



**CENTRAL SECTOR LIQUID WASTE MANAGEMENT PLAN
STEERING COMMITTEE**

**Thursday, March 28, 2013 - 9:00 A.M.
CVRD Boardroom, 175 Ingram Street**

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9. <u>CLOSED SESSION</u>		
10. <u>ADJOURNMENT</u>		

The next meeting of the Central Sector Liquid Waste Management Plan Steering Committee will be held at 9:00 a.m., May 23, 2013.

Distribution:

John Lefebure, Mayor, Municipality of North Cowichan, Chair
Harvey Alphonse, Chief, Cowichan Tribes
Phil Kent, Mayor, City of Duncan
Loren Duncan, Electoral Area E
Lori Iannidinardo, Electoral Area D

As Well As:

Dave Devana, CAO, North Cowichan
John MacKay, P. Eng., North Cowichan
Peter de Verteuil, CAO, City of Duncan
Abbas Farahbakhsh, City of Duncan
Brian Dennison, P. Eng., CVRD
Baljeet Mann, MoE
Maureen Tommy, Cowichan Tribes
Helen Reid, Cowichan Tribes

Copy To:

Rob Hutchins, CVRD Chair
Warren Jones, CAO, CVRD

Minutes of the meeting of the Central Sector Liquid Waste Management Plan Steering Committee held in the Boardroom, 175 Ingram Street, Duncan, on January 24, 2013 at 9:00 a.m.

PRESENT: Mayor Lefebure, North Cowichan, Chair
Director Duncan, Electoral Area E <9:35 a.m.>
Director Iannidinardo, Electoral Area D
Sharon Jackson, City of Duncan Alternate

ABSENT: Mayor Kent, City of Duncan
Chief Alphonse, Cowichan Tribes

ALSO

PRESENT: Brian Dennison, P. Eng., CVRD
Tom Ireland, CAO, City of Duncan
Dave Devana, CAO, North Cowichan
John MacKay, P. Eng., North Cowichan
Baljeet Mann, MoE
Helen Reid, Cowichan Tribes
Rodger Hunter, Cowichan Watershed Board
Joanne Bath, Recording Secretary

**APPROVAL OF
AGENDA**

It was moved and seconded that the agenda be approved as presented.

MOTION CARRIED

**ADOPTION
OF MINUTES**

The following correction was noted to the last sentence of Discussion Item D-2: *"A **\$16,321,000** grant application has been submitted by **Duncan/North Cowichan Joint Utilities Board** to pipe effluent out to a Satellite Channel outfall."*

It was moved and seconded that the minutes of the November 22, 2012 Central Sector Liquid Waste Management Plan Steering Committee meeting be adopted as amended.

MOTION CARRIED

**BUSINESS ARISING
OUT OF MINUTES**

BA1

Mr. Dennison advised that the bylaw to establish the Central Sector LWMP function received three readings at the CVRD Board and will now go to the Province and City of Duncan and North Cowichan Councils for approval, before adoption.

CORRESPONDENCE

A letter to Cowichan Tribes from the Steering Committee Chair regarding the proposed Satellite Channel Outfall was received.

The Chair advised that the Tribes have not responded to this letter.

Helen Reid, Cowichan Tribes representative, advised that it is her understanding that the Tribes are in favour of this initiative, but she will look into it and report back.

REPORTS

R1

Draft terms of reference for a JUB governance study were provided for discussion.

It was moved and seconded that the Duncan/North Cowichan Joint Utilities Board be requested to include funding of \$20,000 in the JUB budget to undertake the 2013 Governance Study, based on the following Terms of Reference:

- 1. Identify suitable potential governance models for the JUB to include wholly owned corporation, commission and any others that may be pertinent for the conditions of the JUB.**
- 2. Provide a report comparing and contrasting the advantages and disadvantages of each governance model.**
- 3. Participate in a discussion session with the stakeholders to consider the various options.**

MOTION CARRIED

R2

John MacKay provided a report on Joint Utility Board capacity. A study is now required to reassess the lagoon capacity.

Discussion took place regarding the need for additional capacity units in Cowichan Bay due to failing septic systems and the 69 units already committed to developers for new subdivisions.

The Ministry of Environment voiced concern that the Committee is jumping ahead with an amendment before initial steps are put in place. The Ministry has yet to receive a response to their letter requesting an update on the plan.

Mr. Dennison replied that response to the Ministry's letter is pending a decision on issues to be addressed in the amendment. Also there are financial considerations, waiting to see if grant money comes through.

It was moved and seconded that the Duncan/North Cowichan Joint Utilities Board (JUB) be requested to undertake a capacity review of the JUB to determine if additional capacity can be provided to the users of the treatment system without undertaking improvements.

MOTION CARRIED

Sharon Jackson asked that the consultant for this work report to all stakeholders.

R3

Discussed under R2.

R4

The Committee considered a recommendation for revised terms of reference for the plan amendment.

Discussion took place regarding keeping the Central Sector Liquid Waste Management Plan focused on sewage. CVRD are suggesting a basin based liquid waste management plan be established separately. Mr. Jones will bring this initiative forward to other CAOs in the near future.

The Ministry of Environment commented that the Liquid Waste Management Plan is a versatile tool and a backbone for future amendments. If a Non-point Source Pollution Plan is also established and signed off by the Minister, it could also provide a backbone for future initiatives. The Ministry has been promoting addressing non-point pollution in the plan amendment for some time.

It was moved and seconded that the following issues be addressed in an amendment process for the Central Sector Liquid Waste Management Plan:

- 1. The establishment of a new ocean outfall to replace the existing JUB discharge to the Cowichan River within 10 years in keeping with the 2011 lease agreement signed between the Cowichan Tribes, City of Duncan and the Municipality of North Cowichan.**
- 2. Consider the long term replacement of the existing JUB treatment works.**
- 3. Review and update other initiatives in the current plan document.**

MOTION CARRIED

ADJOURNMENT

It was moved and seconded that the meeting be adjourned.

MOTION CARRIED

The meeting adjourned at 10:55 a.m.

Chair

Recording Secretary

Dated: _____



Administration provided
By UBCM

Funding provided by:
Government of Canada

Canada

In partnership with:
The Province of BC



Gas Tax Program Services

Local Government House
525 Government St
Victoria BC V8V 0A8

Phone: 250 356-5134
Fax: 250 356-5119

Website:

www.ubcm.ca
under
Funding Programs

Gas Tax Fund, Gas Tax
Agreement

Gas Tax Program Services

...delivering the federal gas tax agreement funding in British Columbia

January 26, 2013

COPY



Dave Devana
Chief Administrative Officer
District of North Cowichan
Box 278
Duncan, BC V9L 3X4

Dear Mr. Devana:

Re: GAS TAX GENERAL STRATEGIC PRIORITIES FUND AND INNOVATIONS FUND APPLICATIONS

Thank you for submitting your 2012 General Strategic Priorities Fund (GSPF)/ Innovations Fund (IF) application for funding under the Gas Tax Program. We have now completed approvals and unfortunately your application for the Duncan/North Cowichan JUB Wastewater Outfall Relocation and Community Integrated Resource Recovery project, was not approved for funding.

In total, 53 projects have been approved totaling over \$53 million in GSPF and IF funding for capital and capacity building projects. These approvals, along with the approvals made under the 2011 intake, fully commit the GSPF and IF allocation for the 2010-2014 Gas Tax extension funding. Consequently, there is no further funding available under these programs.

The 2012 intake was oversubscribed by a considerable margin, with over 200 applications received totaling over \$440 million in grant funding requested, outweighing available funds by almost 8:1. This did not allow for all worthy applications to be funded.

A list of successful projects will be available on our website at (<http://www.ubcm.ca/EN/main/funding/gas-tax-fund.html>) after all of the media events and announcements have been made.

We wish to thank you for taking the time to develop and forward your application.

Sincerely,

Gary MacIsaac, Chair
Management Committee

Mayor + Council
Mark Frame
John Mackay
Jay Reitsma

Mayor Jon Lefebure
Chair, Central Sector Liquid Waste
Management Plan Steering Committee
PO Box 278
Duncan, BC
CANADA
V9L 3X4

February 15, 2013

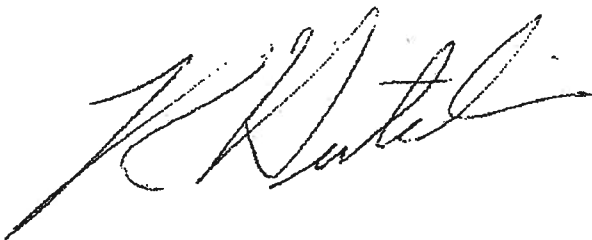
Dear Mayor Lefebure:

We are writing to you in your role as Chair of the Central Sector Liquid Waste Management Plan (CSLWMP) Steering Committee as follow up from discussions and a resolution arising from the Cowichan Watershed Board's February 7, 2013 meeting. At that meeting Watershed Board members expressed concern that non-point sources of pollution are not included within the current CSLWMP and as a result they unanimously passed the following Resolution. *The Cowichan Watershed Board Co-chairs will write to the Chair of the Central Sector Liquid Waste Management Plan Steering Committee requesting that the Steering Committee consider including non-point source pollution within the Plan and offering the services of the Cowichan Watershed Board to manage the non-point source component of the Plan.*

We would appreciate it if you would use this resolution to introduce discussion on this important issue at the next Steering Committee meeting and report back to the Watershed Board with the Steering Committee's recommendation.

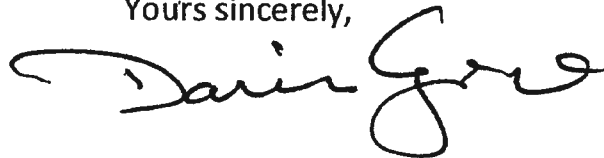
We trust that this is satisfactory.

Yours sincerely,



Rob Hutchins,
Co-Chair

Yours sincerely,



Calvin Swustus
Co-Chair



cc Rodger Hunter
Coordinator
Cowichan Watershed Board

March 14, 2013

File No.

RFP-ES-010-13

*Duncan / North Cowichan
Joint Utilities Board*

**RE: CVRD RFP – ES-010-13 – Investigation of Alternatives for
Governance of the Joint Utilities Board lagoon treatment system**

Your firm is invited to submit a proposal to carry out an investigation of alternatives for governance of the Duncan - North Cowichan Joint Utilities Board (JUB) lagoon treatment system.

Background

The sewage treatment and disposal system serving the City of Duncan, the Southern portion of the Municipality of North Cowichan, the Cowichan Bay area, the Eagle Heights area and portions of Cowichan Tribes land is leased from Cowichan Tribes certificate land holders under the attached long term lease agreement. The sewage collection service areas in Cowichan Bay and Eagle Heights are owned and operated by the CVRD. The Cowichan Tribes operate their own collection system. Each of these areas have a separate service agreement with the City of Duncan and the Municipality of North Cowichan.. (See attached service agreements for Cowichan Bay and Eagle Heights Sewer Systems)

of possession

The system is managed by a joint sub-committee of the City of Duncan and Municipality of North Cowichan councils, referred to as the Joint Utilities Board (JUB). Annual budgets, major upgrades and other longer term or more expensive decisions for the system are considered by the JUB with recommendations requiring ratification by both councils. Agreement service area representatives are invited to attend the periodic JUB meetings, but do not have voting rights. Plant operations are carried out by North Cowichan staff.

In 1994, the CVRD, together with the City of Duncan, the Municipality of North Cowichan and the Cowichan Tribes, embarked on a liquid waste management planning process. The resulting Central Sector Liquid Waste Management Plan (CSLWMP) was approved by the Minister of Environment in August 1999. Among other initiatives, the CSLWMP resulted in upgrades and improvements carried out at the JUB lagoon facility. One of the long term goals of the plan is to investigate the replacement of the existing discharge into the Cowichan River with an outfall into Satellite Channel between Vancouver Island and Salt Spring Island.

The CSLWMP Steering Committee has recently held a series of meetings to initiate an update to the plan, which was last amended in June 2001.

by the JUB

Should note that Cowichan Bay joined the JUB in 2001 by purchasing 746 units from the City of Duncan and that Cow Bay allocated unused cap units to all property within their service area unlike North Cowichan.

An ongoing issue between the "owners" of the JUB system and the agreement service areas is the allocation of capacity. The service agreements allocate capacity by a system of "capacity units". The basis for a capacity unit is the expected sewage flow from a residential home. Equivalent capacity unit values have been assigned to a variety of commercial, industrial and other uses. When the agreements were prepared, after a major upgrade of the lagoon system, the units were allocated according to the total estimated capacity of the lagoon system and the proportion of the upgrade costs paid by each jurisdiction, which in turn, was based on the sewage flows then being discharged to the lagoons. However, since the agreements were signed, the Cowichan Bay area in particular has seen a disproportionately higher rate of uptake of residual capacity resulting in all of the residual capacity being allocated. In this case, one jurisdiction may purchase residual capacity from another system; however, if no other system is prepared to sell capacity, then further growth in the service area may not occur.

In the past, the CVRD electoral area director for Cowichan Bay has voiced frustration with this constraint. There has been considerable discussion at the CSLWMP Steering Committee level regarding this issue, including the consideration whether another form of governance of the JUB should be considered.

Consequently at the January 24, 2013 meeting of the Central Sector Liquid Waste Management Plan Steering Committee it was resolved that:

"The Duncan/North Cowichan Joint Utilities Board be requested to include funding of \$20,000 in the JUB budget to undertake the 2013 Governance Study, based on the following Terms of Reference:

- 1. Identify suitable potential governance models for the JUB to include wholly owned corporation, commission and any others that may be pertinent for the conditions of the JUB.**
- 2. Provide a report comparing and contrasting the advantages and disadvantages of each governance model.**
- 3. Participate in a discussion session with the stakeholders to consider the various options."**

A preliminary assessment of a commission model and a wholly owned corporate model for governance was investigated by [REDACTED]. The attached letter provides their findings.

(Lidstone Young Anderson)

Terms of Reference

Your firm is invited to submit a proposal to carry out an investigation of alternatives for governance of the JUB lagoon treatment system. As noted in the above resolution it is expected that a commission system and a wholly owned corporation at a minimum be considered. Also any other system or combination of systems as may be appropriate for the multi-party conditions of the JUB should be considered and contrasted.

The best governance system would meet the following expectations of the stakeholders

1. Provide security of access to capacity of the system for each of the stakeholders.
2. Anticipate and develop increases in capacity so that no stakeholder would be constrained in growth and development plans.

3. Consider how agreement parties can be given a vote in proportion to their capacity unit ownership
4. Consider modification to service agreements to require a specified number of capacity units be set aside by the partners for sale to others.

I am trying to find letter. do you have it?

Your work plan should include the following components.

1. Meet with representatives of each of the jurisdictions currently utilizing the lagoons to obtain their perspective and needs.
2. Investigate alternatives and prepare a report comparing and contrasting each of the alternatives
3. Provide a presentation to the ~~SWMP steering committee~~ of the draft results of the study and obtain further comment. *↑ JUB*
4. Finalize report

Evaluation of proposals

As noted in the above resolution, a maximum budget of \$20,000 has been established for this work.

Your written submission is requested no later than ~~4:30 p.m., April 11, 2013.~~ *to be determine*

Concise proposals will be received by:

Joanne Bath, Administrative Supervisor, Engineering Services

Via:

E-mail: ~~jrbath@cvrd.bc.ca~~

Facsimile: ~~(250) 746-2543, or~~

Mail: ~~175 Ingram Street, Duncan BC V9L 1N8~~

the CVRD steering committee has no legal jurisdiction with this matter

to JUB

Proposals will be evaluated by a team consisting of representatives of each of the stakeholders. The following criteria will be considered.

1. Meeting the budget constraint – 40%
2. Methodology – 20%
3. Experience – 20 %
4. Overall quality of proposal – 20%

A follow up presentation may be requested.

Please direct any inquiries you may have to:

Mr. Brian Dennison, P. Eng., General Manager, Engineering Services, CVRD at 250-746-2530 or via e-mail: bdennison@cvrd.bc.ca; ✓

OR

Mr. John Mackay, P. Eng., Director of Engineering, Municipality of North Cowichan, at 250-746-3100 or via e-mail: MACKAY@northcowichan.ca ✓

Yours truly,

Brian Dennison, P. Eng., General Manager
Engineering & Environmental Services

BWDD:jlb

pc: CLWMP Steering Committee
John MacKay, P. Eng. MNC

\\cvrdstore1\HomeDir\Bath\RFPe\2013\RFPe-ES-010-13-JUBGovernance.docx

L. STONE, YOUNG, ANDERSON
BARRISTERS & SOLICITORS

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VIA FAX

REPLY TO: VANCOUVER OFFICE

February 21, 2005

Mr. Jim Dias
Administrator
District of North Cowichan
7030 Trans Canada Hwy.
P.O. Box 278
Duncan, BC V9L 3X4

Dear Jim:

**Re: Joint Utilities Board
Our File No. 00024-0193**

Further to our November 21, 2000 letter outlining the options available to the District and the City of Duncan with respect to the legal nature, powers and duties of the Joint Utilities Board, you have asked us to provide an update on the law. In this letter, we address the options of a joint commission, company or society.

A. Background

The JUB is an unincorporated body composed of representatives from the District and the City. The JUB's role is limited to management of the sewage lagoons that are rented from the Cowichan Indian Band by the District and the City.

The JUB originated in 1977 under an agreement between the District and the City. From the District's perspective, the agreement was authorized by "Duncan-North Cowichan Joint Utilities Agreement Bylaw 1977", Bylaw No. 1721. The agreement provided for the establishment of the JUB as a board composed of two council members from each municipality, supported by senior municipal staff.

Section 7 of the agreement provided:

"When a joint use of any utility, including sanitary sewer systems, has been approved, the Board shall be administratively responsible for the construction, operation and maintenance of such utility."

The agreement further provided for annual budgets to be approved by resolution of both councils, with decisions to be submitted to a joint meeting of the councils if there was not a

consensus. Section 8 of the agreement expressed the extent of independence to be given to the JUB:

“For the purpose of the administration and maintenance of any approved joint use of a facility, the Board shall within its budget and terms of reference aforesaid, make recommendations to the respective Councils in regard to the engaging and discharging of employees; and execute such contracts and expend such monies as may be necessary.”

In other words, the JUB was given authority to enter contracts on behalf of the District and the City, within approved budgets, but not to enter contracts of employment.

The 1977 agreement was for a term of 20 years expiring in 1997. We understand that the agreement has not been renewed but that the JUB continues to operate in the same manner as previously.

To the extent the arrangement is continuing, there is an implied agreement between the District and the City. Since each incurs a liability, the agreement arguably should not extend beyond 5 years without the approval of the electors (or an exemption under the Liability Regulation) under Section 175 of the *Community Charter*. Other problems with the JUB include capacity to contract, insurable interest and incurring liability without legal accountability (which falls on the municipalities).

The issue of the JUB's structure and legal status has arisen in part because of insurance issues and a potential lease with First Nations. The District and the City wish to evaluate the role that the JUB will have, as well as the optimal legal structure.

B. Legal Nature of the JUB

The legal nature of the JUB is not clear but it likely has no legal authority to make any binding decisions. It is not a committee or a commission, and it is not a separate legal entity. We have some concern that the individuals who are acting as members of the JUB could be exposed to personal liability for actions taken without proper authorization. Therefore we continue to recommend the legal status of the JUB be clarified.

Alternatively, the JUB could be disbanded and either of the municipalities could operate the sewage lagoons under an agreement between the municipalities. Assuming the District and the City wish to continue with management of the lagoons by a distinct entity, in our view the two feasible approaches in that regard are:

- (a) establishment of a joint commission under Sections 8(1), 14 and 143 of the *Community Charter*; or
- (b) incorporation of a company under the *Business Corporations Act*.

A joint commission would not exist as a separate corporation, but could exercise extensive delegated authority. A company would be an independent corporation and its relationship with the municipalities would have to be controlled through a comprehensive agreement. If independent borrowing authority and protection of the municipalities from liability are critical, in theory the incorporation of a company could offer an advantage.

C. Establishment of a Joint Commission

Section 143 of the *Community Charter* empowers a municipal to establish and appoint commissions to:

- (a) operate services,
- (b) undertake operation and enforcement in relation to Council's exercise of its regulatory authority, or
- (c) manage property and licenses held by the municipality.

In carrying out its powers and duties, a commission acts only as an extension of the local government. A commission only has those functions which are expressly delegated to it by the local government. However, the delegation authority conferred by Section 154 includes all statutory powers, duties and functions of the local government, subject to some specific exceptions. The powers and duties which could be exercised by the JUB include the following:

- (a) expending municipal funds, within approved budgets, and maintaining separate accounts;
- (b) contracting with suppliers and consultants;
- (c) contracting with service customers;
- (d) owning property, including interests in land;
- (e) engaging, administering and dismissing employees; and
- (f) enforcing bylaws relating to the use of the sewage lagoons.

It even appears that expropriation powers could be delegated to a commission. Under Section 154(2) of the *Community Charter*, the powers and duties that may not be delegated to a commission include all powers and duties that are only exercisable by bylaw and the power to appoint, suspend or terminate a local government officer. The "bylaw" powers which cannot be delegated to a commission include:

- (a) borrowing powers;

- (b) property taxation;
- (c) the imposition of fees and charges; and
- (d) establishment of sewer user regulations, prohibitions and requirements.

In summary, a joint commission could be authorized to carry out all the functions that the JUB presently undertakes. In addition, the JUB could be authorized to:

- (a) hold a licence or lease of the sewage lagoon lands;
- (b) make independent decisions regarding the repair, upgrading or replacement of the sewage lagoons, within budgets approved by the Councils;
- (c) enter agreements with the Cowichan Indian Band, the CVRD and other customers regarding use of the sewage lagoons;
- (d) engage and supervise its own employees.

In order for the JUB to function as a joint commission of the District and the City, it would be necessary for both Councils to pass a resolution under section 8(1) and to adopt a bylaw under Section 13 and 14 of the *Community Charter*, authorizing an agreement for the joint exercise of their powers through the commission.

It is important to recognize that although a commission may function independently in a range of matters, a commission always acts as the agent of the local government or local governments which create the commission. If the JUB incurred a debt or liability, or violated the rights of an employee or another person, responsibility for the JUB's actions would remain with the District and the City.

D. Incorporation of a Company or Society

Under Section 10 of the *Business Corporations Act*, one or more individuals may form a company. Upon registration of the required documents, the company is incorporated as a separate legal entity, with "the power and capacity of a natural person of full capacity", under Section 30 of that Act. Companies may own property and borrow money. Therefore a company could carry on the entire business of sewage lagoon construction, operation and management.

However, local governments are restricted in their authority to incorporate and participate in private companies. The provincial government has a long-standing policy of not allowing municipalities to avoid the restrictions in the *Community Charter* through the establishment of private companies under municipal control.

Therefore, although Section 8(1) of the *Community Charter* allows a municipality to “incorporate a corporation or acquire shares in a corporation.” Section 185 of the *Community Charter* provides:

- “185. A municipality may only
- (a) incorporate a corporation other than a society, or
 - (b) acquire shares in a corporation
- with the approval of the inspector...”

One of the tests that is traditionally applied by the Inspector in considering applications under Section 185 is whether the proposed functions of the company could be carried out by the municipality itself, using the powers provided in the Act (and subject to the limitations in the Act). The Inspector is also interested in whether the company has limited purposes (so that it is not free to carry on activities not contemplated at the time of approval) or whether the municipality can sell the company shares to a third party after the municipal assets are rolled into the company.

Finally, Section 154(2) of the *Community Charter* provides that the council’s authority to delegate its powers, duties and functions:

- “... does not include authority to delegate to a corporation incorporated by the local government or to a corporation in which a local government acquires shares.”

Therefore, if a company was to undertake the operation, maintenance, improvement and construction of the sewage lagoons, including any related borrowing, it would be necessary for the company to be incorporated by persons other than the municipalities and to operate at arm’s length from the municipalities. The members and shareholders of the company could not include the municipalities.

If a company was established, the municipalities could deal with such a company through an agreement under Section 8(1) of the *Community Charter*, which empowers agreements with private companies concerning the operation of local government services and the management of property held by the local government. The councils could also provide “assistance”, including loan guarantees to the company, if the agreement was structured as a “partnering agreement”. However, if the duration of the agreement was greater than five years, approval of the electors would be required under 175 of the *Community Charter* (subject to the Liability Regulation) before the municipalities could agree to assume any financial responsibilities to, or on behalf of, the company.

In the alternative, the municipalities could pursuant to section 8(1) of the *Community Charter* incorporate a society under the *Society Act*. This would not require approval of the Inspector and the society would relate to the municipalities in the same manner as a company. The principal

differences relate to appointing members as opposed to being shareholders, the more limited purposes of the society, the nature of the constitution of a society versus that of a company, and the rules governing the directors.

E. Conclusions

Whether or not the JUB is continued, the District and the City should make an agreement for the joint operation of the sewer lagoon service should be entered by of Duncan under Sections 8(1), 13 and 14 of the *Community Charter*. If the District and the City wish to continue operating the sewage lagoons through a separate body, we recommend that the legal status, powers and responsibilities of that body be clearly defined.

In our view, if the JUB is continued, an appropriate form for the JUB is a commission under Section 154 of the *Community Charter* or a company or society. As noted above, a commission could perform all of the current functions of the JUB, as well as several additional functions. Incorporation of a company to manage the sewage lagoons would make sense if it was critical to create an entity with independent borrowing power, to separate the entity's potential liability from that of the municipalities and to create an entity with a narrow focus or purpose. The councils would be able to control the company or society to the extent they control the appointment or dismissal of directors, they establish the purposes, and they enter into the management agreement. The councils would retain more direct control in dealing with a commission (including authority to change the members of the commission, to revoke or amend the commission's delegated powers, or even to disband the commission).

Sincerely,

LIDSTONE, YOUNG, ANDERSON

A handwritten signature in dark ink, appearing to read 'D. Lidstone', with a large, stylized loop at the beginning.

Donald Lidstone

L'ESTONE, YOUNG, ANDERSON
BARRISTERS & SOLICITORS

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VIA FAX

REPLY TO: VANCOUVER OFFICE

November 21, 2000

Mr. Jim Dias
Administrator
District of North Cowichan
7030 Trans Canada Hwy.
P.O. Box 278
Duncan, BC V9L 3X4

Dear Jim:

Re: Joint Utilities Board
Our File No. 00024-0193

This letter outlines the options available to the District and the City of Duncan with respect to the legal nature, powers and duties of the Joint Utilities Board. In particular, you have requested our opinion on the possibility of establishing the JUB as a corporation.

A. Background

At present, the JUB is an informal body composed of representatives from the District and the City. We understand that the JUB's role is limited to management of the sewage lagoons that are rented from the Cowichan Indian Band by the District and the City.

The JUB originated in 1977 under an agreement between the District and the City. From the District's perspective, the agreement was authorized by "Duncan-North Cowichan Joint Utilities Agreement Bylaw 1977", Bylaw No. 1721. The agreement provided for the establishment of the JUB as a board composed of two council members from each municipality, supported by senior municipal staff.

Section 7 of the agreement provided:

"When a joint use of any utility, including sanitary sewer systems, has been approved, the Board shall be administratively responsible for the construction, operation and maintenance of such utility."

The agreement further provided for annual budgets to be approved by resolution of both councils, with decisions to be submitted to a joint meeting of the councils if there was not a consensus. Section 8 of the agreement expressed the extent of independence to be given to the JUB:

“For the purpose of the administration and maintenance of any approved joint use of a facility, the Board shall within its budget and terms of reference aforesaid, make recommendations to the respective Councils in regard to the engaging and discharging of employees; and execute such contracts and expend such monies as may be necessary.”

In other words, the JUB was given authority to enter contracts on behalf of the District and the City, within approved budgets, but not to enter contracts of employment.

The 1977 agreement was for a term of 20 years expiring in 1997. We understand that the agreement has not been renewed but that the JUB continues to operate in the same manner as previously.

At this time, the issue of the JUB's structure and legal status has arisen in part because of the pending long-term capital and operating agreements with the Cowichan Indian Band and the Cowichan Valley Regional District. The District and the City wish to evaluate the role that the JUB will have in administering those agreements, as well as providing a continuing forum for liaison between the District and the City.

B. Legal Nature of the JUB

At present, the legal nature of the JUB is not clear but it likely has no legal authority to make any binding decisions. It is not a committee or a commission, and it is not a separate legal entity. We have some concern that the individuals who are acting as members of the JUB could be exposed to personal liability for actions taken without proper authorization. Therefore we recommend that the legal status of the JUB be clarified.

Alternatively, the JUB could be disbanded and either of the municipalities could operate the sewage lagoons under an agreement between the municipalities. Assuming that the District and the City wish to continue with management of the lagoons by a distinct entity, in our view the two feasible approaches in that regard are:

- (a) establishment of a joint commission under Sections 176(1)(g) and 246 of the *Local Government Act*; or
- (b) incorporation of a company under the *Company Act*.

A joint commission would not exist as a separate corporation, but could exercise extensive delegated authority. A company would be an independent corporation and its relationship with the municipalities would have to be controlled through a comprehensive agreement. If independent borrowing authority is critical, in theory the incorporation of a company could offer an advantage, however there are significant limitations on the incorporation of companies by municipalities, as discussed below.

C. Establishment of a Joint Commission

Section 176(1) of the *Local Government Act* was recently amended by the addition of paragraph (g), which empowers a municipal council:

- “(g) to establish commissions to:
 - (i) operate services of the local government,
 - (ii) undertake operation and enforcement in relation to the local government’s exercise of its regulatory authority, and
 - (iii) manage property or an interest in property held by the local government.”

In carrying out its powers and duties, a commission acts only as an extension of the local government. A commission only has those functions which are expressly delegated to it by the local government. However, the delegation authority conferred by Section 176(1)(e) includes all statutory powers, duties and functions of the local government, subject to some specific exceptions. The powers and duties which conceivably could be exercised by the JUB include the following:

- (a) expending municipal funds, within approved budgets, and maintaining separate accounts;
- (b) contracting with suppliers and consultants;
- (c) contracting with service customers;
- (d) owning property, including interests in land;
- (e) engaging, administering and dismissing employees; and
- (f) enforcing bylaws relating to the use of the sewage lagoons.

It even appears that expropriation powers under Division 3 of Part 8 of the *Local Government Act* could be delegated a commission. Under Section 191 of the *Local Government Act*, the powers and duties that may not be delegated to a commission include all powers and duties that are only exercisable by bylaw and the power to appoint, suspend or terminate a local government officer. The “bylaw” powers which cannot be delegated to a commission include:

- (a) borrowing powers under Division 4 of Part 9 of the *Local Government Act*;
- (b) property taxation (including parcel taxes) under Sections 359 and 360 of the *Local Government Act*;

- (c) the imposition of fees and charges under Section 363 of the *Local Government Act*;
- (d) establishment of any new municipal service, which may only be authorized by Council under Section 517.1 of the *Local Government Act*; and
- (e) establishment of sewer user regulations under Section 518.1.

In summary, a joint commission could be authorized to carry out all the functions that the JUB presently undertakes. In addition, the JUB could be authorized to:

- (a) hold a licence or lease of the sewage lagoon lands;
- (b) make independent decisions regarding the repair, upgrading or replacement of the sewage lagoons, within budgets approved by the Councils;
- (c) enter agreements with the Cowichan Indian Band, the CVRD and other customers regarding use of the sewage lagoons;
- (d) engage and supervise its own employees.

In order for the JUB to function as a joint commission of the District and the City, it would be necessary for both Councils to adopt bylaws under Section 246 of the *Local Government Act*, authorizing an agreement for the joint exercise of their powers through the commission.

It is important to recognize that although a commission may function independently in a range of matters, a commission always acts as the agent of the local government or local governments which create the commission. If the JUB incurred a debt or liability, or violated the rights of an employee or another person, responsibility for the JUB's actions would remain with the District and the City.

D. Incorporation of a Company

Under Section 5 of the *Company Act*, one or more individuals may form a company. Upon registration of the required documents, the company is incorporated as a separate legal entity, with "the power and capacity of a natural person of full capacity", under Section 21(1) of that Act. Companies may own property and borrow money. Therefore a company could carry on the entire business of sewage lagoon construction, operation and management.

However, local governments are restricted in their authority to incorporate and participate in private companies. The provincial government has a long-standing policy of not allowing municipalities to avoid the restrictions in the *Local Government Act* through the establishment of private companies under municipal control.

Therefore, although Section 176(1)(f) of the *Local Government Act* allows a municipality to “incorporate a corporation or acquire shares in a corporation”, the only purpose for which incorporation is allowed is “to engage in commercial, industrial and business undertakings”. Municipal councils may not incorporate companies to engage in governmental undertakings, such as the management of municipal services.

Further, Section 195 of the *Local Government Act* provides:

“195. A local government must not incorporate a corporation or acquire shares in a corporation without first receiving the approval of the inspector.”

One of the tests that is traditionally applied by the Inspector in considering applications under Section 195 is whether the proposed functions of the company could be carried out by the municipality itself, using the powers provided in the Act (and subject to the limitations in the Act). If so, the Inspector is reluctant to approve an incorporation.

In our opinion, a sewage lagoon company would not be incorporated as a “commercial, industrial and business undertaking”, rather it would be incorporated as a vehicle to deliver a municipal service. Therefore it is very unlikely that incorporation is authorized by Section 176 or that the Inspector would give approval for incorporation.

Finally, Section 191(2) of the *Local Government Act* provides that the council’s authority to delegate its powers, duties and functions:

“... does not include authority to delegate to a corporation incorporated by the local government or to a corporation in which a local government acquires shares.”

Therefore, if a company was to undertake the operation, maintenance, improvement and construction of the sewage lagoons, including any related borrowing, it would be necessary for the company to be incorporated by persons other than the municipalities and to operate at arm’s length from the municipalities. The members and shareholders of the company could not include the municipalities.

If an arm’s length company was established, the municipalities could deal with such a company through an agreement under Section 176(1)(a) of the *Local Government Act*, which empowers agreements with private companies concerning the operation of local government services and the management of property held by the local government. The councils could also provide “assistance”, including loan guarantees to the company, if the agreement was structured as a “partnering agreement”. However, if the duration of the agreement was greater than five years, a counter petition opportunity would be required under Section 334.1 of the *Local Government Act* before the municipalities could agree to assume any financial responsibilities to, or on behalf of, the company.

E. Conclusions

Whether or not the JUB is continued, an agreement for the joint operation of the sewer lagoon service should be entered by the District and the City of Duncan under Section 246 of the *Local Government Act*. If the District and the City wish to continue operating the sewage lagoons through a separate body, we recommend that the legal status, powers and responsibilities of that body be clearly defined.

In our view, if the JUB is continued, the appropriate form for the JUB is a commission under Section 176(1)(g) of the *Local Government Act*. As noted above, a commission could perform all of the current functions of the JUB, as well as several additional functions.

Incorporation of a company to manage the sewage lagoons would only make sense if it was critical to create an entity with independent borrowing power. However, a company with no significant share capital would likely only be able to borrow on the strength of guarantees from the municipalities, therefore the municipalities would incur the same liability as if they borrowed directly. We doubt that lending institutions would advance significant loans to a new company on the strength of service agreements that did not incorporate loan guarantees.

Finally, since a sewage lagoon company would have to operate at arm's length from the municipalities, it seems unlikely that the councils would be prepared to give up the control that they would retain in dealing with a commission (including authority to change the members of the commission, to revoke or amend the commission's delegated powers, or even to disband the commission).

On the whole, we recommend that early consideration be given to establishment of the JUB as a joint commission of the District and the City.

Sincerely,

LIDSTONE, YOUNG, ANDERSON

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GA/ab



STAFF REPORT

R4

CENTRAL SECTOR LIQUID WASTE MANAGEMENT PLAN STEERING COMMITTEE MEETING OF MARCH 28, 2013

DATE: March 21, 2013 **FILE No:** CSLWMP

FROM: Brian Dennison, General Manager, Engineering Services

SUBJECT: Public and Technical Committee

Recommendation/Action:

1. That it be recommended to the CVRD Board that the CVRD formally notify the Ministry of Environment of the intent to commence an amendment process for the Central Sector Liquid Waste Management Plan.
2. That a public and technical committee be struck with representation from the following:
 - Electoral Area D - Cowichan Bay director
 - Electoral Area E - Glenora/Sahtlam/Cowichan Station director
 - North Cowichan Chief Engineer
 - City of Duncan – Director of Public Works
 - 1 Cowichan Tribes representative
 - 5 public representatives
 - 1 Ministry of Environment representative
 - 1 VIHA representative
 - 1 Planning Department representative from North Cowichan, or Duncan, or CVRD
 - 1 Economic Commission member
 - 1 Department of Fisheries and Oceans representative

Relation to the Corporate Strategic Plan:

Financial Impact: (Not applicable)

Background:

In order to commence with an amendment of the CSLWMP, the following steps are required.

1. Formal resolution adopted by the CVRD Board
2. Strike a public advisory committee
3. Strike a technical advisory committee

The following excerpts provide the direction from the Ministry of Environment regarding the composition of the public and technical advisory committees.

4.2.2 Public Advisory Committee

A public advisory committee should be established as early in the planning process as possible. In order to ensure that the public advisory committee primarily reflects community interests, local governments should seek and invite representation from each of the following sectors or groups, which exist in the community:

- (a) One elected representative from each municipality;
- (b) First Nations within or adjacent to the plan area;
- (c) Local environmental groups;
- (d) Residents of electoral area and municipalities in the regional district;
- (e) Local business groups and rate-payer associations;
- (f) Operators or owners of private liquid waste facilities;
- (g) Generators of large liquid waste discharges;
- (h) Local school districts;
- (i) The technical advisory committee;
- (j) The consulting team; and
- (k) The Ministry of Environment.

4.2.3 Technical Advisory Committee

A technical advisory committee should be established concurrently with the public advisory committee. In order to ensure that the technical advisory committee primarily reflects government interests, the municipality should seek and invite representation from the following agencies and organizations:

- (a) The Ministry of Environment
- (b) Engineering and/or planning departments of the regional district and member municipalities;
- (c) First Nations;
- (d) Health Authorities;
- (e) Provincial and federal ministries or agencies who have indicated interest or whose mandate will be affected by or will affect the planning process; and
- (f) The public advisory committee, including at least one non-governmental and one governmental representative from that committee.

It has been the CVRD's experience that a combined technical and public advisory committee is more efficient, reliable and cost effective than having two separate committees. For the public members two options exist: 1) Advertise among the broader community for members; 2) Draw on the existing Environment Commission, which already has the Plan Monitoring Advisory Committee role for the CSLWMP and could also be seen to be representing environmental groups.

Submitted by,



Brian Dennison, P. Eng.,
General Manager
Engineering Services

BWDD:jljb

Reviewed by:

Division Manager:

Approved by:

General Manager: