

## Regional District Conservation Funds in British Columbia: Three Case Studies



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## Introduction

This paper discusses funds established by regional districts to acquire and preserve land for conservation purposes and to fund conservation activities. It presents three case studies from around British Columbia, examining conservation funds established by the Capital Regional District (CRD), the Regional District of East Kootenay (RDEK), and the Cowichan Valley Regional District (CVRD).<sup>1</sup> The purpose is to explain the process of creating conservation funds to serve as examples for local governments and community organizations considering establishing such funds.

The paper concludes with a summary of concerns and issues local governments or others should consider before, during and after the establishment of a regional conservation fund. A legislative “roadmap” of the relevant provisions of the *Local Government Act* is included as Appendix 1; bylaws used to establish land acquisition fund services are included as Appendix 2.<sup>2</sup> While these case studies are limited to regional districts, municipalities have broader powers to enact conservation funds under the *Community Charter*.<sup>3</sup>

The case studies presented in this paper are for information purposes only and should not be relied upon as legal advice.

## Why Conservation Funds?

Most regional districts have very little funding for conservation activities and acquisition of locally and regionally significant tracts of land. One successful strategy over the past ten years has been the regional district conservation fund.<sup>4</sup> Although regional districts have used tax revenue to acquire park land for decades, only recently have they established distinct funds for the specific purpose of acquiring and conserving land and undertaking ecological conservation activities. Having a dedicated fund with relatively stable income allows regional districts and supporting conservation organizations to undertake long-term planning for sensitive ecosystems and land acquisition priorities. The following case studies examine three existing regional district funds and the legislative provisions that enable and govern them.

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<sup>1</sup> Two regional district conservation funds not discussed in this paper are Metro Vancouver’s Heritage Parkland Fund, established in 1994 under different legislation, and the Central Okanagan Regional Parks Legacy Program, established in 2008 without a service bylaw.

<sup>2</sup> *Local Government Act*, R.S.B.C. 1996, c.323.

<sup>3</sup> S.B.C. 2002, c.27. For example, section 8(3)(a) empowers municipalities to broadly regulate, prohibit and impose requirements in relation to municipal services.

<sup>4</sup> These funds are referred to as conservation funds, land acquisition funds, and parkland funds.

## Case Study #1: Capital Regional District – Land Acquisition Fund<sup>5</sup>

### Description

The Capital Regional District (CRD) is the regional government for 13 municipalities and three electoral areas located on the southern tip of Vancouver Island.

Prior to 1999, the CRD purchased parkland by borrowing money, for which it will continue paying until 2012.<sup>6</sup> In 1999, after the adoption of the regional Green/Blue Spaces Strategy and with leadership from the regional district, municipal councils were asked to support the establishment of the Regional Parks Land Acquisition Fund with funding from a property tax levy. Some municipal councils supported the fund as proposed. Other municipalities included a public opinion poll on the ballot for the 1999 municipal elections to canvas public support for the establishment of the fund. None of the six polls were binding referenda but for each poll the majority of electors supported some level of taxation for the fund.

With support from member municipalities and thus board members, the regional district board approved the tax for a period of ten years, beginning in 2000 at \$4.39 per \$100,000 assessed value (\$10 per household on average at the time). As of 2008, the tax had decreased to \$1.92 per \$100,000 assessed property value, maintaining the fund at around \$1.7 million annually and the cost per household on average around \$10.

To date, CRD Regional Parks has purchased 2,958 hectares of regionally significant green space valued at \$27.8 million. The CRD's major partner in land acquisitions is The Land Conservancy (TLC) of British Columbia, a charitable land trust. Acquisition priorities are set out in the Regional Parks Master Plan, the document that establishes the vision for the future of the regional parks and trails system. As of 2008, the CRD's contributions amounted to \$17.25 million (62 percent), while its partners' contributions amounted to \$10.55 million (38 percent).

