

DATE: June 24, 2022

FILE: 6130-01

TO: Chair and Directors
Committee of the Whole

FROM: Russell Dyson
Chief Administrative Officer

Supported by Russell Dyson
Chief Administrative Officer

R. Dyson

RE: Regional Parks and Trails Service Establishment Bylaw - Options

Purpose

To provide further information concerning the potential governance arrangements for the proposed Regional Parks and Trails Service.

Recommendation from the Chief Administrative Officer:

None. This report is provided for information purposes.

Executive Summary

At the June 14, 2022 regular meeting, the Board considered giving initial readings to Bylaw No. 719 being “Regional Parks and Trails Service Establishment Bylaw No. 719, 2022” (attached as Appendix A). Bylaw No. 719 had been drafted in alignment with the background study and service framework which had identified, amongst others, the proposed service definition, participation and governance.

The recommended governance structure includes delegated authority for the administration and operation of the service to a standing committee of the Board with a two-thirds supermajority voting arrangement to encourage broad decision-making support amongst service participants. This structure was based on discussions and consensus reached amongst the regional parks working group and was deemed to be equitable while addressing concerns raised in regards to governance. It is noted that the other regional districts examined in the background study all employ the standard “weighted stakeholder vote” with a simple majority threshold provided under provincial legislation.

Also at the June 14th Board meeting, correspondence was received from the Town of Comox clarifying its conditional support for the Regional Parks and Trails Service by identifying a desire for a voting structure that would provide “Comox and one other jurisdiction the ability to defeat recommendations at the committee level as well as the requirement that a land acquisition strategy, that includes connectivity through greenways, be developed and agreed upon prior to the establishment of the service”. It was confirmed at the Board meeting that such an arrangement would require a 75 per cent approval threshold with this also resulting in the City of Courtenay having veto power on its own.

Following first reading of Bylaw No. 719 and a subsequent motion to amend it with an increased voting threshold of 75 per cent, the Board resolved to defer consideration of the voting threshold amendment to the June 28, 2022 regular meeting. The Board also directed that additional information be provided respecting a potential alternative governance concept of requiring at least two jurisdictions to defeat a decision and the implications for the legislative approval process for the service should only a portion of an electoral area be included in the service boundary. This report

provides information on these two matters as well as a brief financial analysis on options for a maximum service requisition should the Board desire to include it in the establishing bylaw.

Alternative Governance Concept

As outlined above, by way of the request from the Town of Comox the Board expressed interest in considering an alternative governance concept that would restrict the City of Courtenay from having a veto by stipulating that a decision cannot be defeated by only one jurisdiction. Such a requirement could be considered in isolation or in combination with the specific approval threshold, such as three-quarters (75 per cent).

While such an arrangement is relatively straightforward in the context of single electoral area and municipal representation, it becomes less so in relation to multiple municipal representatives and a custom voting threshold. As the number of municipal representatives on the Regional Parks and Trails Committee is proposed to be based on population, it is understood that at current the City of Courtenay would have three representatives, the Town of Comox would have two and the Village of Cumberland would have one. Under such a model it would have to be determined what would qualify as jurisdictional opposition – unanimous dissent of all municipal directors representing a jurisdiction or a majority of them. While technically feasible, incorporating a requirement for jurisdictional support or dissent would be a considerable departure from the common voting threshold requirement utilized by regional districts which does not bear specific relevance to the view of each jurisdiction.

Provincial legislation provides that the number of regional district directors and the voting strength of each director are based on the population of their jurisdiction. While Electoral Area Directors are directly elected to the Board by the electors of their jurisdiction, Municipal Directors are appointed to the Board at the pleasure of their council. In this regard it is understood that Municipal Directors often wear two hats: a municipal hat and a regional hat. Provincial legislation is generally silent on the complex nature of a Municipal Directors' obligations and whether they are to vote based on their own conscience and political beliefs or based on the wishes of their council. Governance best practice suggests that all directors are duty bound to the decision-making body they are serving (in this case the regional district) but that they should bring forward the input from their Council and community to help inform and influence the decision-making process. Through this process additional perspectives and information from other directors, staff and the public should help to further inform the members of the body with the resulting individual votes being made with their regional hat on.

Based on the forgoing, incorporating a jurisdictional consideration into the voting structure for the Regional Parks and Trails Committee could bring added complexity to whose views the municipal directors represent at the table, negatively influencing the decision-making process and potentially raising concerns that committee members do not have an open mind that is capable of persuasion.

In light of these considerations and the complex nature of municipal directors' political representation and affiliation, staff would not recommend incorporating such a concept in the voting framework for the Regional Parks and Trails Committee.

Legislative Approval Process

The rules concerning regional district service establishment are provided in Part 10 (Regional Districts: Service Structure and Establishing Bylaws) of the *Local Government Act* (the 'Act'). The legislation provides that all regional district service establishing bylaws must receive the approval of the Inspector of Municipalities as well as participating area approval.

While there are a number of conditions, the Act provides that participating area approval may be obtained in one of four ways: assent of the electors (referendum), alternative approval process (AAP), consent on behalf of municipal participating area and consent on behalf of electoral area. Consent on behalf of electoral areas is only eligible if the Board receives a sufficient petition for the service or if the service is listed under section 339(2) of the Act and the participating area includes all of the electoral area, and the service can be established without borrowing.

The services identified under section 339(2) include: regulatory services, regional development, social planning, economic development, emergency programs and communications, regional parks and trails, heritage conservation and participation in regional library districts. In addition to enabling electoral area director consent, this section provides other special considerations including an exemption from the requirement to include a maximum amount that the regional district may requisition for the service.

As noted above, the eligibility for participating area approval to be provided by consent requires that the participating area includes all of the electoral area. This means that if only a portion of one electoral area is included in the service, the proposed Regional Parks and Trails Service would no longer be considered eligible under section 339(2) and consent would not be able to be provided for any of the proposed electoral area participants. Instead approval of the electors would have to be sought through an assent vote or alternative approval process. Such a change would also force the inclusion of a maximum requisition in the establishing bylaw. This matter is considered in greater detail in the subsequent section of this report.

It is noted that the Act does provide the ability for the Board to dispense with the consent of the electoral area director and give participating area approval on behalf of the electors, however this is not recommended as forcing a non-agreeing member is very likely to create governance challenges and may result in an appeal to the minister for a review.

In accordance with the background study staff are recommending that the service boundary not be adjusted to exclude any portion of the Regional District. In addition to structural changes to the service such an approach would also impact the ability to establish the service in 2022. Provided the current approach for participating area approval is maintained, a timeline is provided as Appendix B to this report detailing the potential dates and legislative steps for service establishment.

Maximum Requisition

As noted above, section 339(2) of the Act provides bylaws for establishing a regional parks and trails service with an exception to section 339(1)(c), which requires a maximum requisition amount to be set when establishing a new regional district service. The maximum service requisition functions as the ‘ceiling’ or upper limit for taxation in which the annual budget can be set.

With this legislative exemption for regional parks and trails services, it was noted as part of the background study that only one of the six regional districts surveyed have set a maximum requisition in their service establishment bylaws. The one single jurisdiction that has did so under a unique arrangement in which they separated the acquisition and operations into different functions with only one having a requisition limit set.

While the setting of a maximum requisition for a regional parks service could provide a level of comfort for the participants in knowing what the upper threshold for property taxation is, it is important to note that the service budget would be approved annually by the committee and if long-term debt financing is ever considered in support of securing future parkland, elector approval would still be required to authorize such borrowing. Furthermore, the development of a land

acquisition strategy proposed for 2023 will help guide and inform each potential future parkland acquisition based on an approved framework or set of guiding principles. In this regard due diligence and broad support for the service budget is envisioned through these processes and in combination with a heightened approval requirement at the committee.

Finally, it is noted that as part of the background study process for the proposed service, consideration was given to the initial budget for 2023. It was recommended that subject to the service being established a contribution of \$275,000 be considered in the 2023 – 2027 financial planning process to support the establishment of the service and replenish the Regional Feasibility Study Service, Function 150, funds. This was endorsed by the Board at the May 24, 2022 regular meeting as part of the direction to staff to bring forward the service establishment bylaw for the creation of the regional parks and trails service.

Regional Parks and Trails Service – Options

Based on the considerations outlined within this report and the interests expressed by the Board, staff have developed a few options for consideration.

1. Proceed with the status quo as recommended by the background study and governance framework in which a two-thirds approval threshold is required on all decisions and recommendations.

In order to action this the Board would need to withdraw or defeat the current motion to amend the bylaw and then proceed with giving second and third readings to the bylaw.

2. Change the voting framework to require a 75 per cent approval threshold on all decisions and recommendations.

In order to action this the Board would need to approve the current motion to amend the bylaw to change the voting structure in Section 7(d) from two-thirds (2/3), to 75 per cent. The Board could then give second reading to the bylaw as amended followed by third reading.

3. Change the voting framework to require a 75 per cent approval threshold on resolutions concerning the acquisition of real property and two-thirds on all other decisions and recommendations.

In order to action this the Board would need to withdraw or defeat the current motion to amend the bylaw to change the voting structure in Section 7(d) from two-thirds (2/3), to 75 per cent. The Board could then consider the following motion to amend the bylaw:

“THAT Bylaw No. 719 be amended at first reading to replace section 7(d) with the following:

shall require an affirmative vote of at least 75 per cent of the votes cast on the acquisition of real property and an affirmative vote of at least two-thirds of the votes cast for all other decisions and recommendations.”

The Board would then provide second reading to the bylaw as amended followed by third reading.

Prepared by:

Concurrence with:

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Government and Community Interests Distribution (Upon Agenda Publication)

City of Courtenay	✓
Town of Comox	✓
Village of Cumberland	✓

Attachments:

Appendix A – Bylaw No. 719 being “Regional Parks and Trails Service Establishment Bylaw No. 719, 2022”

Appendix B – Bylaw Approval Timeline

COMOX VALLEY REGIONAL DISTRICT**BYLAW NO. 719****A bylaw to establish Regional Parks and Trails Service**

WHEREAS in accordance with the *Local Government Act (RSBC, 2015, C. 1)* a regional district may operate any service the Board considers necessary or desirable for all or part of the regional district;

AND WHEREAS the Board of the Comox Valley Regional District wishes to establish a regional parks and trails service within and for the benefit of the entire Comox Valley Regional District;

AND WHEREAS participating area approval has been obtained by written consent on behalf of the electoral and municipal participating areas under section 342 of the *Local Government Act (RSBC, 2015, C. 1)*;

AND WHEREAS the approval of the Inspector of Municipalities has also been obtained under section 342 of the *Local Government Act (RSBC, 2015, C. 1)*; and

NOW THEREFORE the Board of the Comox Valley Regional District in open meeting assembled enacts as follows:

Service

1. The service established by this bylaw includes:
 - (a) the protection and preservation of regionally-significant natural areas while providing opportunities for public access and enjoyment;
 - (b) the development of a network of regional greenways and trails; and
 - (c) carrying out any function that is ancillary or incidental to the foregoing activities including the planning, acquisition, development, operation and regulation of such lands and facilities.
2. The Service shall be known as the Regional Parks and Trails Service.

Participating Areas

3. The participating areas for the Service consist of Electoral Area A, Electoral Area B, Electoral Area C, the City of Courtenay, the Town of Comox and the Village of Cumberland.

Service Area

4. The boundaries of the service area for the Service established by this bylaw are the boundaries of the Comox Valley Regional District (CVRD).

Cost recovery

5. The annual costs for the Service shall be recovered by one or more of the following:
 - (a) property value taxes;
 - (b) parcel taxes;
 - (c) fees and charges;
 - (d) revenues raised by other means authorized by the *Local Government Act (RSBC, 2015, C. 1)* or another Act; and
 - (e) revenues received by way of agreement, enterprise, gift, grant or otherwise.

Regional Parks and Trails Committee

6. The Service created by this bylaw shall be operated by a standing committee of the Regional Board to be known as the Regional Parks and Trails Committee.

7. The Regional Parks and Trails Committee:

- (a) is delegated the authority for the administration and operation of the Service;
- (b) shall at a minimum consist of elected officials from the participating municipalities and electoral areas with each participating area receiving one (1) vote for every 10,000 population or portion thereof as determined by the most recent census certified by the Province of BC for municipal and electoral area populations for the purpose of regional district voting;
- (c) shall function with the number of representatives for each participating municipality being equal to their voting entitlement under subsection (b) with the votes being equally distributed; and
- (d) shall require an affirmative vote of two-thirds (2/3) of the members present for all decisions and recommendations.

Citation

8. This Bylaw No. 719 may be cited as “Regional Parks and Trails Service Establishment Bylaw No. 719, 2022”.

Read a first time this	14th	day of	June	2022.
Read a second time this		day of		2022.
Read a third time this		day of		2022.
Electoral Area A director written consent obtained this		day of		2022.
Electoral Area B director written consent obtained this		day of		2022.
Electoral Area C director written consent obtained this		day of		2022.
City of Courtenay council resolution given this		day of		2022.
Town of Comox council resolution given this		day of		2022.
Village of Cumberland council resolution given this		day of		2022.
Approved by the Inspector of Municipalities this		day of		2022.
Adopted this		day of		2022.

 Chair

 Deputy Corporate Legislative Officer

I hereby certify the foregoing to be a true and correct copy of Bylaw No. 719 being “Regional Parks and Trails Service Establishment Bylaw No. 719, 2022” as adopted by the Board of the Comox Valley Regional District on the day of 2022.

 Deputy Corporate Legislative Officer

Appendix B – Bylaw Approval Process

DATE	ACTION
June 28, 2022	<ul style="list-style-type: none"> • CVRD Board consider proposed amendment(s) to Bylaw No. 719 being “Regional Parks and Trails Service Establishment Bylaw No. 719, 2022”. • CVRD Board give 3 readings to Bylaw 719.
June 29, 2022	<ul style="list-style-type: none"> • CVRD letter to Courtenay, Comox and Cumberland requesting Council consent on behalf of electors to adoption of Bylaw No. 719. • CVRD request to Electoral Area Directors to consent on behalf of electors to adoption of Bylaw No. 719
July 6, 2022	<ul style="list-style-type: none"> • Comox Council consideration of passing resolution to consent to adoption of Bylaw No. 719.
July 11, 2022	<ul style="list-style-type: none"> • Courtenay Council consideration of passing resolution to consent to adoption of Bylaw No. 719.
July 11, 2022	<ul style="list-style-type: none"> • Cumberland Council consideration of passing resolution to consent to adoption of Bylaw No. 719.
July 15, 2022	<ul style="list-style-type: none"> • Subject to receipt of consent from Courtenay, Comox, Cumberland and Electoral Areas A, B and C, Bylaw No. 719 forwarded to Inspector of Municipalities for consideration of approval.
July 18 – September 16 (10 weeks)	<ul style="list-style-type: none"> • Consideration of approval of Bylaw No. 719 by the Inspector of Municipalities.
September 20, 2022	<ul style="list-style-type: none"> • Subject to approval of Bylaw No. 719 by the Inspector of Municipalities, CVRD Board to consider adoption.