

# Paying for conservation:

*Municipal powers to generate revenue for conservation*



Environmental  
Law Centre

**A Community Conserve Project**  
Building environment and conservation  
capacity for municipalities

May 2021

**Paying for conservation:**

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conservation*

MAY 2021

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# Introduction

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In the last 30 years or so, the power of many local governments in Canada has grown considerably.<sup>1</sup> This is mainly because provincial governments have expanded the scope of authority delegated to local governments.<sup>2</sup> There has also been a rise in judicial deference to local legislation.<sup>3</sup> Meanwhile, new opportunities for revenue generation have been more limited. As the role of municipalities have grown the ability to raise funds to pay for these expanded powers has largely stayed the same.

Jurisprudence in Canada has also recently recognized the principle of subsidiary.<sup>4</sup> With respect to governance, the principle of subsidiary refers to “the smallest possible social or political entities should have all the rights and powers they need to regulate their own affairs freely and effectively.”<sup>5</sup> This principle suggests that local governments are often in the best position, and are certainly justified, to play a substantial role in protecting the environment and engaging in conservation at the municipal level.<sup>6</sup>

In Alberta the *Municipal Government Act (MGA)* was recently expanded to encourage local governments to manage components of the environment that are within their jurisdiction: adding a municipal purpose focused on fostering “the well-being of the environment” and enabling the taking of “conservation reserves.”<sup>7</sup> Yet, as creatures of statute, these municipalities have limited revenue streams at their disposal. Most municipal revenue comes from property taxes and user fees, with transfers from the federal and provincial government making up the rest. These financial constraints can make it difficult for municipalities to engage in conservation in a meaningful way.

The following report aims to consider the challenges faced by municipalities when it comes to financing conservation. This report will take a look at municipal taxation powers and how they can (or cannot) be used to finance conservation, explore additional (non-taxation) sources of revenue, and take a look at how two other jurisdictions within Canada are raising revenue for

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<sup>1</sup> Tomas Hachard, “It Takes Three: Making Space for Cities in Canadian Federalism” (2020) IMFG Perspectives 31, University of Toronto, Institute on Municipal Finance and Governance at 2, online: <https://ideas.repec.org/p/mfg/perspe/31.html>.

<sup>2</sup> Zack Taylor & Alec Dobson, “Power and Purpose: Canadian Municipal Law in Transition” (2020) IMFG Papers on Municipal Finance and Governance No. 47, University of Toronto, Institute on Municipal Finance and Governance at 5, online (pdf): [https://tspace.library.utoronto.ca/bitstream/1807/99216/1/imfgpaper\\_no47\\_Power\\_and\\_Purpose\\_Taylor\\_Dobson.pdf](https://tspace.library.utoronto.ca/bitstream/1807/99216/1/imfgpaper_no47_Power_and_Purpose_Taylor_Dobson.pdf)

<sup>3</sup> Taylor & Dobson, at 8.

<sup>4</sup> Dr. Cameron S. G. Jefferies et al. “Subsidiarity in Action: Effective Biodiversity Conservation and Municipal Innovation” (2019) Alberta Land Institute at 20, online (pdf): <https://www.albertalandinstitute.ca/public/download/files/103303>.

<sup>5</sup> Eugénie Brouillet, “Canadian Federalism and the Principle of Subsidiary: Should We Open Pandora’s Box?” (2011) 54 SCLR 601 at 605, online (pdf):

<https://digitalcommons.osgoode.yorku.ca/cgi/viewcontent.cgi?article=1227&context=sclr>.

<sup>6</sup> Jefferies, *supra* note 4 at 23.

<sup>7</sup> RSA 2000, c M-26, ss. 3 (a.1), 661, 664 [*MGA*].

conservation lands and/or environmental projects. Finally, this report will provide suggestions on what could be done to increase municipal conservation funding in Alberta.

## ***A Note on Conservation***

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*What do we mean when we refer to conservation? The literature suggests there are a number of different interpretations (not even conservationists can agree!) that can be loosely organized into two camps. One camp believes that conservation is about protecting nature for its own sake (i.e., nature has intrinsic value), while the other believes that we must protect nature for the sake of humankind (i.e. nature has an instrumental value).<sup>8</sup>*

*For our purposes, we favour a simple and expansive definition. The Oxford English Dictionary defines conservation as "[t]he action or process of conserving" and "[t]he preservation, protection, or restoration of the natural environment and of wildlife."<sup>9</sup> Accordingly, when we use the term conservation going forward, we are referring to municipal preservation, protection, and restoration of the local natural environment and its biodiversity.*

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## **Costs of Conservation: How can municipalities budget for the "well-being" of the environment?**

How much revenue is needed for local conservation efforts? The answer to this question will likely vary widely across local areas, and depend on conservation goals, the presence of provincial and national scale data, planning, policy, and funding, as well as the scope of conservation planning and management that is required.

It is important to consider the wide range of potential costs that must be accounted for in municipal conservation initiatives. The costs associated with conservation span from the planning and assessment of conservation outcomes, to land acquisition or regulation, to monitoring and compliance efforts.<sup>10</sup>

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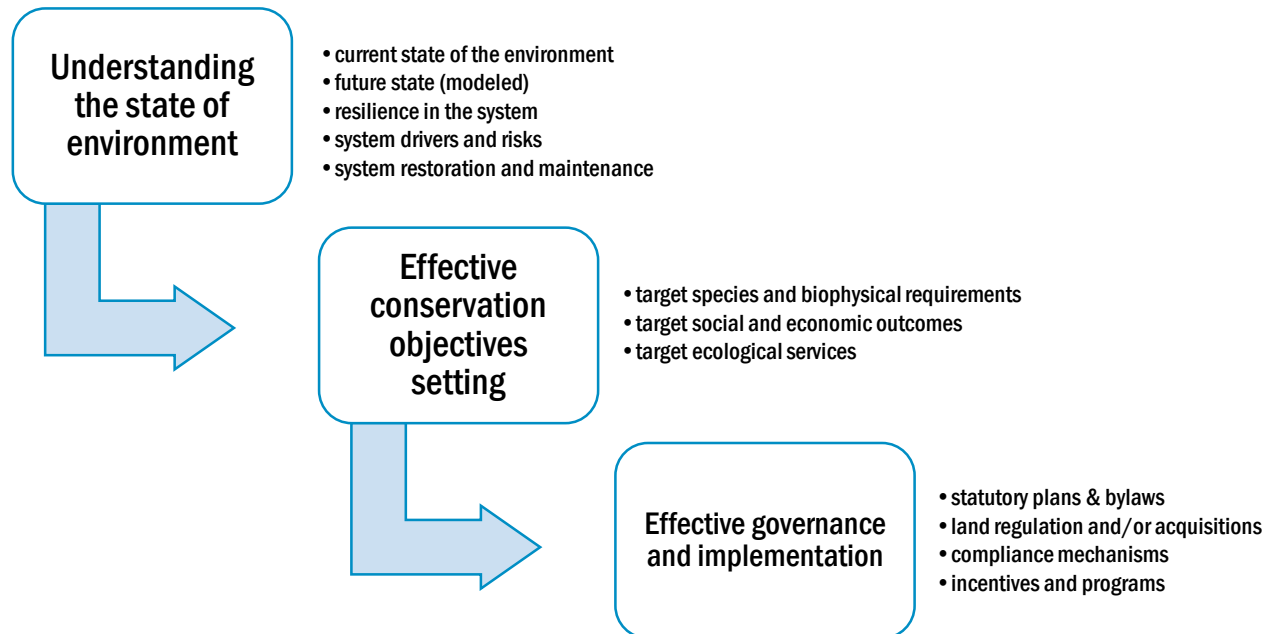
<sup>8</sup> Chris Sandbrook "What is Conservation?" (2015) 49:4 Oryx 565, online: <https://www.cambridge.org/core/journals/oryx/article/what-is-conservation/01CD7B55A1D009475B9A83ED15C78468>.

<sup>9</sup> *Oxford English Dictionary*, 3rd ed. (Oxford: Oxford University Press 2010).

<sup>10</sup> For a discussion of how these costs may be integrated into providing quantifiable benefits see Robin Naidoo et al., "Integrating economic costs into conservation planning" (2006) 21:12 Trends in Ecology and Evolution, online (pdf): [https://www.uvm.edu/giee/pubpdfs/Naidoo\\_2006\\_TRENDS\\_in\\_Ecology\\_and\\_Evolution.pdf](https://www.uvm.edu/giee/pubpdfs/Naidoo_2006_TRENDS_in_Ecology_and_Evolution.pdf).

The breadth of activities, knowledge, and capacity to ensure the “well-being of the environment” can be overwhelming and must be borne by all levels of government. Municipalities must determine the nature and extent of its conservation needs as well as how much it will all cost. Figure 1 below outlines the suite of matters that may fall within the “costs” of environmental wellbeing and conservation for a municipality.

**Figure 1:** Matters relevant to the “well-being of the environment” and conservation at the municipal level (adapted from Rands et al.)<sup>11</sup>



Understanding the resource allocation needs for localized conservation is only part of the policy process. Certainly, ecological and ecosystem benefits accrue to more than local communities, through the provision of ecosystem services that extend beyond municipal boundaries. In this regard there is a clear and strong need for financing mechanisms that attach to local, regional, provincial, and national ecological objectives. A formalized financing system, called an ecological fiscal transfer, has been used in other jurisdictions in the past and would be of value in Alberta (and Canada).<sup>12</sup>

<sup>11</sup> Michael R. W. Rands, et al., “Biodiversity Conservation: Challenges Beyond 2010” (2010) *Science* 329:1298 adapted from Neville Ash et al. (eds), *Ecosystems and Human Well-Being: A Manual For Assessment Practitioners* (Washington: Island Press 2010).

<sup>12</sup> Rui Santos et al., “Fiscal transfers for biodiversity conservation: The Portuguese Local Finances Law” (2010) UFZ Discussion Paper no. 11/2010, online (pdf): <https://www.econstor.eu/bitstream/10419/44749/1/64097144X.pdf>.

## Municipal Implementation of Conservation Measures in Alberta

It is worth noting at the outset that municipalities in Alberta do have a number of conservation measures at their disposal. Most originate from either the *MGA* or the *Alberta Land Stewardship Act (ALSA)*.<sup>13</sup> Generally speaking, they consist of either broad land-use powers that can be used to encourage sustainable growth, and/or more specific powers that can be used to promote and preserve local biodiversity.<sup>14</sup>

For example, the *MGA* permits municipalities to develop various statutory plans for intermunicipal and area land use as well as to establish municipal, environmental and conservation reserves.<sup>15</sup> The *MGA* also requires municipalities to develop a Municipal Development Plan to work out future land use and a Land-Use bylaw to regulate the use and development of land and buildings in a municipality.<sup>16</sup>

In addition, the *MGA* permits the establishment of city charter regulations.<sup>17</sup> Both Edmonton and Calgary have adopted city charter regulations that permit them to make bylaws relating to the well-being of the environment, including bylaws for programs related to “environmental conservation and stewardship” and “protection of biodiversity and habitat” as well as require them to establish a climate change mitigation plan.<sup>18</sup>

Municipalities can also use conservation tools provided under the *ALSA*. *ALSA* permits municipalities to enter into conservation easements (i.e., a voluntary agreement between a landowner and a qualified organization to protect the conservation value of a piece of land) and enables the use of several economic mechanisms such as conservation offsets and transfer development credits.<sup>19</sup>

Yet, while municipalities do have conservation tools at their disposal, they do not always have the funds necessary to implement them. Conservation can be costly. For example, in order to take land for a conservation reserve a subdivision authority must pay fair market value to the landowner at the outset in addition to any legal and administrative costs associated with setting up the conservation reserve, as well as any on-going monitoring costs.<sup>20</sup> Similarly, in order to establish a conservation easement a municipality would likely incur costs for developing the program itself (i.e., policy development, templates and documentation, legal advice, promotion,

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<sup>13</sup> SA 2009, c A-26.8 [*ALSA*].

<sup>14</sup> Jefferies, *supra* note 4 at 27.

<sup>15</sup> *MGA*, ss. 631, 633-635, 661-670.

<sup>16</sup> *MGA*, ss. 632, 639-640.

<sup>17</sup> *MGA*, ss. 141.1-141.9.

<sup>18</sup> *City of Edmonton Charter*, Alta Reg 39/2018, s. 4(1) and Part 16.1; *City of Calgary Charter*, Alta Reg 40/2018, ss. 4(1) and Part 16.1.

<sup>19</sup> *ALSA*, ss. 36-44, 28-35, 45-50.

<sup>20</sup> *MGA*, s. 666.1.



etc.), easement securement costs, various transaction costs for setting up each individual easement, as well as the ongoing monitoring, enforcement and administrative costs.<sup>21</sup>

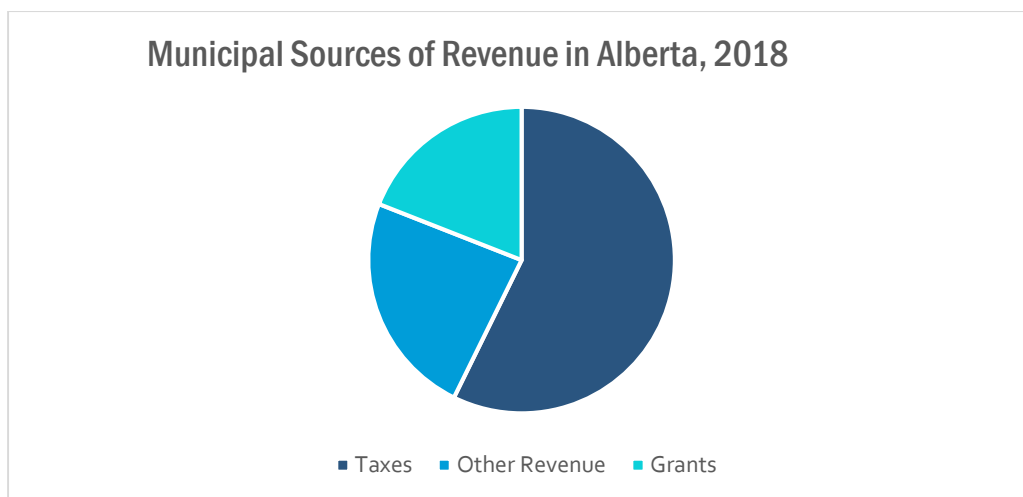
While certain conservation tools (and their respective costs) can be folded into general land-use planning, others require separate, stand-alone funding that may be harder to raise. This begs the question; how do municipalities raise money for conservation?

## Municipal Taxation in Alberta: An Overview

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### Property Taxes

Property taxation is the primary tool available to Alberta municipalities to raise revenue. Municipal governments collect property taxes using a set procedure and then redistribute those monies to provincial and regional authorities as required. Property taxes are used to fund services delivered by the municipal government, provincial education, and other regional services.<sup>22</sup> Property taxes are rationalized as “a method of distributing the cost for government services across properties based on their respective value as an indicator of wealth and ability to pay”.<sup>23</sup>



Source: StatCan Tables 10-10-0020-01

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<sup>21</sup> Miistakis Institute, “Fact Sheet #4: Overview of a Municipality’s Potential Costs Related to Conservation Easements” (2017), online (pdf): <https://www.communityconserve.ca/wp-content/uploads/2017/05/Fact-Sheet-4-Overview-of-a-Municipality%E2%80%99s-Potential-Costs-Related-to-CEs.pdf>.

<sup>22</sup> AUMA, “Fundamentals of Municipal Property Taxes”, online: <https://auma.ca/advocacy-services/programs-initiatives/property-assessment-and-taxation-hub/fundamentals-alberta%E2%80%99s-property-assessment-and-taxation-system/municipal-property-taxes>.

<sup>23</sup> *Ibid.*

The *MGA* governs how municipalities may tax property in Alberta. Generally speaking, the process unfolds as follows:

- a) Each year municipalities must prepare assessments for all eligible property within the municipality. Assessment is the process of estimating a dollar value on a property for the purpose of taxation and is done by certified assessors.<sup>24</sup> There are two types of valuation standards: the market value based standard and the regulated procedure based standard. The market value based standard is used to determine the assessed value for most properties in Alberta.<sup>25</sup> Meanwhile, the regulated procedure based standard is used to assess the value of four types of property: farmland, linear property, machinery and equipment, and railway property.<sup>26</sup>
- b) Once the assessed value is determined the property is assigned an assessment class. Property is classified according to use (i.e., residential, non-residential, farmland, machinery and equipment). The assessment class determines the tax rate that will be applied to each property. The tax rate itself is determined each year by municipal council based on the amount of money that is needed to operate the municipality.<sup>27</sup>
- c) The assessed value and class for each property is entered on the assessment roll, which is a listing of all assessable property in a municipality.<sup>28</sup>
- d) Notices are sent out to every property owner on the assessment roll to notify them of the assessment. If an owner takes issue with the assessment notice, they may file a complaint within 60 days.

Once collected, the property taxes are distributed to the relevant provincial and regional authorities.

### ***Non-Assessable and Exempt Property***

Not all property is subject to property tax. Municipalities may choose to subsidize select property owners or certain uses of property in order to encourage select goals. Property tax exemptions can occur in two ways under the Act: (a) property is excepted from assessment and therefore not subject to property taxation; or (b) property is assessable but exempt from taxation where specific conditions are met.

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<sup>24</sup> Government of Alberta Municipal Affairs, "Guide to Property Assessment and Taxation in Alberta" (2010) at 2, 16, online (pdf): [http://municipalaffairs.alberta.ca/documents/as/AB\\_GuidePtyAssmt\\_finrev.pdf](http://municipalaffairs.alberta.ca/documents/as/AB_GuidePtyAssmt_finrev.pdf).

<sup>25</sup> *Ibid* at 9.

<sup>26</sup> *Ibid*.

<sup>27</sup> *Ibid* at 21.

<sup>28</sup> *Ibid* at 22.

## Non-assessable property

Properties that are non-assessable are described in section 298(1)(a) to (cc) of the *MGA*. They include, among many others, sewage or water treatment and supply systems, irrigation works, weigh scale and inspection stations, and provincial parks or recreation areas. Their exemption from property taxation is confirmed in section 351(1) of the Act.

## Exempt property

Meanwhile, select other property is considered assessable but is exempted from taxation under the *MGA*. Sections 351, 361 to 365 and 370(a)(c) and (d) of the Act contain information about property that is assessable, but that may be exempt from taxation, if specific conditions are met:

- **Section 351 – Non-taxable property:** Property listed in s. 298 of the Act along with any other property that was subject to an exemption granted before January 1, 1995, under a private act or by an order of the Local Authorities Board (unless cancelled by a municipal bylaw).
- **Section 361 - Exemptions based on use of property:** This section exempts property based on use and covers reserve lands, including environmental reserves, conservation reserves, municipal reserves, school reserves and undeveloped property reserved for public utilities. It also covers residences and farm buildings to the extent prescribed in Part 5 of the *Matters Relating to Assessment and Taxation Regulation*.<sup>29</sup>
- **Section 362 - Exemptions for government, churches, and other bodies:** This section exempts most property held by the federal and provincial government, municipalities, educational institutions, religious bodies, utilities, and other organizations that use the property for public service, charitable or benevolent purposes. Section 362(1)(n) provides authority for property tax exemptions to be given to property held by non-profit organizations.
- **Section 362.1 – Exemption for electric energy generation systems:** This section authorizes the Minister to exempt, by order, one or more electric power systems used or intended for use in the generation or gathering of electricity from taxation for the purpose of raising revenue to pay for the requisitions in s. 326(1)(a)(ii)-(iii).
- **Section 363 – Exempt property that can be made taxable:** This section exempts property held and used in connection with Ducks Unlimited, various hostelling associations, the Royal Canadian Legion and other veteran groups, and student dormitories. However,

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<sup>29</sup> Alta Reg. 220/2004.

council may choose to pass a bylaw making any of these properties subject to taxation with notice.

- **Section 364 – Exemptions granted by bylaw:** This section authorizes council to exempt from taxation property held by a non-profit organization, as well as machinery and equipment used for manufacturing or processing to the extent council considers appropriate.<sup>30</sup>
- **Section 364.1 – Brownfield tax incentives:** This section authorizes council to provide full or partial tax exemptions (or tax deferrals) for brownfield properties. The exemptions must be for the purpose of encouraging development or redevelopment of these brownfield properties for the general benefit of the municipality.
- **Section 364.2 – Tax incentives for non-residential property:** This section authorizes council to provide full or partial tax exemptions (or tax deferrals) for the purpose of development or revitalization of property in the assessment class of either non-residential or machinery and equipment (as specified in section 297(1)(b) or (d) of the Act) for the general benefit of the municipality.

### Community Organization Property Tax Exemption Regulation

The Community Organization Property Tax Exemption Regulation<sup>31</sup> (the “Regulation”) provides authority for property tax exemptions for property owned, leased, or operated by non-profit organizations. When read together with section 362(1)(n) of the Act, the Regulation provides that property may be exempt from taxation when held by a non-profit organization and used for one of the following:

- in an official capacity on behalf of the municipality;
- for community games, sports, athletics or recreation for the benefit of the general public;
- for a charitable or benevolent purpose that is for the benefit of the general public;
- to provide senior citizens with lodge accommodation; or
- in connection with an agricultural society or community association.

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<sup>30</sup> MGA, s. 364.

<sup>31</sup> Alta Reg 281/98.

Additionally, the Regulation allows non-profit organizations, whose function falls outside of the enumerated purposes, to apply to the respective municipality for an exemption from property taxation.

### ***Other Types of Municipal Taxes in Alberta***

In addition to property taxes, municipalities may also pass bylaws (or the Minister may make regulations) that permit them to impose a variety of other taxes and/or levies that are usually tied to very specific outcomes. These include a supplementary property tax, business tax, business improvement area tax, clean energy improvement tax, community aggregate payment levy and well drilling equipment tax.

Municipalities are also allowed to pass a few other taxes and/or levies that allow for more general uses and could ostensibly be used for conservation funding. However, there are limitations. These include a local improvement tax, a special tax, and a community revitalization levy.

#### **Local improvement tax**

A local improvement tax is a tax on properties within a defined area of a municipality for the purpose of funding a local improvement (i.e., sidewalks, lane lighting, paving, etc.).<sup>32</sup> Council may propose a local improvement or a group of owners in a municipality may petition council for one.<sup>33</sup> Either way, a local improvement plan must be prepared that describes the local improvement and its location, identifies all the parcels of land in respect of which the tax will be imposed, estimates the cost and states the period over which the cost will be spread, etc.<sup>34</sup>

On its face, it appears that a local improvement tax could be imposed to fund conservation efforts in very specific circumstances. The primary barrier is that the “local improvement” must be a project that council considers to be of greater benefit to a particular area rather than the municipality as a whole. There would also likely need to be community buy-in, even if initiated by council (rather than petition).

Still, these obstacles are not insurmountable. Similar to how sidewalk or lighting improvements can benefit a local community, in certain circumstances there is likely to be a piece of land, body of water, or environmental feature that falls within and could benefit a particular area within a municipality. It is possible that a local improvement tax could be used to raise money for the acquisition of a park or conservation lands – similar to how money is raised for conservation funds in British Columbia (discussed in greater detail below under “British Columbia”). It should, however, be stressed that a local improvement tax would only ever be

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<sup>32</sup> *MGA*, ss. 397-403.

<sup>33</sup> *MGA*, s. 393.

<sup>34</sup> *MGA*, s. 395.

useable in select, discrete scenarios and therefore not be a truly sustainable source of conservation funding over the long-term.