### Applicable Legislation

The regional board established the CRD Land Acquisition Fund under the *Park (Regional) Act*,<sup>7</sup> which was repealed in 2003. The fund was an item in the Regional Parks budget, requiring consent of the board. However, the board was not compelled to obtain municipal or electoral area approval as it would be required to today under the service establishment provisions of the *Local Government Act*, discussed in the two case studies below.<sup>8</sup>

### Administration

Each member municipality collects the tax and remits it to the CRD. The CRD collects the tax from its electoral areas. The CRD Regional Parks department is responsible for spending the funds on parkland acquisition.

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<sup>5</sup> Significant input to this section was provided by Jeff Ward, Manager Planning, Resource Management and Development, CRD Parks. Personal communication, September-October 2009.

<sup>6</sup> For example, the total debt requisition in the 2008 Regional Parks budget was \$605,060.

<sup>7</sup> *Park (Regional) Act*, R.S.B.C. 1996, c. 345.

<sup>8</sup> *Local Government Act*, *supra* note 2, Division 4.

### **Challenges and Wisdom**

Generating the political support necessary to put conservation funds on the board agenda can be difficult. It is important to build consensus among the community, local businesses, the chamber of commerce and politicians before the fund is placed before regional board members. Land conservation organizations can champion the creation of the fund and create significant public support.

Long-term planning is crucial. Starting with a comprehensive vision and developing detailed strategies to achieve that vision provides important justification for the fund and keeps all participants focused. Keeping the public informed on progress also maintains support for the fund.

## Case Study #2: Regional District of East Kootenay – Columbia Valley Local Conservation Fund<sup>9</sup>

### Description

The RDEK established the Columbia Valley Local Conservation Fund in 2008. The Columbia Valley subregion comprises electoral areas F and G and the municipalities of Radium Hot Springs, Invermere and Canal Flats, all of which supported establishment of a fund. Other municipal councils in the RDEK did not support the fund and asked to be excluded from the service area.

In establishing the conservation fund, the RDEK worked closely with the East Kootenay Conservation Program (EKCP), a partnership of 49 conservation, industry and government organizations dedicated to conserving natural areas for Kootenay communities.

The fund seeks to conserve and restore fish and wildlife habitat, watersheds, and open spaces, including family farms and ranches and forested land. The intent is to provide funding for conservation projects that are not the existing priority of governments. The focus is on private land, but projects involving Crown land are also considered. The fund prioritizes projects that can demonstrate a reduction of a known threat to a biodiversity target in ecosystems such as mature forest, hydro-riparian, grasslands and marshes.

### Applicable Legislation

A regional district must establish a service either by:<sup>10</sup>

- referendum;
- consent on behalf of the electors by board members and municipal councils; or
- alternative approval process.

The service of a conservation fund allows the regional district to charge a property value tax, a parcel tax or a fee.<sup>11</sup>

The RDEK used its authority to establish the service of providing a conservation fund by parcel tax. It chose to proceed by referendum as governed by section 801.2 and Part 4 of the *Local Government Act* for those areas whose board members supported the fund. The normal procedure involves separate voting for each participating area (a municipality or local area) in the service area (the whole area to which the service will be provided).<sup>12</sup> However, the board could (and did) pass a resolution allowing a collective vote for the service area (in this case the Upper Columbia Valley).<sup>13</sup> The EKCP generated support for the resolution from all participating areas with the logic that conservation would benefit everyone in the Upper Columbia Valley.

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<sup>9</sup> Significant input to this section was provided by Nancy Newhouse, former Program Manager, East Kootenay Conservation Program. Personal communication, October 2009.

<sup>10</sup> *Local Government Act*, *supra* note 2, s. 801.

<sup>11</sup> See Appendix 1 “Legislative Roadmap”.

<sup>12</sup> *Local Government Act*, *supra* note 2, s. 801(3).

<sup>13</sup> Allowed by 2/3 vote under s. 801(4).

A referendum is not strictly necessary when establishing a new service, but it is considered a good idea to explicitly engage the public in discussing the need, and showing their support for, a conservation fund. Participating area approval can either be sought separately for each participating area, or be sought for the entire service area. When approval is sought separately for each participating area, it is normally achieved by referendum. However, municipal councils may consent on behalf of their electors, and electoral area directors may consent on behalf of their electoral area.<sup>14</sup> When participating area approval is sought for an entire service area, the board may proceed by referendum, or by alternative approval process.<sup>15</sup> However, in both cases, a public referendum is seen as a more open, transparent way of establishing a new service.

The EKCP found citizens had trouble understanding the question posed in the referendum, the wording of which closely followed the phrasing in the actual bylaw that established the fund via parcel tax.<sup>16</sup> The question read:

Are you in favour of the Regional District of East Kootenay adopting Bylaw No. 2083 to:

- establish the “Columbia Valley Local Conservation Fund Service” within Electoral Areas F and G, the District of Invermere, Village of Radium Hot Springs, and Village of Canal Flats; and
- annually requisition up to a maximum of \$230,000 or the product of \$0.055 per \$1,000 of taxable assessed value of land and improvements, whichever is greater, to be collected by an annual parcel tax?

It must be noted that parcel taxes can be problematic in some rural areas where individual ranches may include many parcels and thus the same land owner could pay the tax several times. The other common alternative is to specify a property value tax rate (as the CRD and CVRD did). The RDEK bylaw includes mention of a property value tax rate, as well as a maximum amount, which it is allowed to do under the *Local Government Act*, although it is only required to list one or the other.<sup>17</sup>

The regional board gave the bylaw three readings and the Inspector of Municipalities approved it before the referendum occurred as part of the 2008 local government elections. On November 15, 2008, 54% of voters approved the Local Conservation Fund. The RDEK formally adopted Bylaw No. 2083 on December 12, 2008. It expires in ten years on December 31, 2018.

### **Administration**

Each participating member municipality collects the tax and remits it to the RDEK. The RDEK collects the tax from its participating electoral areas.

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<sup>14</sup> *Local Government Act*, *supra* note 2, ss. 801.4, 801.5.

<sup>15</sup> *Ibid.*, s.801.1.

<sup>16</sup> There is no legislation in British Columbia governing the wording of a referendum. Case law in the area is sparse. In *Morton v. Quesnel (City)*, [2005] B.C.J. No. 932, 2005 BCSC 610, 45 B.C.L.R. (4th) 359, 11 M.P.L.R. (4th) 274, the BC Supreme Court affirmed that a referendum, which is by definition an election under the *Local Government Act*, is neither a “statutory power of decision” nor a “statutory power” and thus is not subject to review under the *Judicial Review Procedure Act*. The Court also held that a local government is authorized to take steps to support and promote an outcome to the referendum, and further, that individual councillors cannot be faulted for making known publicly their position.

<sup>17</sup> *Local Government Act*, *supra* note 2 s.800.1(1)(e).

The establishing bylaw specifically allows the RDEK to enter into an agreement with the EKCP to assist with program delivery. It is expected that the EKCP will be responsible for all aspects of program management, other than the direct financial administration (collection of taxes and grant payments). This will include advertising calls for proposals, responding to enquiries, and evaluating projects. The RDEK will be responsible for final approval of all projects, grant payments and financial audits of the Program.<sup>18</sup>

### **Challenges and Wisdom**

One of the biggest challenges facing the EKCP was the public's desire to understand precisely how funds would be spent, should the referendum pass. The RDEK was hesitant to invest the time and resources to determine the exact mechanics of the fund until they were sure it would be approved. At the same time, the EKCP did not want to foster expectations about funding for specific projects. It was important to ensure the public understood that an appropriate evaluation process would be established once the fund was in place.

Another challenge was helping citizens understand the referendum question. After unsuccessfully attempting to simplify the question, the EKCP eventually simplified their own message of support to "vote yes to conservation [inquire for details]."

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<sup>18</sup> Columbia Valley Local Conservation Fund Draft Terms of Reference, online: <[http://www.ekcp.ca/Downloads/CVLCF\\_Terms\\_of\\_Reference.pdf](http://www.ekcp.ca/Downloads/CVLCF_Terms_of_Reference.pdf)>.

## Case Study #3: Cowichan Valley Regional District – Regional Parkland Acquisition Fund<sup>19</sup>

### Description

The CVRD established its Regional Parkland Acquisition Fund in December 2008. The service applies to the entire CVRD, including the municipalities of Duncan, North Cowichan, Lake Cowichan and Ladysmith, and nine electoral areas.

The impetus for the fund came from the CVRD board itself. The Regional Parks and Trails Master Plan of 2007 identified strong public support and the capacity necessary to establish the fund.<sup>20</sup> The CVRD completed the Master Plan with extensive consultation across the region to guide acquisition and management of regionally significant sites having outdoor recreational and/or environmental values.

The CVRD undertook an advertising and public awareness campaign, which included open houses across the region, to present factual information on the intent of the fund and to make residents aware of the referendum taking place concurrent with the fall 2008 municipal/regional elections.

### Applicable Legislation

The board considered its options, including seeking assent of the electors for each participating area or proceeding by alternative approval process (see the legislative roadmap in Appendix 1), but ultimately decided on a referendum for the entire regional district. The referendum took place on Nov 15, 2008. Note that this referendum question differs from that posed by the RDEK in that it does not state the maximum amount to be requisitioned. It asked:

Are you in favour of the Board of the Cowichan Valley Regional District adopting “CVRD Bylaw No. 3163 - Regional Parkland Acquisition Fund Service Establishment Bylaw, 2008” to establish an acquisition fund to provide for expenditures in respect to acquiring regional parkland within the Cowichan Valley Regional District? (This question is being asked in all 9 Electoral Areas and 4 Municipalities)

In the establishing bylaw, the CVRD opted to apply a property value tax rather than a parcel tax. The maximum that can be requisitioned annually is the greater of \$715,000 or the amount that could be raised by a property value tax of \$.05942 per \$1,000 of net taxable value of land and improvements. The CVRD chose but was not required to include both maximum amounts. Like the RDEK, the CVRD gave the bylaw three readings and received the Inspector’s approval prior to the referendum.

The CVRD board may terminate the fund at its discretion when the fund is no longer required to achieve the parkland acquisition objectives of the Regional Parks and Trails Program.

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<sup>19</sup> Significant input to this section was provided by Brian Farquhar, Parks and Trails Manager, CVRD. Personal communication, October 2009.

<sup>20</sup> CVRD, Regional Parks and Trails Master Plan, 2007, online: <<http://www.cvrld.bc.ca/index.aspx?NID=301>> at 79.



**Administration**

The fund is administered through the CVRD Regional Parks Program, with money to be used to purchase lands identified for acquisition in the Master Plan or as otherwise directed by the CVRD board. The funds can only be used to purchase lands for regional park purposes. Each member municipality collects the tax and remits it to the CVRD. The CVRD collects the tax from its electoral areas.

**Challenges and Wisdom**

The most difficult challenge in establishing the Regional Parkland Acquisition Fund was educating the public about the fund's purpose and relevance to the implementation of the adopted Master Plan. This was at least in part due to other activities happening at the same time, such as a federal election and the concurrent regional/municipal election. Staff suggest that successfully establishing a land acquisition fund is predicated on having a plan in place for priority land acquisitions that clearly identifies publicly and politically supported objectives.

## Things to Consider Before, During and After Establishing a Conservation Fund

### Pre-Establishment

1. Build consensus in the community through education. This is especially important if the board members have not identified the establishment of a conservation fund as a priority. The support of municipal politicians and area directors assists in garnering regional board support.
2. Establish a detailed conservation strategy. The EKCP had trouble meeting the public's demands to know what areas would be conserved before voting in the referendum. It is useful to have an existing conservation strategy that describes what lands will be given priority. Ideally, the fund will be a part of a comprehensive long-term plan, such as the CVRD's Regional Parks and Trails Master Plan or the CRD's Green/Blue Spaces Strategy and Regional Parks Master Plan.
3. Poll residents in each participating area well in advance of the referendum to determine the extent of support for the fund.

### Establishment

1. Consider whether the fund should terminate on a specified date, and what that date should be. The date will depend on the time it is expected to take to reach land acquisition goals or conservation objectives.
2. Consider the form of tax best suited to the needs of the fund and the citizens supporting it. Both parcel taxes and property value tax rates have advantages and disadvantages.
3. Complete the preparatory work ahead of time. The establishing bylaw should be given three readings and approved by the Inspector of Municipalities before the referendum. Sufficient public support should be evident before the local government undertakes the referendum.
4. Seek assent of the electors via the entire service area if possible, to reduce the chance that rejection by one participating area could fail the whole process. This requires a board resolution by 2/3 majority vote. However, it may be necessary, as was the case in the RDEK, to prescribe a service area smaller than the entire regional district to obtain a majority vote.
5. Consider that a referendum to obtain assent of the electors will be perceived as more fair and open than either having board members consent on behalf of their electors or using an alternative approval process. However, these latter options are available to obtain participating area approval in specific circumstances outlined in the *Local Government Act*.
6. Make the referendum question easy to comprehend. Aim for clear, simple wording. It is more important that the question be understood than that it conform verbatim to the bylaw establishing the service.

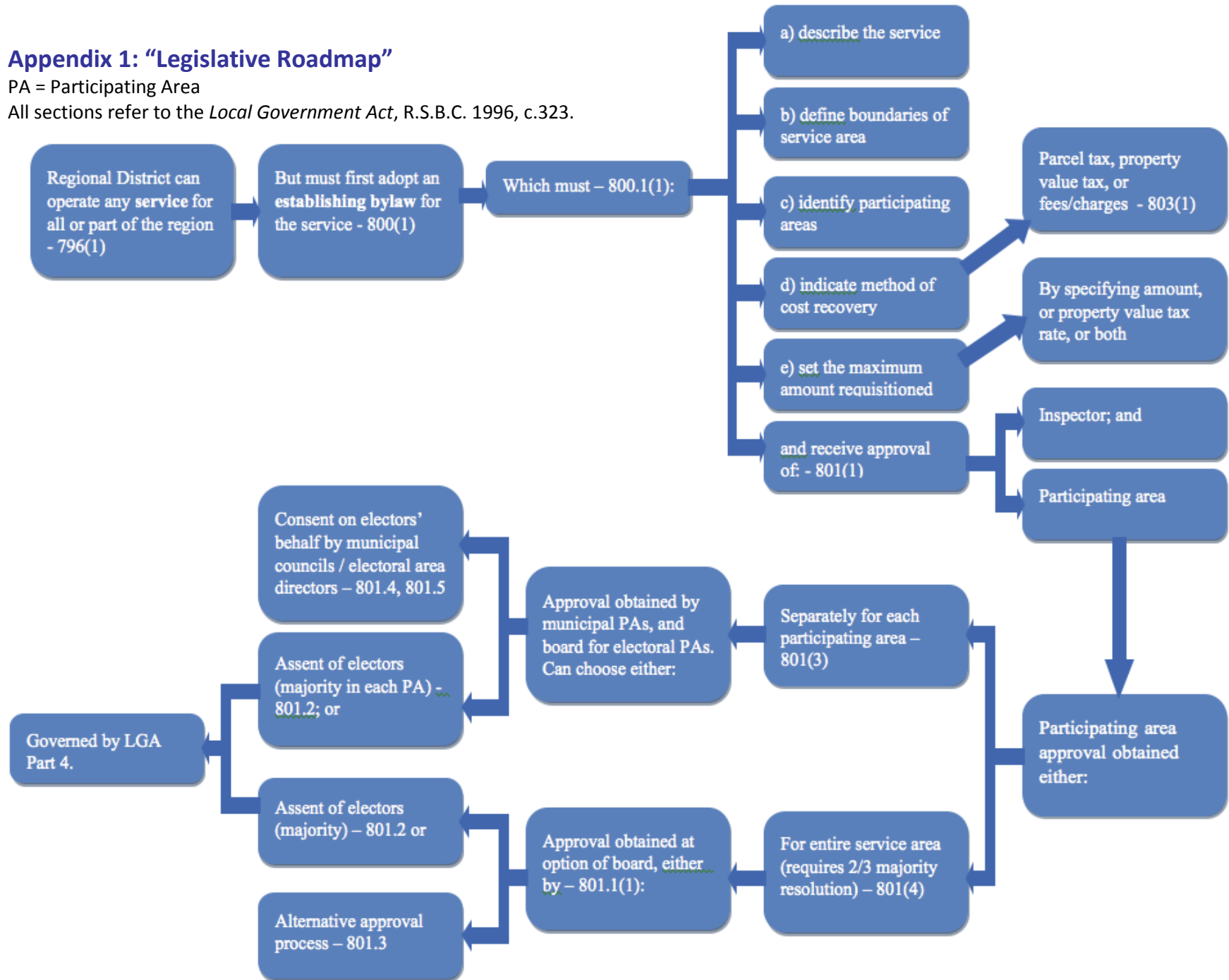
## **Post-Establishment**

1. Partner with land conservation organizations. Groups such as The Land Conservancy or other land trust organizations can have significant financial and public education leverage. Collaboration allowed the CRD to increase its spending power by more than 50%.
2. Consider providing a local conservation organization with the authority to administer the fund. Local experts may be better able to handle the minutiae of the fund, such as evaluating applications and selecting sites. One example is the EKCP administering the Columbia Valley Local Conservation Fund for the RDEK.
3. Develop an appropriate review process to ensure the fund is achieving the established objectives.

# Appendix 1: "Legislative Roadmap"

PA = Participating Area

All sections refer to the *Local Government Act*, R.S.B.C. 1996, c.323.



## **Appendix 2: CVRD and RDEK service establishment bylaws**

The CVRD bylaw is presented on the first two pages that follow. The RDEK bylaw is presented on the third page.

For .pdf versions of the bylaws contact the respective regional district offices.



## COWICHAN VALLEY REGIONAL DISTRICT

### BYLAW NO. 3163

#### **A Bylaw to Establish a Service to Provide a Regional Parkland Acquisition Fund within the Cowichan Valley Regional District**

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**WHEREAS** pursuant to Sections 796 and 800 of the *Local Government Act*, a regional district may, by bylaw, establish and operate any service that the Board considers necessary or desirable for all or part of the regional district;

**AND WHEREAS** the Board of the Cowichan Valley Regional District wishes to establish an acquisition fund to provide for expenditures in respect to acquiring regional parkland within the Cowichan Valley Regional District;

**AND WHEREAS** the Board of the Cowichan Valley Regional District has obtained the approval of the service area electors in accordance with the *Local Government Act* and the *Community Charter*;

**NOW THEREFORE** the Board of Directors of the Cowichan Valley Regional District enacts as follows:

1. **CITATION**

This bylaw may be cited for all purposes as "**CVRD Bylaw No. 3163 – Regional Parkland Acquisition Fund Service Establishment Bylaw, 2008**".

2. **SERVICE BEING ESTABLISHED**

The service being established under the authority of this bylaw is a service for the purpose of establishing an acquisition fund to provide for expenditures in respect to acquiring regional parkland within the Cowichan Valley Regional District. The service shall be known as the "Regional Parkland Acquisition Fund Service".

3. **SERVICE AREA BOUNDARIES**

The boundaries of the service area are the boundaries of the whole of the Cowichan Valley Regional District.

4. PARTICIPATING AREA

The participating area for this service is the whole of the Cowichan Valley Regional District comprised of the: City of Duncan; District of North Cowichan, Town of Lake Cowichan; Town of Ladysmith; and Electoral Areas A – Mill Bay/Malahat; B – Shawnigan Lake; C – Cobble Hill; D – Cowichan Bay; E – Sahtlam/Glenora/Cowichan Station; F – Cowichan Lake South/Skutz Falls; G – Saltair/Gulf Islands; H – North Oyster/Diamond; and I – Youbou/Meade Creek.

5. METHOD OF COST RECOVERY

The annual cost of providing this service shall be recovered by property value taxes requisitioned and collected on the basis of the net taxable value of land and improvements within the service area.

6. MAXIMUM REQUISITION

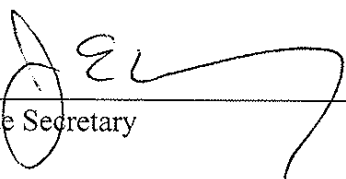
The maximum amount of money that may be requisitioned annually in support of this service shall be the greater of \$715,000. or an amount equal to the amount that could be raised by a property value tax of \$.05942 per \$1,000. of net taxable value of land and improvements within the service area.

READ A FIRST TIME this 9<sup>th</sup> day of July, 2008.

READ A SECOND TIME this 9<sup>th</sup> day of July, 2008.

READ A THIRD TIME this 9<sup>th</sup> day of July, 2008.

I hereby certify this to be a true and correct copy of Bylaw No. 3163 as given Third Reading on the 9<sup>th</sup> day of July, 2008.

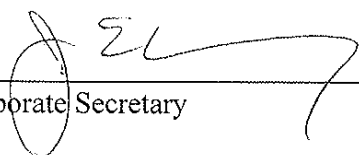
  
\_\_\_\_\_  
Corporate Secretary

JULY 15, 2008  
\_\_\_\_\_  
Date

APPROVED BY THE INSPECTOR OF MUNICIPALITIES this 11<sup>th</sup> day of September, 2008.

ADOPTED this 10<sup>th</sup> day of December, 2008.

  
\_\_\_\_\_  
Chairperson

  
\_\_\_\_\_  
Corporate Secretary

REGIONAL DISTRICT OF EAST KOOTENAY

BYLAW NO. 2083

A bylaw to establish a Local Conservation Fund Service.

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WHEREAS a regional district may, by bylaw, establish and operate a service under the provisions of the *Local Government Act*;

AND WHEREAS the Board of the Regional District of East Kootenay wishes to establish a service for the purpose of establishing a Local Conservation Fund in the Columbia Valley by collecting up to \$20 per parcel of land annually;

AND WHEREAS the assent of the electors has been obtained pursuant to Section 801.2 of the *Local Government Act*;

NOW THEREFORE, the Board of the Regional District of East Kootenay, in open meeting assembled, enacts as follows:

1. This Bylaw may be cited as "Regional District of East Kootenay – Local Conservation Fund Service Establishment Bylaw No. 2083, 2008."
2. The Regional Board hereby establishes a service for the purpose of establishing a Local Conservation Fund in the Columbia Valley.
3. The boundaries of the service area are the boundaries of Electoral Areas F and G, the District of Invermere, Village of Radium Hot Springs, and Village of Canal Flats and the service area is known as the "Local Conservation Fund Service Area".
4. The participants in the service established under Section 2 of this Bylaw are Electoral Areas F and G, the District of Invermere, Village of Radium Hot Springs, and Village of Canal Flats.
5. The Regional Board may enter into an agreement exceeding five years with the East Kootenay Conservation Program for administration of the local conservation fund.
6. The maximum amount that may be requisitioned annually for the service provided under Section 2 of this Bylaw shall be \$230,000 or the product of \$0.055 per \$1,000 of taxable assessed value of land and improvements, whichever is greater.
7. The annual costs to provide the service under Section 2 of this Bylaw shall be recovered by requisition of money to be collected by an annual parcel tax in the electoral and municipal participating areas.
8. The costs to provide the service under Section 2 of this Bylaw shall be apportioned among the municipal and electoral participating areas on the basis of the number of parcels in those areas.
9. This Bylaw shall expire on December 31, 2018.

READ A FIRST TIME the 6<sup>th</sup> day of June, 2008.  
READ A SECOND TIME the 6<sup>th</sup> day of June, 2008.  
READ A THIRD TIME the 6<sup>th</sup> day of June, 2008.

APPROVED BY THE INSPECTOR OF MUNICIPALITIES the     day of                     , 2008.

ASSENTED TO BY THE ELECTORS within the "Local Conservation Fund Service Area" the     day of                     , 2008.

ADOPTED the     day of                     , 2008.

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CHAIR

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MANAGER OF ADMINISTRATION