



Making a difference...together

REPORT TO CAPITAL REGIONAL DISTRICT BOARD MEETING OF WEDNESDAY, JULY 13, 2022

SUBJECT **Mount Maxwell Conservation Covenant**

ISSUE SUMMARY

A Motion with Notice was approved at the June 8, 2022 Capital Regional District (CRD) Board meeting requesting that staff provide a report to the CRD Board regarding a possible maximum contribution of \$100,000 to the proposed 75 acre Mount Maxwell park land acquisition in return for a conservation covenant.

BACKGROUND

The CRD Board, at its June 8, 2022 meeting, passed the following Motion with Notice:

That CRD Parks staff provide a report to the Capital Regional District Board regarding a possible maximum contribution of \$100,000 to the proposed 75 acre Mount Maxwell park land acquisition, in return for the placement of a satisfactory conservation covenant on forested lands contiguous to the Provincial park and protected watershed lands.

Due to limitations in the *Local Government Act* relating to regional parks acquisition and funding, the regional parks service may only use the Land Acquisition Fund to purchase property and interests it owns. The fund cannot be used to contribute toward an acquisition made by another party, even where that party is a CRD community parks service, unless the regional parks service is acquiring property for the purposes of operating it as a regional park or an interest for the purpose of a regional trail network.

IMPLICATIONS

Legal Implications

The CRD's regional parks service, continued from letters patent under Bylaw No. 1749, "Regional Parks Extended Service Establishment Bylaw No. 1, 1989", is for the purpose of acquisition, development, operation and maintenance of regional parks, which has historically been interpreted as those areas of regional importance that are otherwise unprotected. The CRD has special powers to acquire trails for the purpose of a regional trail system by statutory right-of-way, lease, license or permit for any term under the *Capital Regional District Regulation*. The regional parks service is restricted in its use of funding, which in relation to acquisition, can only be used for regional parks it owns, interests in regional trails, and to maintain the lands it operates as park or trail. Section 191 of the *Local Government Act* requires funds in the Land Acquisition Fund to only be used for acquiring regional parks and trails. This fund cannot be used for maintenance.

In addition, the Regional Parks mandate may not be broad enough to purely engage in conservation as the primary purpose of a purchase. The historical purposes of the now-repealed *Park (Regional) Act* and the CRD's original Regional Parks letters patent have been on acquisition and ownership for park purposes, not for conservation. Park purposes have generally been

interpreted by the courts as meaning relaxation, ornamentation, leisure, and recreation, as well as including, ancillary commercial enterprises (those related to use or enjoyment of the regional park or trail).

While ownership is a focus of the regional parks service, a third party may provide funds to the CRD to contribute to a purchase of a park or provide fee simple land in trust to establish a regional park (e.g., a trust park). The CRD's regional parks service or its community parks services are also able to purchase a larger area and subdivide a portion of it into a park or charge it with a right of way, then dispose of the remaining interest, with surplus funds to be used for the purposes of acquisition of regional parks and trails under the *Local Government Act* or community parks under the *Community Charter*.

CONCLUSION

A Motion with Notice was passed at the June 8, 2022 CRD Board meeting directing staff to report back on a possible contribution of up to \$100,000 towards the proposed Mount Maxwell park land acquisition in return for the placement of a satisfactory conservation covenant. The regional parks service is unable to use Land Acquisition Funds to purchase lands it does not own or to purchase a conservation interest.

RECOMMENDATION

There is no recommendation. This report is for information only.

Submitted by:	Jeff Leahy, RPF, Senior Manager, Regional Parks
Concurrence:	Larisa Hutcheson, P.Eng., General Manager, Parks & Environmental Services
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer