

TO: Planning & Development Committee

FROM: B. Newell, Chief Administrative Officer

DATE: April 20, 2023

RE: Section 52 Agreement – Transportation Act

Administrative Recommendation:

THAT the Minister of Transportation and Infrastructure be requested to enter into an agreement with the Regional District under Section 52(2) of the *Transportation Act*.

Purpose:

The purpose of this report is to provide options regarding a possible agreement between the Regional District and the Minister of Transportation and Infrastructure under Section 52(2) of the *Transportation Act*.

Background:

Under Section 52(3) of the *Transportation Act*, a Regional District zoning bylaw does not apply to a “controlled area” — which is defined as meaning land within an 800 metre radius of the intersection of any road with a controlled access highway (e.g. Highways 3, 3A, 5A, 97 & 97C – see Attachment No. 1 below) — unless:

- a) *the bylaw has been approved in writing by the minister or any person designated in writing by the minister before its adoption, or*
- b) *the bylaw is in compliance with the terms of an agreement referred to in subsection (2) between the minister and the municipality or regional district.*

At present, the Regional District ensures compliance with the requirements of Section 52(3) by seeking approval of the Minister of Transportation and Infrastructure, or their delegate, of the applicable zoning bylaw in accordance with sub-section (a).

As a result, between 2 to 4 weeks can be added to the processing time of certain zoning bylaws due to the need to obtain Ministerial approval between 3rd reading and adoption.

While it is understood that the Ministry has not previously entered into an agreement under Section 52(3)(b), such an agreement *could* allow qualifying bylaws to proceed to adoption without the need for formal Ministerial approval (thereby reducing processing times).

Provincial Interest:

It is understood that, in reviewing Regional District zoning amendment bylaws, the Ministry is principally concerned with ensuring that a proposed development will not adversely impact the safety and operation of a controlled access highway. This includes, amongst other things, determining;

- the anticipated vehicle trip generation that will result from the proposed land use (e.g. average trips generated during the highest peak traffic periods are calculated at being >100 trips);

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- impacts to any known areas where additional traffic load would lead to a worsening condition of a known safety issue; and
 - if the land use change creates an increase of >20% traffic load at existing intersections.

RDOS Bylaws:

During the four year period between 2019 and 2022, approximately 89 bylaws were either submitted to the Regional District or initiated by the RDOS Board. Of these:

- 37.1% (33 bylaws) were zoning and affected lands within 800 metres of a Controlled Area;
- 97% of these (32 of 33 bylaws) were referred to the Ministry for its review and comments prior to the Board considering 1st reading of the bylaw;
 - the 1 bylaw that was not referred was withdrawn prior to agency referral.
- In 96.9% of instances (31 of 32 bylaws), the Ministry advised that “Preliminary Approval is granted for the rezoning for one year pursuant to section 52(3)(a) of the *Transportation Act*.”
 - in the other instance, the Ministry granted a one year “Preliminary Approval” but required the applicant obtain an Access Permit as a condition or approval.

In summary, between 2019 and 2022, MoTI approved every amendment bylaw referred to it by the Regional District under Section 52(3) of the *Transportation Act* and generally without issue.

Provincial “Development Approval Process Review” (DAPR):

Released in 2019, the DAPR is an on-going provincial initiative that is seeking “to address challenges and identify opportunities for improvement in the current development approvals process, and to support local governments in eliminating barriers to affordable housing and accelerate the construction of the homes they need in their communities.”

In April of 2022, senior MoTI staff attending a provincial webinar regarding upcoming DAPR initiatives indicated the Ministry was open to entering into a Section 52 Agreement with any interested local government. As a result of this invitation, a draft agreement has been developed (see Attachment No. 2).

Analysis:

An agreement between the Ministry and Regional District under Section 52(3) of the *Transportation Act* is seen to possess a number of benefits, including:

- reduction of processing times and elimination of an unnecessary step for a vast majority of bylaws that currently require Ministry approval; and
- furtherance of a provincial DAPR objective by helping to speed up local government approvals and construction in order to build more homes.

Under the Draft Agreement, if the Minister, or their delegate, does not respond to a bylaw referral, or responds to the referral and indicates any of the following:

- (a) *preliminary approval of the bylaw is granted;*
- (b) *the Minister’s interests are unaffected by the proposed bylaw;*

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- (c) *the Minister does not anticipate that the proposed bylaw would have any negative impact on a controlled area; or*
- (d) *there are no specific conditions or requirements the Minister wishes the Regional District to consider, or consider imposing, in relation to the bylaw;*

then the proposed bylaw is deemed to be in compliance with the Agreement and may be adopted by the Regional District without any further review or approval by the Minister after 3rd reading.

Alternative:

The option of retaining the status quo by not requesting the Minister of Transportation and Infrastructure enter into an agreement under Section 52(2) of the *Transportation Act* is available to the Board.

Alternatives:

1. status quo.

Respectfully submitted



C. Garrish, Planning Manager

Attachments: No. 1 – Map of Controlled Access Highways & Controlled Areas
No. 2 – Draft Controlled Areas Agreement

Attachment No. 1 – Map of Controlled Access Highways & Controlled Areas

