 (4) (b) before or after the end of that period.

### **Resolution of refusal to accept**

**859** (1) The proposing board must notify the minister in writing if an affected local government refuses to accept a proposed regional growth strategy.

(2) After being notified under subsection (1), the minister must

(a) require a non-binding resolution process to attempt to reach acceptance on the regional growth strategy, specifying a time period within which the parties must begin the resolution process, or

(b) if satisfied that resolution using a non-binding resolution process under paragraph (a) is unlikely, direct that the regional growth strategy is to be settled under section 860.

(3) The choice of non-binding resolution process is to be determined by agreement between the proposing board and the local government or governments that refused to accept the regional growth strategy but, if the minister considers that these parties will not be able to reach agreement, the minister must direct which process is to be used.

(4) Any affected local government may participate in a non-binding resolution process under this section.

(5) Unless otherwise agreed by these parties, the fees of any neutral person participating in the non-binding resolution process and the administrative costs of the process, other than the costs incurred by the parties participating in the process, are to be shared proportionally between the proposing board and the affected local governments that participate in the process on the basis of the converted value of land and improvements in their jurisdictions.

(6) If changes to a regional growth strategy are proposed as a result of a resolution process under subsection (2) (a), the regional growth strategy must be submitted again to the affected local governments for acceptance in accordance with section 857.

(7) If acceptance is not reached within 60 days after a non-binding resolution process under this section is concluded, the regional growth strategy must be settled under section 860 unless the proposing board and the affected local governments can reach an agreement on the provisions of the regional growth

strategy before the settlement process is completed.

### **Settlement of regional growth strategy**

**860** (1) If acceptance by affected local governments cannot otherwise be reached under this Part, the regional growth strategy is to be settled by one of the following:

- (a) peer panel settlement in accordance with section 861 (1);
- (b) final proposal arbitration in accordance with section 861 (2);
- (c) full arbitration in accordance with section 861 (3).

(2) If more than one affected local government has refused to accept a regional growth strategy, whether the refusals are in relation to the same or different issues, the regional growth strategy is to be settled for all affected local governments in the same settlement proceedings.

(3) The choice of process for settlement is to be determined by agreement between the proposing board and the local government or governments that refused to accept the regional growth strategy but, if the minister considers that these parties will not be able to reach agreement, the minister must direct which process is to be used.

(4) Any affected local government may participate in a settlement process under section 861.

(5) During the 60 days after the provisions of a regional growth strategy are settled under section 861, the proposing board and the affected local governments may agree on the acceptance of a regional growth strategy that differs from the one settled.

(6) At the end of the period under subsection (5), unless agreement is reached as referred to in that subsection, the provisions of a regional growth strategy as settled under section 861 become binding on the proposing board and all affected local governments, whether or not they participated in the settlement process.

### **Options for settlement process**

**861** (1) As one option, the provisions of a regional growth strategy may be settled by a peer panel as follows:

- (a) the panel is to be composed of 3 persons selected from the applicable list prepared under section 862 (1);
- (b) the selection of the panel is to be done by agreement between the proposing board and the local government or governments that refused to accept the regional growth strategy or, if the minister considers that these parties will not be able to reach agreement, by the minister;

(c) subject to the regulations, the panel may conduct the proceedings in the manner it determines;

(d) the panel must settle the disputed issues of the regional growth strategy and may make any changes to the provisions of the regional growth strategy that it considers necessary to resolve those issues;

(e) the panel must give written reasons for its decision if this is requested by the proposing board or an affected local government before the panel retires to make its decision.

(2) As a second option, the provisions of a regional growth strategy may be settled by final proposal arbitration by a single arbitrator as follows:

(a) the arbitrator is to be selected from the applicable list prepared under section 862 (1);

(b) the selection of the arbitrator is to be done by agreement between the proposing board and the local government or governments that refused to accept the regional growth strategy or, if the minister considers that these parties will not be able to reach agreement, by the minister;

(c) subject to the regulations, the arbitrator must conduct the proceedings on the basis of a review of written documents and written submissions only, and must determine each disputed issue by selecting one of the final written proposals for resolving that issue submitted by one of the participating parties;

(d) the provisions of the regional growth strategy will be as settled by the arbitrator after incorporation of the final proposals selected by the arbitrator under paragraph (c);

(e) no written reasons are to be provided by the arbitrator.

(3) As a third option, the provisions of a regional growth strategy may be settled by full arbitration by a single arbitrator as follows:

(a) the arbitrator is to be selected from the applicable list prepared under section 862 (1);

(b) the selection of the arbitrator is to be done by agreement between the proposing board and the local government or governments that refused to accept the regional growth strategy or, if the minister considers that these parties will not be able to reach agreement, by the minister;

(c) subject to the regulations, the arbitrator may conduct the proceedings in the manner he or she determines;

(d) the provisions of the regional growth strategy will be as settled by the arbitrator, who is not restricted in his or her decision to submissions made by the parties on the disputed issues;

(e) the arbitrator must give written reasons for the decision.

### **General provisions regarding settlement process**

**862** (1) Lists of persons who may act on a panel under section 861 (1), as an arbitrator under section 861 (2) or as an arbitrator under section 861 (3) are to be prepared by the minister in consultation with representatives of the Union of British Columbia Municipalities.

(2) Persons who may be included on a list for a panel under section 861 (1) are persons who are or have been elected officials of a local government or who, in the opinion of the minister, have appropriate experience in relation to local government matters.

(3) In the case of a specific regional growth strategy, a person may not be appointed to a panel or as an arbitrator if the person is, or was at any time since the regional growth strategy was initiated, an elected official of the proposing board or of an affected local government for the regional growth strategy.

(4) Subject to a direction by the panel or arbitrator or to an agreement between the parties, the fees and reasonable and necessary expenses of the members of a peer panel or arbitrator and the administrative costs of the process, other than the costs incurred by the parties participating in the process, are to be shared proportionally between the proposing board and the affected local governments that participate in the process on the basis of the converted value of land and improvements in their jurisdictions.

(5) The directors of the electoral areas to which the regional growth strategy is proposed to apply and the Provincial government may make representations in the settlement process, subject to any conditions set by the panel or arbitrator.

(6) The time limit for bringing any judicial review of a decision of a panel or arbitrator under section 861 is the end of the period for agreement under section 860 (5).

(7) The minister may make regulations regarding settlement processes under section 861, which may be different for different settlement processes, including regulations

(a) respecting matters that a panel or arbitrator may or must consider,

(b) respecting the authority of a panel or arbitrator to settle a regional growth strategy, and

(c) respecting the authority of a panel or arbitrator to require the cooperation of local governments in relation to the settlement processes.

### **Adoption of regional growth strategy**

- 863** (1) A regional growth strategy must be adopted by bylaw.
- (2) As soon as practicable after adopting a regional growth strategy, the board must send a copy of the regional growth strategy to
- (a) the affected local governments,
  - (b) any greater boards and improvement districts within the regional district, and
  - (c) the minister.

### **Requirement to adopt finalized regional growth strategy**

- 864** (1) If a proposed regional growth strategy has been accepted by the affected local governments or has become binding under section 860 (6), but has not been adopted by the proposing board, on the recommendation of the minister, the Lieutenant Governor in Council may, by order, specify a time by which the board must adopt the regional growth strategy.
- (2) If the board does not adopt the regional growth strategy within the period specified under subsection (1), the Lieutenant Governor in Council may, by order, deem the regional growth strategy to have been adopted by the board, in which case it applies as if it had been adopted by a valid bylaw of the board.

## **Division 3 – Effect of Regional Growth Strategy**

### **Regional district must conform with regional growth strategy**

- 865** (1) All bylaws adopted by a regional district board after the board has adopted a regional growth strategy, and all services undertaken by a regional district after the board has adopted a regional growth strategy, must be consistent with the regional growth strategy.
- (2) All bylaws adopted by a greater board or an improvement district board after the adoption of a regional growth strategy applicable to its jurisdiction, and all works and services provided by a greater board or an improvement district board after the adoption of a regional growth strategy applicable to its jurisdiction, must be consistent with the regional growth strategy.
- (3) A regional growth strategy does not commit or authorize a regional district, municipality, greater board or improvement district to proceed with any project that is specified in the regional growth strategy.

### **Requirement for regional context statements in municipal official community plans**

- 866** (1) If a regional growth strategy applies to all or part of the same area of a municipality as an official community plan, the official community plan must include a regional context statement that is accepted in accordance with this section by the board of the regional district for which the regional growth

strategy is adopted.

(2) A regional context statement under subsection (1) must specifically identify

(a) the relationship between the official community plan and the matters referred to in section 850 (2) and any other regional matters included under section 850 (3), and

(b) if applicable, how the official community plan is to be made consistent with the regional growth strategy over time.

(3) A regional context statement under subsection (1) and the rest of the official community plan must be consistent.

(4) The council must

(a) submit a proposed regional context statement required under this section for acceptance by the board,

(b) submit any amendments to the regional context statement for acceptance by the board, and

(c) review the regional context statement at least once every 5 years after its latest acceptance by the board and, if no amendment is proposed, submit the statement to the board for its continued acceptance.

(5) For the purpose of subsection (4), the board must respond by resolution within 120 days after receipt indicating whether or not it accepts the regional context statement or amendment and, if the board refuses to accept the regional context statement or amendment, indicating

(a) each provision to which it objects, and

(b) the reasons for its objection.

(6) If the board fails to act under subsection (5) within the period for acceptance or refusal under that subsection, the board is deemed to have accepted the regional context statement or amendment.

(7) Sections 856, 858 to 862 and 864 apply regarding the acceptance and adoption of a regional context statement.

(8) After a regional growth strategy is adopted, the requirement under subsection (1) must be fulfilled by the applicable council submitting a proposed regional context statement to the board within 2 years after the regional growth strategy is adopted.

(9) If a regional growth strategy is binding on a new municipality under section 857 (9) and the regional growth strategy applies to all or part of the same area of the municipality as an official community plan, the requirement under subsection (1) of this section must be fulfilled by the council submitting a proposed regional context statement to the board within the earlier of the following:

- (a) the period established by the Lieutenant Governor in Council by letters patent;
- (b) 2 years after the municipality was incorporated.

## **Division 4 – General**

### **Intergovernmental advisory committees**

**867** (1) A board may establish an intergovernmental advisory committee for its regional district and must establish an intergovernmental advisory committee for its regional district when a regional growth strategy is initiated.

(2) The role of an intergovernmental advisory committee is

- (a) to advise the applicable local governments on the development and implementation of the regional growth strategy, and
- (b) to facilitate coordination of Provincial and local government actions, policies and programs as they relate to the development and implementation of the regional growth strategy.

(3) The membership of an intergovernmental advisory committee is to include the following:

- (a) the planning director of the regional district, or another official appointed by the board;
  - (a.1) for the purposes of an intergovernmental advisory committee established in the Greater Vancouver Regional District, the planning director of the South Coast British Columbia Transportation Authority or another official appointed by the board of directors of that authority;
- (b) the planning director, or another official appointed by the applicable council, of each municipality all or part of which is covered by the regional growth strategy;
- (c) senior representatives of the Provincial government and Provincial government agencies and corporations, determined by the minister after consultation with the board;
- (d) representatives of other authorities and organizations if invited to participate by the board.

### **Implementation agreements**

**868** (1) Without limiting section 176 [*corporate powers*] of this Act or section 8 (1) [*natural person powers*] of the *Community Charter*, a local government may enter into agreements respecting the coordination of activities relating to the implementation of a regional growth strategy.

(2) For the purposes of this section, the Provincial government may enter into

agreements under subsection (1) respecting Provincial commitments to act consistently with a regional growth strategy and to take actions necessary to implement a regional growth strategy.

(3) In addition to agreements with the Provincial government and its agencies, agreements under subsection (1) may be made with the federal government and its agencies, other local governments, first nations, school district boards, greater boards, the South Coast British Columbia Transportation Authority, improvement district boards and other local authorities.

### **Regular reports and review of regional growth strategy**

**869** (1) A regional district that has adopted a regional growth strategy must

(a) establish a program to monitor its implementation and the progress made towards its objectives and actions, and

(b) prepare an annual report on that implementation and progress.

(2) At least once every 5 years, a regional district that has adopted a regional growth strategy must consider whether the regional growth strategy must be reviewed for possible amendment.

(3) For the purposes of subsection (2), the regional district must provide an opportunity for input on the need for review from the persons, organizations and authorities referred to in section 855 (2).

### **Provincial policy guidelines**

**870** (1) The minister may establish policy guidelines regarding the process of developing and adopting regional growth strategies and official community plans.

(2) The minister, or the minister together with other ministers, may establish policy guidelines regarding the content of regional growth strategies and official community plans.

(3) Guidelines under subsection (1) or (2) may only be established after consultation by the minister with representatives of the Union of British Columbia Municipalities.

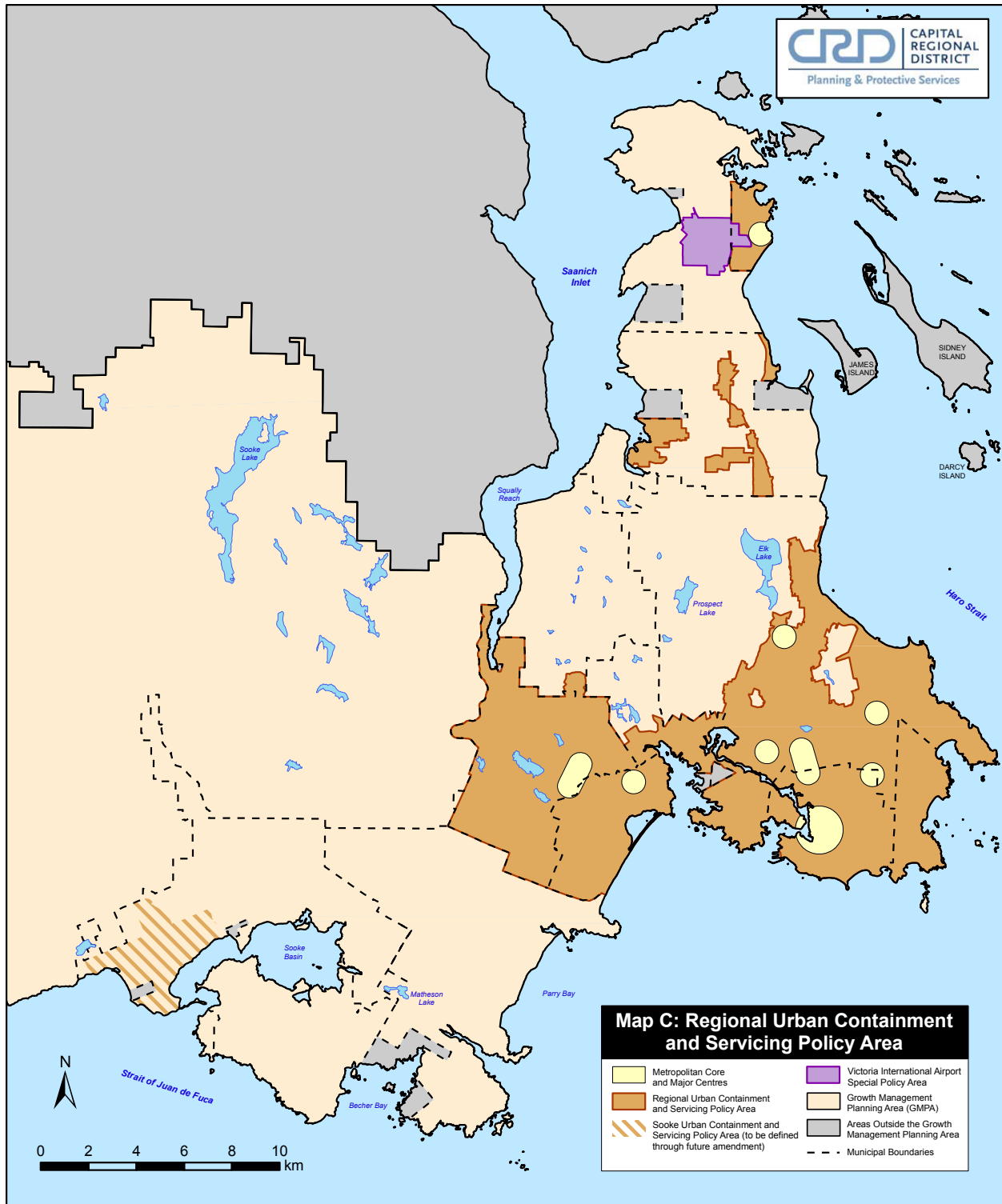
### **Minister may require official community plans and land use bylaws**

**871** After a regional growth strategy has been adopted, the minister may require a municipality or regional district to adopt, within a time specified by the minister, an official community plan, a zoning bylaw or a subdivision servicing bylaw for an area that is covered by the regional growth strategy and to which no such plan or bylaw currently applies.

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## Appendix C2:

### Final Bylaw 3443 RUCSPA Extension in the District of Highlands (CRD, 2008)

White line represents the lands to be included in the RUCSPA as decided by Final Proposal Arbitration



## Appendix D – Recruitment e-mail for follow-up interviews

Hello,

We last spoke in June regarding Mr Sloan's recommendations to resolve the RGS bylaw amendment conflict. It is time for the final stage of my research on this conflict for my master's thesis in dispute resolution. I would like to interview you as part of this research.

Your voluntary participation would consist of a one hour interview, preferably in person, before December 1, 2008. Please let me know a time and date that would work for you. During this interview I will take audio recordings and notes using a system that allows me to identify individuals for research purposes, but that keeps their identity confidential for all other purposes.

Please take a few minutes to review the letter I have attached as it provides the rationale for this research and

information about participant privacy.

Please contact me with any questions or to schedule an interview.

Thanks for your time, and I look forward to speaking with you again

You are being invited to participate in a study to be conducted by Brandy Sistili entitled: **Dismantling metaphors, a narrative study of impasse: The Capital Region Districts facilitated effort to move beyond boundaries in the Regional Growth Strategy amendment process.**

Brandy Sistili is a graduate student in Dispute Resolution in the Faculty of Human and Social Development at the University of Victoria and you may contact her if you have further questions by emailing her at [bsistili@uvic.ca](mailto:bsistili@uvic.ca) or via the above contact information for the Institute for Dispute Resolution.

As a graduate student, I (Brandy Sistili) am required to conduct research as part of the requirements for a degree in Dispute Resolution. It is being conducted under the supervision of Dr. Jo-Anne Stoltz, and Mr. Gordon Sloan. You may contact my supervisors at [jstoltz@uvic.ca](mailto:jstoltz@uvic.ca) and by phone at 250.721.7799 (Jo-Anne Stoltz) or [gsloan@adrededucation.ca](mailto:gsloan@adrededucation.ca) and by phone at 250.598.9696 (Gordon Sloan).

This project evolved from my observation of meetings conducted by the Ministry appointed facilitator Mr. Gordon Sloan. This research will represent the data for my master's thesis research. It is my intent to aesthetically<sup>1</sup>explore conflict; investigating why this regional dispute has yet to be resolved.

This research is guided by two objects. The first objective is to describe the resolution process undertaken by the facilitator. The process employed by the facilitator is the first of its kind, emerging from section 849 of the Local Government Act. Although the facilitation constructed was unable to bring parties to resolution, there is much to be learned from the first iteration of a process as it inevitably influences how this conflict and others in the region will emerge, unfold and resolve.

The second objective is to notice metaphor present in the facilitation session, and within these interviews, to gain insight into human change processes. This research will strengthen our understanding of metaphor as it relates to deep cognitive sources of conflict. In creating a clearer understanding of the metaphoric constructs parties use to explore a conflict experience, a practitioner or theorists may have a clearer picture into the ripeness for and the characteristics change might take between parties within relationship.

The relationships between members of regional districts are unique, as each municipality represents different geographic areas with different regional priorities, interest and identities. Currently, there is no literature available in this area therefore there is a unique opportunity to conduct much-needed research. This research will enhance our understanding of the dynamics

<sup>1</sup> The word aesthetic has Greek etymology meaning "being sharp in the senses"((Lederach 200 5)

involved in these relationships, as well as the principles, processes, and skills involved in resolving conflicts in this setting.

To accomplish this goal I would like to recruit from key informants to unearth three layers of context; representative from the Highlands municipality, from CRD board (representative from other municipalities and staff), and the facilitator (Mr. Gordon Sloan). You are also being asked to participate in this study because you also expressed interest in further participation during the facilitation process.

Your responses will not be identifiable as an individual, but rather as part of a group involved in the process.

Your voluntary participation will consist of a one hour interview, either by phone or in person, depending on your preference. During this interview I will take audio recordings and notes using a system that allows me to identify individuals for research purposes, but keeps your identity confidential for all other purposes. Your responses will not identify you as an individual, but rather as part of a group involved in the process. Names will not be used in my write-up.

There are no known or anticipated risks to you by participating in this research, beyond the normal risks you may potentially encounter in your everyday life in relation to the Capital Regional District (CRD) Regional Growth Strategy Amendment process. The potential benefits of your participation in this research include benefits to the regional districts, Canadian society, and conflict resolution as a discipline. As stated above, little research has been done about the conflict resolution processes in regional districts, so this project is beneficial in promoting understanding of how conflict resolution practices work. Canadian society benefits from a refinement of understanding of how conflict works and what the potential responses are, and this project will add to the overall body of conflict resolution literature as a discipline still in early stages of development.

Your participation in this research must be completely voluntary. If you do decide to participate, you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study your data will be used only if you give permission, but can be removed from the database if you wish.

Anonymity means that no one, including the principal investigator, is able to associate responses or other data with individual participants. In this case loss of anonymity during the data-gathering phase of my research is required for your participation so that I can identify themes to create understanding about participating municipalities.

Confidentiality means the protection of the person's identity (anonymity) and the protection, access, control and security of his or her data and personal information during the recruitment, data collection, reporting of findings, dissemination of data (if relevant) and after the study is completed (e.g., storage). Your confidentiality and the confidentiality of the data will be protected with limits due to the methods and sample size. While, your responses will not identify you as an individual in the final results it may be possible for fellow participants to identify you in the institutional context of the Capital Regional Districts.

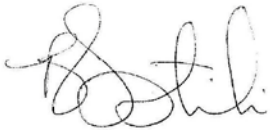
It is anticipated that the results of this study will only be used to gain a better conceptualization of the conflict, and form some of the research data for my thesis.

Data (electronic, audio data, written documentation) from this study will be disposed of following the completion of my MA in Dispute Resolution. All electronic and audio data will be erased, and all written documentation will be shredded.

In addition to being able to contact the researcher and the co-supervisors at the above phone numbers, you may verify the ethical approval of this study, or raise any concerns you might have, by contacting the Human Research Ethics Office at the University of Victoria at [ethics@uvic.ca](mailto:ethics@uvic.ca).

Thank you very much for your time.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brandy Sistili', written in a cursive style.

Brandy Sistili

You are being invited to participate in a study to be conducted by Brandy Sistili entitled: **Dismantling metaphors, a narrative study of impasse: the Capital Region Districts facilitated effort to move beyond boundaries in the Regional Growth Strategy amendment process.**

Brandy Sistili is a graduate student in Dispute Resolution in the Faculty of Human and Social Development at the University of Victoria and you may contact her if you have further questions by emailing her at [bsistili@uvic.ca](mailto:bsistili@uvic.ca) or via the above contact information for the Institute for Dispute Resolution.

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This research is guided by two objects. The first objective is to describe the resolution process undertaken by the facilitator. The process employed by the facilitator is the first of its kind, emerging from section 849 of the Local Government Act. Although the facilitation constructed was unable to bring parties to resolution, there is much to be learned from the first iteration of a process as it inevitably influences how this conflict and others in the region will emerge, unfold and resolve.

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To accomplish this goal I would like to recruit from key informants to unearth three layers of context; representative from the Highlands municipality, from CRD board (representative from other municipalities and staff), and the facilitator (Mr. Gordon Sloan). You are also being asked to participate in this study because you also expressed interest in further participation during the facilitation process. Your responses will not identifiable as an individual, but rather as part of a group involved in process.

<sup>1</sup> The word aesthetic has Greek etymology meaning "being sharp in the senses"((Lederach 200 5)

If you agree to participate voluntarily in this research, your participation will consist of a one hour interview, either by phone or in person, depending on your preference. During this interview I will take audio recordings and notes using a system that allows me to identify individuals for research purposes, but keeps their identity confidential for the purposes of writing my thesis. Your responses will not identify you as an individual, but rather as part of a group involved in process. Names will not be used in my write-up.

There are no known or anticipated risks to you by participating in this research, beyond the normal risks you may potentially encounter in your everyday life in relation to the Capital Regional District (CRD) Regional Growth Strategy Amendment process. The potential benefits of your participation in this research include benefits to the regional districts, Canadian society, and conflict resolution as a discipline. As stated above, little research has been done about the conflict resolution processes in regional districts, so this project is beneficial in promoting understanding of how conflict resolution practices works. Canadian society benefits from a refinement of understanding of how conflict works and what the potential responses are, and this project will add to the overall body of conflict resolution literature as a discipline still in early stages of development.

Your participation in this research must be completely voluntary. If you do decide to participate, you may withdraw at any time without any consequences or any explanation. If you do withdraw from the study your data will be used only if you give permission, but can be removed from the database if you wish.

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It is anticipated that the results of this study will be used to gain a better conceptualization of the conflict, and form some of the research data for my thesis.

Data (electronic, audio data, written documentation) from this study will be disposed of following the completion of my MA in Dispute Resolution. All electronic and audio data will be erased, and all written documentation will be shredded.

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Your signature below indicates that you understand the above conditions of participation in this study and that you have had the opportunity to have your questions answered by the researchers.

---

*Name of Participant*

---

*Signature*

---

*Date*

***A copy of this consent will be left with you, and a copy will be taken by the researcher.***

## Appendix G - Narratives S1, S2, S3, M3

### 5.2 Reader's Guide

- My role in the interviews took the form of questions and interjections which were filtered out during narrativisation.
- Most of the narratives told stories in a non-linear fashion, so I rearranged the text for continuity. Alterations to this end are noted by a forward slash (/). A forward slash also indicates omission of words or a natural pause, and often takes the traditional place of a comma. The length of the interview is included in the heading of each section.
- I altered tense and plurality as necessary to promote flow and understanding.
- Text contained in brackets [] is meant to clarify meaning.
- The subheadings are intended to emphasize common themes. **Truth and perception** represents the speaker's reality in relation to the overall story and reminds the reader of the context. **Complicating actions** and the resultant **perspective** imply a reoriented, analytical distance from the story based on the participants' expressions of the experience. The **coda** adds final thoughts that carry to the future.

**S1 Narrative:** November 21, 2008 (33 minutes)

#### Truth and Perception

The legislation around this is extremely unaccommodating / it's nice in theory / but / it's not modulated to deal with the scale of the issues

If the province is going to ignore the growth strategy anyways / quite honestly / one has to ask the question 'why are we going through all this?'

There is no capacity / no fiscal leaders / there are no regulatory leaders / there is no veto power at the end of the day that can hold municipalities accountable for whatever decision they make as to whether or not they are consistent with the growth strategy

It's really up to the municipalities / are you seriously behind this? Or are you paying lip service?

[The] RGS was not meant to be one cohesive plan / I mean the vision of the growth strategy is the way it is because it essential reflected the implicit vision already in the community plans

The only change was that it was going to be a snapshot picture of the foot print of urban development in this region from here on in

Where it starts to fall down is around the question how do you ensure discipline / or ensure that people adhere to the vision over time

The legislation basically says / you've got the growth strategy / you've got context statements / but really then it's up to the municipalities to implement / to give effect to the growth strategy as they see fit

[In the end] we will hold our noses and vote in favour of [the RGS]

We're the outlier in this province / we're the only one that have accessed these dispute resolution processes at this point / we did it on acceptance and on the first amendment [bylaw 3443]

I think that says something about the fractious nature of local government in this region / and maybe something about the immaturity of politics in this region

I think they [municipalities] all see themselves as very autonomous [resulting from] weak regional governance / that's the way municipalities like it / we are not willing to give up a modicum of control to a regional body because then we are diminished and the region is empowered and becomes this enduring force somehow

I think it's kind of like cutting off one's nose to spite your face

### **Complicating action**

The boundary was the issue / half of our council saw this first principle issue / [as] a line in the sand / that the regional urban containment boundary should never be changed

The other half felt there was some room for compromise / that the rough outlines from Gord's report was a reasonable compromise / this [thought] is symptomatic of the rest of the region

We have a situation where very small players like Highlands / North Saanich / Sydney / Metchosin / have been the tail wagging the regional dog for so long

I think the legislation is flawed / everything isn't the equivalent of the Israeli-Palestinian situation / it is a conflict enhancer as opposed to a conflict resolving mechanism

I didn't think we were going to get to resolution / certainly once the final proposal arbitration was invoked

This may be a bit off topic from your question / I don't think Gordon Sloan actually facilitated this exercise / I think he went in / talked to people / wrote a report and that was it / he didn't facilitate or as far as I can tell / make any kind of effort to actually facilitate an agreement / so in that sense what occurred was not facilitation / it was key informant interviews / and report-writing

There was no appetite to go in [after facilitation] / it was kind of up to the people involved to take it upon themselves to either call a meeting or call the facilitator back or something / work has to be done by the facilitator / or the CRD / or someone who is the perceived sponsor or the keeper of the process

## Perspective

Municipal governments are the farm team of the provincial government / there is this obligation / the last couple of premiers have been mayors of Vancouver / they go back to UBCM every year / and it is kind of like going back to their old schools / they will pass things / resolutions / that say / the province recognizes local governments as an order of government / it's nice / it sounds great / it has no constitutional meaning / the province can evaporate them any time they want to

There are some cases when / if they were really interested in the good governance part of the [Canadian] constitutional structure / maybe they should look at places like greater Victoria / does this really make sense? Thirteen thousand people / thirteen municipalities / two electoral areas? [One where] protracted conflict and irresolution over fundamentally minor issues or one [a bylaw dispute] where someone just has to make the call?

We've got a government rather than dealing with fundamental governance issues around how a metropolitan area should be managed and planned / they [the province] came up with a very complex piece of enabling legislation / that is based on the fiction that the local government are independent orders of government and that they are not creatures of the province as is outlined in the constitution / that they've got this autonomy and they pander to it in legislation / consequently we spend / it's expensive / it's time consuming / it's frustrating / with some vision at the provincial level / with some strong legislation about / what the role of the region is / what the roles of the municipalities are / what are the goals we have to achieve in regional planning / and some provincial support for that / through their decision making and spending / I don't think we would need to have as much effort spent on trying to resolve disputes

## Coda

Are we that different? / When I walk across Foul Bay [Road] / I don't really sense a massive cultural shift

## M3 Narrative: November 27, 2008 (16 minutes)

### Truth and Perception

Legislation is ineffective / as far as I'm concerned / if you don't get it [the boundary] right the first time / because of the issues with Highlands / how long and how frustrating it is to amend it / the legislation needs to be changed / I think there has to be a section in the RGS for some compromise and for some growth / I mean every municipality will be dealing with this in the next 50 years / You can't have it arbitrarily say no /

You listen to the municipalities who have been around for a 100 years / they're set with their land use / they know where their growth is / they seem to be controlling / they have the weighted vote on the board / they seem to be controlling what happens in the outlying areas

It's hard for us to say where our growth area is going to be because we are still in that process / finding different ways to doing our land use / from smart growth to sustainability / from nodal development

The Highlands and even Langford are fairly new / [Sooke is] quite a young municipality

### **Complicating actions**

(1) [When the RGS] was first presented to us / it wasn't going to be arbitrary / it was airy fairy / It's gone to the fact that's it's so controlling / it's so controlling around land use and servicing issues

(2) If they had concentrated on the water quality / quality of life / some growth / impact to benefits / it might have been different

I think the whole problem for the Highlands is the Bear Mountain issue / the fact that Bear Mountain was the overseer / and was going to benefit from that / turned off a lot of the city dwellers / Oak Bay / Victoria / Saanich are threatened by Bear Mountain because it's taking away from them

(3) And then<sup>1</sup> it went sideways

I was hoping it would go to a compromise / and when we got back to the board I could see that we weren't going to get any sort kind of resolution / there was quite a discussion on the board [after Mr. Sloan's report and before arbitration submissions] / some people wanted to leave it to the five year review of the RGS / some of us thought / let the Highlands decide because they hadn't actually had a resolution yet on which map they were considering [for submission to the arbitrator]

Then it had to come back to my council here [to make a submission to the arbitrator] and we decided we had three options / do nothing / go with Mr. Sloan's suggestions / or go with what the Highlands council voted on / we went with what the Highlands council voted on because we felt we shouldn't be interfering with other council decisions in their own municipalities

We wouldn't want it to happen to us / which it does happen / on a regular basis / the CRD gets involved in our planning decisions

### **Perspective**

For us / for me / personally / it shows that it's ineffective / the way it is set up in the legislation / having unanimous support for amendment to the RGS / it's not doable in this day in age [sic]

I think if more of the councillors had been at that meeting [the same June meeting referenced above] / some of the mayors would have had an opportunity to compromise but because they

<sup>1</sup> Meeting June 10, 2009 – with mayors, council, staff and Mr. Sloan

only had that resolution that was backing their actions / they didn't hear the whole process or see the display

Well I think for the Highlands / it would have been better to come with a solid resolution from the council / I know it was difficult for the mayor with the three-three split there [on the Highlands council] / I think if you're going to challenge the RGS you need a strong resolution / if you don't you're going to battle public perception / and at the board level / you know that was one of the questions from the board / Where is your resolution? / Was it unanimous? / If your own council is split / you're going to face a split on the [CRD] board

### **Coda**

In the big scheme of things I think we do need something regionally / especially in smaller municipalities that don't have the voter turnout / but I don't think they're ready to give control of their municipalities [to the CRD]

### **S2 Narrative: December 4, 2008 (87 minutes)**

#### **Truth and Perception**

It [the bylaw dispute] is not so black and white, it's not all or nothing, but a lot of other issues are clouding / there is a lot more coalescing of opinions /

It really illustrated how much work needs to be done in the five year review

[The RGS ] framework is really a collection of local vision / of themselves / a cod liver oil sort of thing / we know it's good for us but god damn it we don't like it / places like Saanich where they have a strong commitment to growth management / it reinforced what they were already doing / to other ones / it was a meaningless document / they were quiet resentful of being dragged into it

Langford had drawn the urban containment boundary at their municipal boundary, even including Goldstream park / a mistrust in the system / they didn't trust each other to do a regional [plan]

The cost in personalities and relationships was huge / some people made it so personal / the anger around the board became phenomenal

Yes / it is like herding female cats / I think they [CRD municipalities] would all be female cats because male cats fight differently/ female cat will back off if they lose and shit / and that's what they do / they have interesting territorial behavior

#### **Complicating actions**

We knew this was going south early on / we asked for a facilitator / the ministry is in charge and dictated a process and they sat on it for three or four months / dragging their feet / until it was really late and it had gone off the rails / they let it fester / they let a manageable issue become unmanageable

What Gordon did was really set the stage / to find a middle ground or a hybrid solution / the only thing I saw missing was a little more process / if Gord had done some shuttle diplomacy I think we would have gotten to a resolution or darn close

I think the threat of arbitration is always helpful / while I didn't agree with the district's timelines it forced people to sit up and start working / and they did

With the elected officials it was such unfortunate timing / that they could have campaigned around this / some could get on their high horse / the hypocrisy level around this was astounding / here people who would never have defended the RGS suddenly got religion around this / others who always been supportive suddenly got much quieter / if they thought they had been living in a glass house

The process associated with the growth strategy amendment process seems so incredibly naive / like with the arbitration process / those timelines which are written into the regulations / do you know how a council schedule works? Do you know how difficult it is to get council resolutions in a timely manner? A lot of them had to do special meetings / it's extremely onerous

### **Perspective**

Well it's huge / it was a test of our Regional Growth Strategy / the degree of support or non-support behind it / it showed some of the limitations of the legislations / some of the complexities of the regional growth strategy / some of the shortcomings in this region around how we work together/

It was painful / it was unfortunate that Highlands had to take on all that grief as it was well beyond their issue

I think if Highlands had reached agreement the CRD would have supported it

I think it would have been problematic if the arbitrator had chosen anything but the Highlands / it was the right decision

It felt like this incredible conflict over process and procedural roles / we had no control on process / no ability to hire our own facilitator / no ability to back out of it after the public hearing / it's just running down a track with no control / and then the ministry gets silent on us / if there is an ability in our five-year review to take more ownership of some of the decision-making

Sloan's process probably gave us more information than we could have taken in two years of consultation and focus groups / we got nice / streamlined feedback for the five year review

I think we need to revisit the key question/ [it's] not being forced down our throats here /

Why do you want to do it? What is a good outcome for you? What do we need to work together on? Where do you actually want to strengthen your voice when you go up against the province? / And then lets develop a good strategy to accomplish this / then it makes the

province the bad guy or at least the objective / that would focus [on] what the regional district needs to do to reign in the bad municipalities

But what if they focused in on what they want collectively / really focus in on it and focus the voice to the province to really get something for this region / they are kind of on track for some of those things like transportation and affordable housing / but their objective should be not to please the CRD with their regional context statement / that's almost irrelevant

### **Coda**

I feel like the larger process really helped the Highlands take a good look at this / they finally came to some sort of solution in their council

The [legislative] process creates disputes and then throws a lot of process to resolve it / I think there are elements of the process that were poorly managed / responsibility needs to be shared all the way around / it developed into such a big deal / for a whole lot of reasons / instead what would have been more helpful is a process that avoided disputes / it would be so much easier if we don't have to involve the province at all

Putting this kind of process on to busy local municipalities irritates them / I think it works against the CRD and I think it works against growth management / I think it needs to be thrown out and those who wrote it need to be thrown out

### **S3 Narrative : December 10, 2008 (55 minutes)**

#### **Truth and Perception**

It was a bit of a surprise

The Highlands is a distinct alternative to virtually every other local municipality and electoral areas / I think it's more about the rural character / large lots / twisty roads / lots of trees / one of the most important characteristics I hear about is the roads / we don't have street lights / there are amateur astronomers all over the county

There are two schools of thought [around what this development and the dispute mean] /

one is that urban development clustered in the south of Highlands will provide the Highlands with a tax increase such that the remaining Highlands can sustain themselves over the longer term with no development pressures / the cash cow effect of clustered urban development / it would create a situation with much more financial comfort / and then on the other hand there is a concern / the dynamic of the Highlands could change / the 'urbanites' as you call them / if they become stronger in numbers they could dominate / that could tip the scale the other way / which could open the door for more development

I think the focus on the Highlands had more to do with the developer than the issues

#### **Complicating Actions**

So Sloan produced his report / and then it got quiet for quite some time

Then the minister of community development sent a letter/advising that he had exercised the maximum amount of discretion / he dictated all the way to the end / in doing so he selected the method of arbitration and selected the arbitrator / and so that process has a start and finish date

[The Highlands's] choose to participate by submitting a proposal that was different than the one they sent to the CRD for the [original] amendment / then they went to work

Then the council set about in a dialogue on properties that might be included in the submission / they ended up identifying twelve properties that the council agreed upon to analyse as to whether they should or should not be included in the submission / that report came to council to consider and [with] little debate a motion was proposed to include all of those twelve areas in the submission to the arbitrations / and that was carried

### **Perspective**

It was a bit of surprise / because there is certainly controversy around some of the properties and there was a lot of internal dynamics at the table / because our council was essentially deadlocked at 3-3 because one person was away / on a leave of absence

The timing of the election has to have some relevance / of the six [council members] that were sitting there three were running / two of whom were running for mayor [of the Highlands] / the other side of the equations is if Highlands didn't agree to put a submission in / the arbitration would have selected a submission from someone else / [those] two things combined had a lot to do with the ultimate compromise

Plus it seemed as though that there was a strong level of acceptance of what was on the table / because it accomplished the larger goals / and because of what was put forward in the Sloan report as a way through this [dispute]

When the decision came down and in my view that was surprising / but in the end I guess it was the ability to compromise / I think that the council members realized if the Highlands were able to agree on a proposal / it would really represent the macrocosm of the region / I think there was a strong belief that because of all the conflict leading up to this point if the Highlands could agree to something that would in itself would be a compelling reason for the arbitrator [to pick their submission]

The decision of the Highlands council was recognized by the arbitrator / it's difficult to make sense of this because of the 'entrenchedness' of both sides in the Highlands all the way along and you know you're left with one of two conclusions

### **Coda**

They couldn't get there on their own for whatever reason / the arbitration forced them to compromise [or] everybody knew this was going to end in arbitration / although everyone's

actions never for a second suggested that / it certainly became a clash of ideology / to say the least / when the arbitrators decision came down / I thought 'okay it will be interesting to see where this will end up' / because it doesn't mean by any stretch this is where it will end up / because this is an imposed decision / and the only reason there would be widespread acceptance of it is because it is the proposal put forward by the Highlands

## Appendix H - Full-text of narrative data Chapter 5 and analysed in Chapter 6

### Reader's Guide

- My role in the interviews took the form of questions and interjections which were filtered out during narrativisation.
- Most of the narratives told stories in a non-linear fashion, so I rearranged the text for continuity. Alterations to this end are noted by a forward slash (/). A forward slash also indicates omission of words or a natural pause, and often takes the traditional place of a comma. The length of the interview is included in the heading of each section.
- I altered tense and plurality as necessary to promote flow and understanding.
- Text contained in brackets [] is meant to clarify meaning.
- The subheadings are intended to emphasize common themes. **Truth and perception** represents the speaker's reality in relation to the overall story and reminds the reader of the context. **Complicating actions** and the resultant **perspective** imply a reoriented, analytical distance from the story based on the participants' expressions of the experience. The **coda** adds final thoughts that carry to the future. Finally, each narrative is followed by a **summary** of analytical findings.

### (N1) Narrative 1 November 17th, 2008 33 minutes

#### Truth and perception

My stand is a principled / it's that this was an agreement / and why shouldn't this still stand / I actually don't agree that you change it ever / I wouldn't change it / it's part of the old deal

[The region] is so localized you've got this incredible land planning / Highlands is a glorious area / certainly a different part of the region than Victoria or Oak Bay / Highlands and Langford are very different / like chalk and peas

I think one of the issues here [is] the elephant in the room / a bear / When a guy from Vancouver comes over and wants to invest in forty-two stories at the top of Bear Mountain [golf resort, in Langford] / you should say wow – the world is coming apart

I think the urban containment [boundary] is vital for good planning because it contains sprawl and it doesn't change / I don't think sprawl adds to the quality of life

#### Complicating action

I attended that meeting in October / where the mayor of Highlands brought forward a proposal / reducing the amount of land for redevelopment to be less than what Gordon Sloan had recommended and he had the board going along with what he was thinking

[And the mayor of Oak Bay asked]... / well presumably this is a proposal that is coming from the council and has been approved and we're not getting ourselves involved [in a situation] that the mayor is saying is the solution that everyone else [Highlands council] is going to dispute

I thought it was a reasonable thing to ask / I think it's a principled thing to state 'well this is my position or our position' / It actually came out of the meeting that this was not the position the highland council had endorsed/ following that my understanding is that there is a position that the Highlands have unanimously agreed to

### **Perspective**

And I think decisions in the Highlands effect [other municipalities] / because if you keep the Highlands rural as opposed to urban / development has to go somewhere / the benefit if you like is you get smarter growth / it goes back to the urban containment boundary / if you do away with it / it just adds more land to be developed which becomes sprawl /

[Changing the boundary is] not what I call 'for the greater good' / I don't believe in policy that only affects select individuals or companies / that is not what I call 'the greater good' / if you ask anyone / do you want sprawl? Ninety-nine percent would say no / but / does Bear Mountain want to develop? Absolutely yes

I don't think the conflict was internally driven / I think it was externally driven / I think you've got this spill over from Bear Mountain that has created this friction in a community /

I think the shift which has been reported / before the election certainly helped / the fact of an election is / people say / well you better compromise now / or you better show you can compromise / if you want to get re-elected / which is why I made the point that they didn't need the arbitrator / because the election would focus peoples minds / a unanimous decision ten days before the election tells me that elections focus minds not the mediations

And you know Gord Sloan's idea was pretty good / I think the mediation gave them some ability to zero in / which I think is good / work to do / [and it resulted in] a reasonable compromise /

the mayor [of Highlands] was beaten by Jane Menden who was always on the other side/ and is now the mayor / I think there is a really strong message about the status quo [based on the election results] / and not growth for growth sake / North Saanich / Metchosin / Highlands / [are] more anti-growth / there is quite a message

I've said / that I would accept a compromise if it was unanimous in the Highlands' / and it is up the Highlands' to get a unanimous compromise / if the Highlands says we've got a position that we all accept / knowing how split that community is / then I think the [majority of the CRD] board will naturally accept it / my understanding is that there is a position that the highlands have unanimously agreed to

All along the position I have taken is that this should be taken to the five year review / which used to be the minority position / which then became the majority position of the board / and I don't think that has really changed

### **Coda**

the world has changed/ it's very different/ I think it will be easier now to find compromise on the RGS then it was 6 months ago/[because of ] the economic slowdown / I think that's a good thing / I hate to see the slowdown in growth / but / the slowdown is good for Victoria / if its short lived because it means that some of the stupidity in building is going to be looked at more realistically /Downtown is where you should build out /

Look at us / we've had one [RGS/boundary] for five years and we've got ourselves in a knot /I say okay change it once and never again / once this is done / I say leave it / I will go back to my principle of not reviewing / we could review small stuff / but / not the boundary

were not willing to impede on the autonomy of another municipalities ability to make a principled, populist decision. Therefore, they were willing to participate in the facilitation to generate possible solutions but, not push for one. Given the proximate of the ADR process to 2009 municipal elections it was also important to have the populist position, and to allow the election to sort out winners and losers.

### **(N2) Narrative 2 January 6, 2009 52 minutes**

#### **Truth and Perception**

This is the first test of the waters/ it's obvious from my perspective and from a number of other municipalities that there are flaws in the growth strategy [legislation] / we swam upstream for 1000 days and never got anywhere until the last day when the current slowed down

Our identity is one of a lot of open green spaces / tourist / an eco-friendly region / we have significant green space / which the Highlands thankfully provides

Thirty-five percent of our land is park / fifty percent is protected / we're doing our part and more / we don't have a commercial core or an industrial core / we're not asking for the region to let us pave paradise / We're just asking to have a little piece of what everyone else has / financial sustainability /

Most governing process require a simple majority / a simple majority defeated the [RGS] master implementation agreement / which brought on conflict / There should never have been a conflict / [the] CRD dropped the ball two years ago / we're missing the RGS MIA / we should have had that tool / and unfortunately [the] CRD board burned making a decision on that / I believe that was done purposely so that we didn't have that tool in place

#### **Complicating actions**

Our regional context statement was accepted by a 10-9 vote [at the CRD board] that gave our municipality some reassurance / We began to run into a bunch of resistance / people started to fan the fire / I mean there are people in the Highlands that have been adamant that water never come to the Highlands / they want to protect their own little fiefdoms /

[the province] felt further facilitation wouldn't have produced any new results / [and] made the decision [to go to final proposal arbitration] and it was in their legislative right to do so / I agree with that / I don't think we would ever have been able to get 100 of the municipalities to agree /

A number/ of municipalities that quite honestly dug their heels in and said there is the line in the sand and we're not willing to move it / we've signed and you've signed / we have legal rights over what you want to do

unfortunately the final stage of this process [submission to the arbitrator] came forward before municipal elections / we lost some of the support we had / personally I've lost respect for a lot of those people / because they put their political careers ahead of what they believed in / simply so they could get elected again /

I wanted [Sloan] to bring all three parties [the CRD, the Highlands and Bear Mountain] to the table / although it's not mandated / he represented the whole government / if they had been involved in the process then yes that might have worked out

### **Perspective**

When I read Sloan's report / that the status quo was not acceptable / and as far as the region was concerned neither was the full-blown boundary extension / I never doubted that even if we went to arbitration that we wouldn't get something / sure we were taking a gamble / That is why I was more in favour / of an arbitration process / I [knew] what the legislation said

the problem with / the steps Sloan suggested was timelines / I think even if we had come up with that [a resolution] / gone through this whole process / to a vote again / trying to get 100 percent resolution from all municipalities / had someone say no/ and gone back to final arbitration anyway / we were two years down the road already / it didn't seem fair /

[Sloan] suggested the / two polarized sides come to a consensus on an acceptable compromise / which we did end up doing / because / we had no choice/ our position wasn't going to be represented /the question / whether arbitration produced any result / yes it did / it basically said you have to submit something or you don't participate / and it gave some timelines / [and] said there is going to be an end /

We could have [come to resolution without arbitration] with different legislation

I think it's positive for the municipality of the Highlands / the results that came from this are not necessarily what the Highlands had approved and not necessarily what the land owner in the area wanted / but it's a compromise / we had to / [this is] a nine year-old [sic] goal

accomplished / it will have long-term financial benefits which can lead to social benefits and environmental benefits

The CRD needs to pass the master implementation agreement which will further allow the expansion of services outside the urban containment boundary / that's a tool to help service expansion / if it makes sense

### **Coda**

I hope the province will take a harder look at this because I know there are a lot of other municipalities who are watching / Squamish / Lillooet regional districts / Pemberton is really watching this / they were about to engage in creating a regional growth strategy and put the brakes on it because they wanted to make sure they weren't being handcuffed

New legislation has been put in place and that's a result of what we have gone through / it has to do with a minor change / minor amendment to the legislation / I think there are some more legislative changes to be considered / not to make it easy to change / but certainly not make it impossible because this is about as possible as it can get /

**(N3) Narrative 3 January 6, 2009 121 minutes**

### **Truth and Perception**

We were always trying to figure out what was going on / how did this happen? I was meant to be on council to solve this issue / it's been in our community for too long / causing a lot of conflict and division in our community / this is the beauty of compromise / it created a lot more peace / people on either sides of the community / would have liked less or more / would agree / this is fair

The underlying conflict comes from different views of how [the] Highlands' future should progress / it's not that the [other council members] didn't want that [Bear Mountain Comprehensive Development] / it was about the way to achieve it / and then that led to different levels of sympathy or empathy around how much land was needed

There are a lot of people who see Highlands as this green space / low development / different from other municipalities / low / density and service / and other people are concerned with the consequences of that / which means smaller budgets /not huge cash flow

The third element [is] major land owners / I think it's unusual in [the] Highlands' case / a land owner /financially a magnitude bigger than the municipality / It sets up a dynamic which is difficult to deal with / because we don't have the power / there is power in politics / in this case the developer has more power to lobby / more power to pay for lawyers / more power to spend money / making sure the wording is in favour of the developer / compared to Highlands small budget / a part-time staff

I think the conflict works on many levels of fear / people who are open to the development / fear / that the community is stopping the community from being viable/ fear / that they don't understand the potential for financial revenue

Fear / what we have is getting diminished / in a way that is irreversible / like the night sky / during the election I knocked on probably two-thirds of the houses / there's this very sweet woman / up a hill / widowed / lives in this house / and she, just in her sixties, watched the whole thing happen / it just devastated her / before, she used to look at the mountain skirt / she didn't own the land but nonetheless she had to watch it all come down / big piles / piled up / burning debris / then came the crane / and the hotel / she used to look out upon Mount Finlayson / now she sees Bear Mountain

these people had their house there / they had all this forest / now it's about a fifty to one hundred meter buffer / they hear all this noise / some guy on the ninth hole drinking this beer / the blasting / those are direct impacts / they see the visuals / the loss of the night sky

### **Complicating actions**

Gord came out with his report / [then] things kind of stalled / Jane Medan [council member at the time, mayor now] and I made motions / we wanted to talk about it / we wanted to strike a sub-committee with various motions which all failed 3-3 / so there was a decision to not go forward

Then / the CRD voted to have this rolled into the five-year review / the Minister [Blair Lekstrom] in September imposed / force[d] binding arbitration / I didn't agree with him / Once [Minister Lekstrom] invoked [arbitration] its clear within the legislation what the time frames are [approximately 6 weeks from start to finish] / the time frame was ludicrous

You had to submit your proposal by early November / just during municipal elections / when all the other municipalities may not be interested in what happens in the Highlands / because of the time frame it had to be really simple / the submission had to be about the line / where is the line? / In other words the submission is just a map / most municipalities ended up / digging their heels in / saying no change / which Gord Sloan's report said 'no change is not a very good option / it wouldn't solve anything / those municipalities chose to shirk [responsibility] in a sense by not changing

[The CRD ] process [to determine their submission to the Arbitrator] unfolded in an unusual way / at the CRD meeting our Mayor pulled out his own map / that we hadn't seen / some of the other board members asked if Highlands council has seen or approved this / he had to reply 'no / there hadn't been time' / which is amazing / because he had resisted talking about the Sloan report all summer / we voted on trying to talk about the Sloan report / that got crushed until the arbitration process came up / then the mayor of Highlands was talking about it at the CRD board / the only way there was movement on the other side of the table was by having this arbitration process /

### **Perspective**

I'd say it was a gradual shift in expectations of process and dispute outcomes / it didn't happen all at once / it happened when the Highlands made their submission / the completion of that shift happened when the arbitrator made his decision

It was something we were unable to talk about let alone resolve after three years / when you don't have [a] discussion like we eventually did / you don't know what someone else is thinking / Fear causes people not to see any solutions /

the facilitation process succeeded a hundred percent I think Gord's report articulated the feeling of all the communities /and he extracted it beautifully / that was useful even though we didn't act on it right away / The map in Gord's report represented the consensus of the region / in retrospect how could you call it a failure when in fact the option chosen by the arbitrator was almost identical to the one in Gord's report /

I think there are other ways to design [a resolution process] to get the same context to happen with it being more of a bottom-up as opposed to it coming from the province /

I think a bit more facilitation would have been good / his process has been unfairly characterized by the media and by politicians / I've tried to correct the Times Colonist / when they say the facilitation process failed / they don't realize the role he was put in / facilitating / he wasn't suppose to mediate / in fact he got to a point where [they were able] to articulate possible solutions / missing was a mediation step / or a step that said it's back in your court Highlands /

I think it wasn't the arbitration per se that helped us create a solution / it was explicitly imposed / I think in my mind it would have been for any of the two sides virtual political suicide to come out and say / 'I think we're better off not submitting' [a proposal to the arbitrator] / councillors all felt we have to agree to something / Our submission / the one picked in the end was virtually identical to Gord's report / just refined / the eighty-twenty solution / eighty percent of the development on twenty percent of the land /

[the resolution] provides some certainty / Now they [Highlands' council] need to talk to Bear Mountain / maybe there are some win-win / who knows if there is a reduction of conflict between Bear Mountain and the Highlands council and community / that would be good for everybody

### **Coda**

The story's almost over / it would be nice to have a chapter closed and to see [the] Highlands less in the paper / no tiger stories / no crime stories A peace treaty has been made and signed / [now lets] work with it to minimize the conflict / diminish the fears of those concerned with what the change will mean /