## Special tax

A special tax is a tax on properties within a defined area for the provision or construction of a special service in that area.<sup>35</sup> Council may pass a bylaw to raise revenue to pay for one or more of the enumerated options, including infrastructure (i.e., waterworks tax, sewer tax, paving tax, etc.), incentives for health professionals to work and reside in the municipality, or a recreational service.<sup>36</sup> A special tax bylaw must be passed annually.<sup>37</sup>

A special tax appears to be similar to a local improvement tax, but with more constraints. It is possible that a special tax could be used to raise funds for conservation purposes, however it is unclear what category it could fall under. The term “recreational services” is not defined in the *MGA* and it is possible that funding for a conservation area that includes walking trails or that permits some type of sporting or recreational activity could qualify for a special tax. Still, given its constraints a special tax would also not be a long-term, sustainable source of conservation funding.

## Community revitalization levy

A community revitalization levy (CRL) authorizes council to impose a levy in respect of the incremental assessed value of property in a community revitalization area to raise revenue to be used toward the infrastructure and other costs associated with the redevelopment of property in the area.<sup>38</sup>

Put another way, it permits municipalities to borrow against future property tax revenues to help pay for the infrastructure required to spur new development in a specific area.<sup>39</sup> The idea is that investment in infrastructure such as new or improved roads, buildings, and wastewaters systems will attract private investment to the area and result in increased property values over time. Typically, the levy is in place for a period of 20 years.<sup>40</sup>

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<sup>35</sup> *MGA*, ss. 382-387.

<sup>36</sup> *MGA*, s. 382.

<sup>37</sup> *MGA*, s. 382(2).

<sup>38</sup> *MGA*, ss. 381.1-381.5.

<sup>39</sup> Government of Alberta, “Community Revitalization Levy Program”, online: <https://www.alberta.ca/community-revitalization-levy.aspx>.

<sup>40</sup> *Ibid.*

A CRL is a tool that, at least in theory, could be deployed for the purpose of financing municipal conservation. The Government of Alberta notes that some of the “benefits” of CRLs are that they can be used to clean up environmental damage in areas where development is needed and improve environmental conditions through new building practices.<sup>41</sup> Accordingly, a CRL could be used in a municipality to clean up existing environmental damage and/or build infrastructure to support a conservation area with the expectation that this investment will impact the property values of the surrounding area and pay for itself within a defined period of time.

However, in order for a CRL to be successful the local economic environment must grow enough over the lifetime of the CRL to cover the costs of borrowing to incentivize that growth.<sup>42</sup> Otherwise, the CRL has diverted tax revenues away from other initiatives that may have been more efficient or worthwhile to the public and/or supported special interests at the expense of the public.<sup>43</sup> To determine whether a CRL is the right tool for revitalization the literature suggests employing both a “but-for” and “blight” test to minimize financial risk:

- The “but for” test asks whether private sector investment would have occurred in the revitalization zone *but for* the use of a CRL. If investment would have occurred regardless, then a CRL could actually result in increased costs for taxpayers;<sup>44</sup>
- The blight test asks whether the base property values in an area are sufficiently low. Using a CRL in a non-blighted area may not boost the property values enough to repay the initial loan.<sup>45</sup>

Assuming the CRL is the best available tool there should be clear conditions in place for implementation.<sup>46</sup> In Alberta, the *MGA* authorizes a municipality to pass a CRL bylaw and the Lieutenant Governor in Council to make regulations establishing the CRL.<sup>47</sup> The specific requirements for a CRL are generally set out in the individual regulations and can include the contents of the CRL plan, revitalization zone boundaries, levy-amount calculations, and reporting and public consultation requirements.<sup>48</sup>

Currently in Alberta there are five CRLs located in Calgary (1), Cochrane (1) and Edmonton (3). Given that none have reached the end of their respective terms it is not yet clear whether they will yield positive results. However, a recent review of two of Alberta’s CRLs provides some insight. Marina Spahlinger and Nancy Wayne looked at Alberta’s oldest CRL, the City of Calgary

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<sup>41</sup> *Ibid.*

<sup>42</sup> Marina Spahlinger & Nancy Wayne, “Community Revitalization Levy as a Municipal Financing Mechanism in Alberta” (2019) Volume 12:4 University of Calgary The School of Public Policy Publications at 3, online: SSRN: <https://ssrn.com/abstract=3342825>.

<sup>43</sup> *Ibid* at 2.

<sup>44</sup> *Ibid* at 3.

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *MGA*, ss. 381.1, 381.5.

<sup>48</sup> Spahlinger & Wayne, *supra* note 42 at 8.

Rivers District CRL (put in place in 2007 and set to expire in 2027), and its newest, the City of Edmonton Capital City Downtown CRL (put in place in 2013 and set to expire in 2034).<sup>49</sup>

In both instances the plans anticipated an increased demand for office space and relied, at least in part, on this growth to realize CRL revenues. Pre-COVID, the economic downturn in the province of Alberta and resulting office vacancy rates already posed a threat to realizing projected CRL revenues.<sup>50</sup> The current pandemic has exacerbated these issues and there is a real risk that, at least for the Rivers District CRL which is set to expire in 2027, there will be a shortfall in CRL revenues to cover the revitalization costs.

There is also some question as to whether the Government of Alberta even has the appetite to approve any new CRLs. The Government of Alberta has not approved a CRL since the Edmonton Capital City Downtown CRL in 2013. In 2014 the Alberta Urban Municipalities Association (AUMA) adopted a resolution urging the Government of Alberta to lift its suspension on the CRL.<sup>51</sup>

Regardless, a CRL seems like a risky choice for municipal conservation funding. The success of a CRL turns on whether the investment causes a rise in property values such that the increased taxes are sufficient to repay the loan. A municipality would have to bank on a very linear path between improving green space and/or conserving a piece of property in the community and increased land values. Careful study would be required. A CRL would also only apply to very specific areas, such as where property values are already low.

## Redevelopment levies

Redevelopment levies may be imposed when a person applies for a permit in respect of a redevelopment plan that contains proposals for residential, commercial, or industrial development.<sup>52</sup> Where a redevelopment levy is imposed and collected it must be used to provide land for a park, school buildings, or new or expanded recreation facilities.<sup>53</sup> It appears that municipalities could put redevelopment levies towards parks that further their conservation goals.

## Off-site Levies

A council may by bylaw impose an off-site levy in respect of land that is to be developed or subdivided.<sup>54</sup> The levy may only be used to pay for all or part of new or expanded facilities for the supply of water, sanitary sewage, storm sewer drainage facilities, roads, transportation

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<sup>49</sup> Spahlinger & Wayne, *supra* note 42 at 8-17.

<sup>50</sup> *Ibid* at 19.

<sup>51</sup> AUMA, "Community Revitalization Levy Resolution" (2014) online: <https://auma.ca/advocacy-services/resolutions/resolutions-index/community-revitalization-levy>.

<sup>52</sup> *MGA*, s. 647.

<sup>53</sup> *MGA*, s. 647.

<sup>54</sup> *MGA*, s. 648.



infrastructure or land required for any of these facilities.<sup>55</sup> Off-site levies for conservation areas and parks are currently not permitted under the *MGA*.

## ***Summary of Municipal Taxation Powers***

In summary, property taxation is the primary way in which Alberta municipalities raise revenue. These property taxes are then used to fund most municipal programs and services, such as fire, police, road maintenance, and snow removal. Property taxes are also used to fund parks and recreation and can be used to fund the capital and operating costs of conservation projects. However, given the heavy demands on the local revenue base, parks and other forms of conservation often fall near the bottom of the list when it comes to prioritizing how these funds are allocated.<sup>56</sup> Moreover, residents are generally resistant to property tax increases as they are “very visible and thus deeply unpopular”.<sup>57</sup>

Aside from property tax, municipalities do not have the power to levy other forms of own source revenues such as local sales, income, or land transfer taxes.<sup>58</sup> Naturally, this prevents municipalities from expanding capital expenditure in any significant way.<sup>59</sup> Nevertheless, there is likely some potential to raise additional funds for conservation projects through adding a local improvement tax or allocating redevelopment levies for parks or conservation lands. These options would need further exploration.

## **Non-tax Sources of Revenue**

Aside from taxation, municipalities in Alberta have few funding options for the purpose of conservation. As a result, municipalities are often reliant on grants or transfers from the provincial and federal governments for additional funds. Still, municipalities do have natural person powers and these powers can also open up additional sources of revenue for conservation.

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<sup>55</sup> *MGA*, s. 648(2).

<sup>56</sup> Harry Kitchen, “Financing City Parks in Canada: What Might be Done?” (2017) Park People at 7 online: <https://parkpeople.ca/resources/en/research/601/financing-for-city-parks>.

<sup>57</sup> James Wilt, “Alberta’s Cities under the NDP” in Duane Bratt et al, ed, *Orange Chinook: Politics in the New Alberta* (Calgary: University of Calgary Press, 2019) 271 at 274, online: [https://prism.ucalgary.ca/bitstream/handle/1880/109864/9781773850269\\_chapter12.pdf?sequence=15&isAllowed=y](https://prism.ucalgary.ca/bitstream/handle/1880/109864/9781773850269_chapter12.pdf?sequence=15&isAllowed=y)

<sup>58</sup> *Ibid.*

<sup>59</sup> *Ibid.*

## *Natural Person Powers*

The *MGA* provides that municipalities have natural person powers.<sup>60</sup> This means they have all the rights that the common law attributes to a natural person, including the power to borrow and lend money, buy and sell land, make investments, negotiate contracts, restrict activities on land that they own, even where not specifically authorized. These natural person powers are, however, subject to any express restrictions set out in the *MGA* or other legislation.

Through the use of their natural person powers, municipalities have some additional options for conservation funding. Municipalities can sometimes partner with regional land trusts, non-profits and conservancy groups that are eligible for conservation funding. For instance, the Alberta Land Trust Grants Program (ALTGP) is a provincial program that uses funds from sale of public lands to secure perpetual protection of conservation lands. Grants are available to eligible land trust organizations to help establish and administer new conservation easements on private land or new conservation projects on land trusts titled land.<sup>61</sup>

Municipalities may also have the option to use non-monetary consideration to encourage conservation services.<sup>62</sup> For example, in exchange for a conservation easement that is in line with the municipality's conservation goals, a municipality may provide a developer with favourable consideration of a development proposal. Consideration could include relaxation of municipal reserve requirements, permitting higher density developments, and streamlining of the approval process.<sup>63</sup>

Municipalities also have the power to require developers to hold back land for municipal and school reserves (10% plus density bonuses).<sup>64</sup> Municipalities have the option to require money in lieu of land or some combination of the two. Municipal reserve land or money may be used for, among other things, a public park or public recreation area.<sup>65</sup>

### User Fees

Another option for municipalities is to introduce visitor user fees for protected areas or conservation lands. User fees are a type of market-based mechanism that can be used to collect revenue from the use of protected areas, which can then be used to support and maintain these same lands.<sup>66</sup> Most user fees are site-level mechanisms and can include

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<sup>60</sup> *MGA*, s. 6.

<sup>61</sup> Government of Alberta, "Alberta Land Trust Grant Program" (2020), online: <https://www.alberta.ca/alberta-land-trust-grant-program.aspx>.

<sup>62</sup> Environmental Law Centre & Miistakis Institute, "Conservation Easements in Alberta", online: <https://www.ce-alberta.ca/question/18/>.

<sup>63</sup> *Ibid.*

<sup>64</sup> *MGA*, s. 666.

<sup>65</sup> *MGA*, s. 671(1).

<sup>66</sup> Esteban Brenes Vega, "Sustainable Finance for Protected Areas: Tourism-Based User Fees" in *Conservation Finance Guide* (Conservation Finance Alliance, 2004) at 2, online (pdf): <http://ssrn.com/abstract=2013199>.

entrance fees, concession fees (i.e., fees charged to a business for providing a service within the protected area), licences and permits (i.e., fees charged for certificates that permit businesses and/or users to participate in a specific activity), and tourism-based taxes (i.e., hotel tax, airport departure tax, road tolls, etc.).<sup>67</sup>

User fees have both advantages and disadvantages. On the positive side, user fees can be considered economically equitable in that they are only levied on those that actually use the protected area (as opposed to the population at large).<sup>68</sup> They are also advantageous in that they help to partially or completely offset the operation and/or maintenance costs for a protected area. In turn, financial self-sufficiency can help to insulate protected areas from the politics of budget allocation and even encourage governments to expand protected areas if they know it can be done at little cost.<sup>69</sup> User fees are also thought to increase public appreciation, enhance the economic value of an ecosystem, control congestion, and provide an opportunity for information exchange at the time of payment.<sup>70</sup>

Nevertheless, user fees can also be controversial, especially where the public has traditionally had free access to a protected area and where it may be widely seen as a public good.<sup>71</sup> Protected lands that feature natural attractions are often considered “merit goods”, meaning a “good the consumption of which is deemed to be intrinsically desirable”.<sup>72</sup> Merit goods are thought to benefit society in general and some users believe that access to these types of goods should be subsidized by public funds.<sup>73</sup>

Other downsides to user fees are that they are dependent on visitation and therefore revenue is unstable, they may unfairly exclude or discourage low income visitors who are not able to afford the amenity, “commercialize” a natural space and may lead to profit-seeking rather than protectionist behaviour, and double-charge certain individuals (i.e., taxes and user fees).<sup>74</sup>

In general, user fee prices are based on “willingness to pay”, that is the amount users are willing to pay for the visit to the protected area in relation to other, competing uses of their income.<sup>75</sup> However, other factors, such as cost recovery and the estimated value of an ecosystem and its services, should also be considered when levying visitor use fees.<sup>76</sup> Research

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<sup>67</sup> *Ibid* at 2.

<sup>68</sup> Cory R. Brown, “Visitor Use Fees in Protected Areas: Synthesis of the North American, Costa Rican and Belizean Experience” (2001) Ecotourism Program Technical Report Series No. 2 at 47, online (pdf): <http://www.nbsapforum.net/sites/default/files/Visitor%20Use%20Fees%20in%20Protected%20Areas%20in%20N%20America%20Belize%20and%20Costa%20Rica.pdf>.

<sup>69</sup> Brenes Vega, *supra* note 66 at 11.

<sup>70</sup> Brenes Vega, *supra* note 66 at 11, Brown at 47.

<sup>71</sup> Brown, *supra* note 68 at 46.

<sup>72</sup> *Ibid* at 4.

<sup>73</sup> *Ibid*.

<sup>74</sup> Brenes Vega, *supra* note 66 at 11; Brown, *supra* note 68 at 48.

<sup>75</sup> Brown, *supra* note 68 at 5.

<sup>76</sup> *Ibid* at 4, 50.

suggests that public resistance to fees is reduced when fees are increased in small increments and when fee revenues are used for improvements to facilities and for conservation.<sup>77</sup>

With respect to municipalities, they have clear authority under the *MGA* to charge fees, tolls and charges for the use of their property, including property under the direction, control and management of the municipality.<sup>78</sup> It may be reasonable, in select circumstances, to charge a visitor user fee for access to municipal conservation lands, especially where recreational activities (i.e., hiking, cross-country skiing, bird watching, etc.) take place and there is some expense associated with upkeep. It would be up to municipalities to determine how best to collect and enforce user fees, however an entry fee or yearly pass would likely be the simplest options. Another issue to consider is whether the conservation lands at issue are sufficiently “special” to generate revenue or whether users will just opt to use another (free) location nearby. Still, in the right circumstances municipal user fees could help to support, maintain, and potentially even encourage an increase in conservation lands within the municipality.

### Participating in Market-Based Instruments and Offsets

As a landowner, municipalities have the opportunity to generate revenue through the conservation of land. This will often take the form of market-based instruments (MBIs). MBIs are a broad class of policy tools that seek to influence positive environmental behaviour by putting a price on externalities like environmental degradation and attaching it to the activities that give rise to them.<sup>79</sup> For land in Alberta, these mechanisms of raising revenue for conservation are in their infancy, and admittedly, may never truly be a substantial revenue source for municipal conservation.

Moreover, offset systems are typically linked to regulatory approvals within the province so it may not always be clear how a municipality may play a role. For example, under the current Alberta Wetland Policy there is the ability to pay a fee into a fund that is then used in the wetland replacement program.<sup>80</sup> Wetland restoration may then be pursued by a qualified professional as a provincially recognized wetland restoration agent. Municipalities may seek to participate in the program however there remain questions as to whether funds are sufficient to broadly and effectively secure, manage and monitor these restored sites.

There are two offset systems of particular note. One focused on conservation values and securing land (i.e., conservation offsets) and one focused on land management as a way to offset greenhouse gas emissions (i.e., carbon offsets).

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<sup>77</sup> Brown, *supra* note 68 at 51-52.

<sup>78</sup> *MGA*, s. 61(2).

<sup>79</sup> David W. Poulton, “Biodiversity Offsets: A Primer for Canada” (2015) CIRL Occasional Paper #48 at 10 online:

<sup>80</sup> See the full suite of wetland policy documents at <https://www.alberta.ca/alberta-wetland-policy-implementation.aspx>.

For conservation offsets, the idea is to put in place a regulatory system that operates on the premise that environmental degradation caused by the development of one site can be compensated for by an equivalent or greater environmental enhancement on another site.<sup>81</sup> The availability of these offsets are not meant to provide an excuse for a developer to cause environmental harm, but rather to compensate for adverse impacts that cannot be either avoided or minimized.<sup>82</sup> Municipalities could participate in conservation offset markets by offering to undertake conservation projects using municipal lands in exchange for funds from developers looking to offset their activities.

At present, conservation offset markets are not available in Alberta. However, the *ALSA* does contain provisions for the introduction of such markets and it is conceivable that municipalities may be able to participate in them in the future.<sup>83</sup>

Similarly, a municipality may participate in a carbon market if one evolves a system of offsets that can be applied to municipal lands. Currently carbon offset systems exist in Alberta and may soon evolve with the Government of Canada.<sup>84</sup> To date, Alberta's carbon offset system has focused mostly on greenhouse gas mitigation measures through energy management and a direct link to conservation lands is not currently in place. There may be a limited opportunity under the Government of Canada program as well through reforestation programs under its protocols (which remain under development).<sup>85</sup>

## Municipal Funding of Conservation in Alberta

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Currently, it would appear that Alberta municipalities are able to fund conservation through a combination of property tax revenue, redevelopment levies, and possibly provincial or federal grants.

However, it is exceedingly difficult to get a clear accounting of how much money is actually being spent by municipalities on conservation. Municipalities are required to release annual financial statements, but there is no specific category for recording "conservation" expenses. Rather, it seems likely that such expenses are spread across several categories such as "parks

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<sup>81</sup> *Ibid* at 11.

<sup>82</sup> *Ibid* at 12.

<sup>83</sup> *ALSA*, ss. 45-50.

<sup>84</sup> See Alberta's emission offset system at <https://www.alberta.ca/alberta-emission-offset-system.aspx>. Also see the proposed Canada Gazette, Part I, Volume 155, Number 10: Greenhouse Gas Offset Credit System Regulations (Canada), online: <https://canadagazette.gc.ca/rp-pr/p1/2021/2021-03-06/html/reg1-eng.html>.

<sup>85</sup> See Environment and Climate Change Canada, Carbon Pollution Pricing: Considerations for Protocol Development in the Federal GHG Offset System, (Gatineau: Her Majesty the Queen in Right of Canada, 2020) online: <https://www.canada.ca/content/dam/eccc/documents/pdf/climate-change/pricing-pollution/pricing-pollutionProtocol-Development-GHG-Offset-System-v6.pdf>.

and recreation”, “other environmental use and protection”, and perhaps various planning and development functions as well.<sup>86</sup>

Complicating matters is the fact that there is no universal or agreed upon amount that municipal governments should be putting towards conservation. What percentage of the municipal budget should be allocated to conservation? In Ontario, for example, where park spending is tracked separately from other recreational and cultural expenditures, data shows that cities generally spend between 2% to 4% on municipal parks.<sup>87</sup> Is this an adequate amount or too much?

In order to properly assess conservation spending in Alberta there needs to be additional discussion of, and investigation into, what amount of funding is necessary to meet municipal conservation goals. This is especially so given that conservation often gets short shrift compared to some of the more pressing (and costly) municipal services.

It is also apparent that municipalities in Alberta have very limited options when it comes to raising revenue for conservation. Do municipalities in any other provinces fare any better when it comes to funding conservation?

## Examples in other Jurisdictions

### *British Columbia*

#### Conservation Funds

In British Columbia (BC), local governments are empowered to establish conservation funds. A conservation fund is a local government service that is funded through a dedicated tax or fee and is used to support environmental conservation and community sustainability projects.<sup>88</sup> Generally speaking, there are two types of conservation funds: parkland acquisition funds and conservation funds. Parkland acquisition funds are more focused on the purchase of land for parks, whereas conservation funds are designed to support a broad array of activities, such as supporting environmental conservation and local sustainability.<sup>89</sup>

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<sup>86</sup> For a more fulsome explanation of these categories see, for example, the Government of Alberta’s 2019 Financial Information Return Manual accessed at: <https://open.alberta.ca/publications/6026340>.

<sup>87</sup> Kitchen, *supra* note 56 at 8.

<sup>88</sup> South Okanagan-Similkameen Conservation Program, *Local Conservation Funds in British Columbia: A Guide for Local Governments and Community Organizations*, 2<sup>nd</sup> ed. (Penticton:South Okanagan-Similkameen Conservation Program) at 4, online: <https://soscp.org/wp-content/uploads/2017/12/Conservation-Fund-Guide-2nd-Edition-2017.pdf> [Conservation Fund Guide].

<sup>89</sup> *Ibid* at 7.

The authority and process for establishing a conservation fund differs for BC municipalities and regional districts. The municipal process is mostly governed by the *Community Charter* whereas regional districts are governed by the *Local Government Act*.<sup>90</sup>

### The Municipal Process

The *Community Charter* provides the statutory framework for all municipalities in BC (except the City of Vancouver which has its own *Vancouver Charter*). Various sections of the *Local Government Act* also apply to municipalities (ex., municipal sales tax, planning, land use, elections).

Section 8 of the *Community Charter* lays out the “fundamental powers” the Act bestows on municipalities. Section 8(2) of the Act gives municipalities the authority to provide any service that council deems necessary or desirable, and section 8(3) states that council may, by bylaw, regulate, prohibit, and impose requirements in relation to, among other things, public places and protection of the natural environment.

A municipal council may establish a conservation fund service to benefit part or the whole of a municipality. If the conservation fund will benefit (and be paid for by) the entire municipality then council can choose to authorize the fund by resolution or bylaw and elector approval is not required. However, practically speaking municipalities will often seek elector approval on the issue to ensure there is community support for the fund. Financing may be achieved through a property tax, parcel tax, or fee for service basis.<sup>91</sup>

Meanwhile, if the conservation fund will only benefit (and be paid for by) a part of the municipality, council must pass a bylaw to establish a local area service and requires elector approval.<sup>92</sup> A local area service is a municipal service that is to be paid for in whole or in part by a local service tax.<sup>93</sup> Council may only adopt a bylaw for a local area service where:

1. The service and its cost recovery methods have been proposed by petition (specific content requirements apply) and the petition is signed by owners of at least 50% of the parcels and represent at least 50% of the assessed value of land and improvements that would be subject to the local service tax;<sup>94</sup> or
2. The service and its cost recovery methods have been proposed by council initiative and in accordance with the Act and a sufficient petition (i.e., signed by owners of at least 50% of the parcels and represent at least 50% of the assessed value of land and

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<sup>90</sup> SBC 2003, c 26; RSBC 2015, c 1 [LGA].

<sup>91</sup> Conservation Fund Guide, *supra* note 88 at 7.

<sup>92</sup> *Community Charter*, s. 210.

<sup>93</sup> *Community Charter*, ss. 210, 216.

<sup>94</sup> *Community Charter*, ss. 210, 212.

improvements that would be subject to the local service tax) opposing the service is not received,<sup>95</sup> or

3. The service and its cost recovery methods have been proposed by council initiative (specific content requirement apply) and the bylaw establishing the service has received the assent of the electors in the local service area.<sup>96</sup>

In all cases, a local service tax may be imposed by way of a property value tax (imposed on land, improvements or both) and/or a parcel tax.<sup>97</sup> Revenue from a local service tax may only be expended for the local area service to which it is imposed.<sup>98</sup>

### The Regional District Process

The *Local Government Act* is the primary legislation for regional districts in BC. Regional districts are composed of municipalities, electoral areas, and in some cases, Treaty First Nations.<sup>99</sup> The governing body of a regional district is its board.<sup>100</sup> The *Local Government Act* sets out the main powers and responsibilities of regional districts as well as the framework for structure and operations.<sup>101</sup>

A regional district conservation fund must be established by bylaw and specify the method of cost recovery for the service.<sup>102</sup> The conservation fund service may be established to benefit the entire region (i.e., all electoral areas and municipalities), all or some electoral areas, or any combination of electoral areas and/or municipalities.<sup>103</sup> The bylaw must be approved by electors.<sup>104</sup> Financing may be achieved through a property tax, parcel tax or fee-for-service.<sup>105</sup>

In British Columbia the following regional districts have established conservation funds:

- **Regional District of East Kootenay (RDEK)** – RDEK established the Columbia Valley Local Conservation Fund (CVLCF) in 2008. It was the first of its kind in Canada. The CVLCF provides funding for projects in the Columbia Valley region that benefit conservation through the CVLCF. The original goal was to have all municipalities and electoral areas in the RDEK participate in the service, however, the conservation fund idea only received support from the Upper Columbia Valley portion of the RDEK. A

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<sup>95</sup> *Community Charter*, s. 213.

<sup>96</sup> *Community Charter*, s. 214.

<sup>97</sup> *Community Charter*, s. 216.

<sup>98</sup> *Community Charter*, s. 216.

<sup>99</sup> Government of British Columbia, "Regional Districts in B.C.", online:

<https://www2.gov.bc.ca/gov/content/governments/local-governments/facts-framework/systems/regional-districts>.

<sup>100</sup> *LGA*, s. 194.

<sup>101</sup> Government of British Columbia, "Local Government Legislative Framework", online:

<https://www2.gov.bc.ca/gov/content/governments/local-governments/facts-framework/legislative-framework>.

<sup>102</sup> *LGA*, ss. 338-339.

<sup>103</sup> Conservation Fund Guide, *supra* note 88 at 24.

<sup>104</sup> *LGA*, s. 342.

<sup>105</sup> *LGA*, s. 378.



referendum was conducted in conjunction with a general election in 2008. Property owners in the area pay a parcel tax of 5 cents per \$1000 of taxable assessed value up to a max of \$230,000 annually, which works out to about \$20 per parcel.<sup>106</sup>

- **Regional District of Central Kootenay (RDCK)** – RDCK established the Kootenay Lake Local Conservation Fund in 2014 after a successful vote in the local election. The financing mechanism is a parcel tax of \$15 per parcel per year, which is applied to all parcels (residential, industrial, commercial) in the service area.<sup>107</sup>
- **Regional District of Okanagan-Similkameen (RDOS)** – RDOS adopted a bylaw (with public assent) to establish the South Okanagan Conservation Fund (SOCF) in 2016. The SOCF supports conservation efforts in the communities of Summerland, Penticton, Oliver and a number of rural electoral areas. Property owners in the service area pay a property value tax of 3.75 cents per \$1000 of net taxable value of land and improvements, to a maximum of \$450,000 annually.<sup>108</sup>

The following districts have established parkland acquisition funds:

- **Capital Regional District (CRD)** – The CRD is the regional government for 13 municipalities and three electoral areas on southern Vancouver Island and the Gulf Islands.<sup>109</sup> In 2000 the CRD Board established the Land Acquisition Fund to purchase land for regional parks and trails.<sup>110</sup> Monies are collected through municipal property taxes. Initially the fund was set at a rate of \$10 per average residential household but gradual increases over the years have increased it to \$20 per average residential household.<sup>111</sup> The fund has acquired approximately 4,800 hectares of land to date.<sup>112</sup>
- **Cowichan Valley Regional District (CVRD)** – The CVRD established a Regional Parkland Acquisition Fund by bylaw in 2008. The CVRD sought electoral assent through a referendum. The fund was initially financed by a property value tax of the greater of \$715,000 or an amount equal to \$0.5942 per \$1000 of net taxable value of land and improvements within the service area.<sup>113</sup> In 2014 the bylaw was amended and increased

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<sup>106</sup> Kootenay Conservation Program, "Columbia Valley Local Conservation Fund", online: <https://kootenayconservation.ca/columbia-valley-local-conservation-fund/>.

<sup>107</sup> Kootenay Conservation Program, "Kootenay Lake Local Conservation Fund", online: <https://kootenayconservation.ca/kootenay-lake-local-conservation-fund/>.

<sup>108</sup> Regional District of Okanagan Similkameen, "South Okanagan Conservation Fund Terms of Reference" (2017) at 3, online (pdf): <https://soconservationfund.ca/wp-content/uploads/2019/08/Conservation-Fund-ToR-FINAL-Approved-June-1-2017-a.pdf>.

<sup>109</sup> Capital Regional District, "What is CRD", online: <https://www.crd.bc.ca/about/what-is-crd>.

<sup>110</sup> Capital Regional District, "Land Acquisition Fund", online: <https://www.crd.bc.ca/parks-recreation-culture/parks-trails/crd-regional-parks/land-acquisition-fund>.

<sup>111</sup> *Ibid.*

<sup>112</sup> *Ibid.*

<sup>113</sup> Cowichan Valley Regional District, CVRD Bylaw No. 3163, *A Bylaw to Establish a Service to Provide a Regional Parkland Acquisition Fund within the Cowichan Valley Regional District* (July 15, 2008), in Minutes of CVRD Board Meeting on December 10, 2008 at 55-56, online (pdf): <https://cverd.ca/Archive/ViewFile/Item/79>.

the allowable limit to \$958,000 or an amount equal to \$0.07427 per \$1000 of net taxable value of land and improvements.<sup>114</sup>

The BC example provides an excellent framework for how local governments can, with access to the right tools, raise funds through property taxes to support conservation and stewardship in their communities. To be sure, conservation funds can be challenging to implement as they require leadership, planning, and significant community outreach to achieve consensus and/or electoral approval. Nevertheless, they appear to give local governments in BC some measure of financial independence with respect to conservation in the local environment.

Could Alberta municipalities enact something similar?

As discussed above, Alberta municipalities already have the power to enact a tax for a “local improvement”. Is Alberta’s local improvement tax sufficiently similar to the BC *Community Charter’s* section 216 local service tax such that Alberta municipalities could also use it to pay for a conservation fund service?<sup>115</sup>

A comparison of the relevant legislation suggests that, while there are many similarities between the two provisions, there are slight differences that make it unlikely Alberta could enact a conservation fund and achieve the same result under the current *MGA*.

The primary distinction between the two provinces is that while the Alberta legislation characterizes the tax as being for a local improvement “project”, in BC it is characterized as a local area “service”. In Alberta, a local improvement is defined as a project that council considers to be of greater benefit to an area of the municipality than to the whole municipality and is paid for by a local improvement tax.<sup>116</sup> Meanwhile, in BC under the *Community Charter* a local area service is defined as a municipal service that provides particular benefit to part of the municipality and/or business improvement area services that are paid for by a local service tax.<sup>117</sup>

The difference may be subtle, but a project suggests something that takes place within a finite amount of time, whereas a service suggests something that is more likely to be ongoing (although it could certainly be temporary as well – in fact the original RDEK bylaw establishing the CVLCF had an expiry clause that was later removed). This distinction is also borne out in the

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<sup>114</sup> Cowichan Valley Regional District, CVRD Bylaw No. 3772, *A Bylaw to Amend Regional Parkland Acquisition Fund Service Establishment Bylaw No. 3163* (December 11, 2013), in Minutes of Council of the Town of Ladysmith Meeting on January 6, 2014 Board Meeting 19-20, online (pdf): [https://www.ladysmith.ca/docs/2014-council-documents/2014-01-06-council-agenda.pdf?sfvrsn=30a77b2e\\_6](https://www.ladysmith.ca/docs/2014-council-documents/2014-01-06-council-agenda.pdf?sfvrsn=30a77b2e_6).

<sup>115</sup> We note that municipalities and local governments in BC can also establish a conservation fund service pursuant to other provisions in the *Community Charter* and *Local Government Act* (as discussed above) that permit them to enact a service and impose a property or parcel tax for pay for said service. However, Alberta municipalities are not empowered to do the same, so we have limited comparison to Alberta’s local improvement tax and BC’s local area service tax.

<sup>116</sup> *MGA*, s. 391.

<sup>117</sup> *Community Charter*, s. 210.

legislation. Alberta's *MGA* provides that a local improvement plan must "state the period over which the cost of the local improvement will be spread" while there is no mention of a timeline in BC's *Community Charter*.<sup>118</sup>

That said, while a local improvement tax may not be suitable for establishing a conservation fund for the provision of general conservation services, it is possible this mechanism could be used to raise funds for a parkland or conservation land acquisition fund. Characterizing the local improvement as a "one-time" acquisition fund that seeks to raise a specific amount of money over a defined period of time and for a select purpose makes it more akin to a "project" than a "service". There also appears to be support in the *MGA* for such a project - the *MGA* provides that the estimated cost of a local improvement may include the actual cost of buying land necessary for the local improvement and/or the capital cost of undertaking the local improvement.<sup>119</sup>

Finally, there is also the issue of whether the local improvement project in question is of greater benefit to one area of the municipality than to the whole municipality. That is to say, is the project really "local"? Depending on the size, nature, and location of the conservation area there is a risk that the tax may give rise to a taxpayers challenge based on the fact that it benefits the municipality as a "whole". This is particularly the case where conservation areas may run along water bodies, connecting multiple areas of a municipality. In the case of a challenge, a reviewing court may seek to determine whether it is reasonable for a local rate payer to pay for a conservation area or service that potentially benefits the whole of the municipality.

## **Ontario**

### **Green Bonds**

Green bonds are "debt securities where the issue proceeds are utilized to fund projects with specific environmental benefits".<sup>120</sup> A green bond issuer raises a fixed amount of capital that it must repay (both principal and accrued interest) over a set period of time and the issuer needs to generate sufficient cash flows for repayment. Basically, green bonds are identical to conventional bonds, save for the fact that proceeds must be invested in projects that generate environmental benefits.<sup>121</sup> However, the advantage of green bonds is that they can help attract new investors who are focused on environmental, social and governance (ESG) investment

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<sup>118</sup> *MGA*, s. 395(1)(e).

<sup>119</sup> *MGA*, s. 395(2)(a).

<sup>120</sup> Government of Ontario Financing Authority, "Ontario Green Bond Q&A's", online (pdf): [https://www.ofina.on.ca/pdf/green\\_bond\\_qa.pdf](https://www.ofina.on.ca/pdf/green_bond_qa.pdf) [OFA Green Bond Q&A's].

<sup>121</sup> City of Edmonton, "Energy Transition Strategy 1.5 Degree Celsius Update: Energy Transition Funding Options" at 10, online: [https://www.edmonton.ca/city\\_government/documents/PDF/EnergyTransitionFundingOptions.pdf](https://www.edmonton.ca/city_government/documents/PDF/EnergyTransitionFundingOptions.pdf) [Energy Transition Funding Options].

opportunities, as well as bring attention to environmental and sustainability issues and promote the issuer's environmental projects or pedigree.<sup>122</sup>

Beginning in 2014, the Province of Ontario began issuing green bonds for eligible projects that provided environmental benefits within one of the following categories: 1) clean transportation; 2) energy efficiency and conservation; 3) clean energy and technology; 4) forestry, agriculture and land management; and 5) climate adaptation and resiliency.<sup>123</sup> Projects are selected by the Province of Ontario's Financing Authority with advice from the Green Bond Advisory Panel. Green bonds have helped the Province "broaden its investor base and raise additional funding" to finance these environmental initiatives.<sup>124</sup>

Since then, several Ontario municipalities have also begun to issue green bonds, leveraging the low cost of borrowing to finance capital projects that contribute to environmental sustainability. The City of Ottawa launched its green debenture program in 2017 and has issued \$602 million to date.<sup>125</sup> Proceeds have mainly been used to fund an LRT expansion. Meanwhile, the City of Toronto issued its first green bond in 2018, and after two rounds, has issued \$500 million in bonds.<sup>126</sup> Proceeds have been used to fund subway expansions, community housing energy retrofits, and solar PV projects (among others).<sup>127</sup> Various other jurisdictions, including municipalities in other provinces, such as the City of Vancouver, have also begun to participate in the green bond market. Nevertheless, the Province of Ontario remains the largest issuer of green bonds in Canada.<sup>128</sup>

While eligible projects vary by jurisdiction, green bonds have mainly been used to date to fund infrastructure projects for things like sustainable transportation, energy efficiency retrofits, and renewable energy projects. It is less common for green bonds to be used to fund land conservation, primarily because of the difficulty generating cash flows from these projects with which to repay investors.<sup>129</sup> Still, land conservation can often times be a by-product of projects aimed at climate change adaptation and resiliency because they include measures such as increasing tree canopies or protecting natural landscapes for flood protection.

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<sup>122</sup> CAIA Association, "An Introduction to Green Bonds" (2016) Alternative Investment Analyst Review Quarter 2 at 7, online: [https://caia.org/sites/default/files/AIAR\\_Q2\\_2016\\_02\\_GreenBonds.pdf](https://caia.org/sites/default/files/AIAR_Q2_2016_02_GreenBonds.pdf).

<sup>123</sup> OFA Green Bond Q&A's, *supra* note 120.

<sup>124</sup> *Ibid.*

<sup>125</sup> City of Ottawa, "City of Ottawa Green Debenture Framework", online: <https://ottawa.ca/en/business/research-and-data/investor-relations/green-bonds-city-ottawa>.

<sup>126</sup> City of Toronto, "Green Debenture Program", online: <https://www.toronto.ca/city-government/budget-finances/city-finance/investor-relations/green-debenture-program/>.

<sup>127</sup> City of Toronto, "Green Bond Newsletter" (August 2020) online: <https://www.toronto.ca/wp-content/uploads/2020/07/9616-GreenBondNewsletter-v4a.pdf>.

<sup>128</sup> Government of Ontario Financing Authority, "Green Bonds Presentation" (January 2021) at 3, online: [https://www.ofina.on.ca/pdf/ontario\\_greenbonds\\_presentation\\_Jan2021\\_en.pdf](https://www.ofina.on.ca/pdf/ontario_greenbonds_presentation_Jan2021_en.pdf) [OFA Green Bonds Presentation].

<sup>129</sup> Nature United "A Blueprint for Action: Conservation Finance to Support Canada's Target 1" (2018) at 5, online: <https://www.natureunited.ca/content/dam/tnc/nature/en/documents/canada/A-Blueprint-for-Action-%20Nature-United.pdf> [Blueprint for Action].

There are also green bonds aimed directly at conservation. For example, the Province of Ontario includes projects aimed at “forestry, agriculture and land management” that provide “sustainable forest management” and “preservation and restoration of natural landscapes”.<sup>130</sup> Nature United suggests that one way to promote the use of “conservation bonds” would be to view them more as helping to manage government expenditure, “extending and reducing the annual cost over the term of the bond issue” rather than as having a “defined, project-based source of revenue for repayment”.<sup>131</sup> Alternatively, they could also be packaged as part of a “hybrid” bond with other social or project-based green bonds that would help to generate sufficient revenues or subsidies to cover the cost of repayment.<sup>132</sup>

In Alberta, the *Municipal Debentures Act* permits municipalities, school divisions, irrigation districts and other similar public corporations to issue debentures, bonds, or other obligations.<sup>133</sup> Alberta municipalities could likely issue green bonds for select conservation projects or as hybrid bonds with transit or clean energy improvements.

Generally speaking, green bonds are better suited to larger municipalities that can afford the time, effort and expense associated with issuing debentures. There can be significant costs associated with developing the green bond framework, securing certification, and reporting on the use of proceeds.<sup>134</sup> In addition, green bonds may not always be the most economical way of borrowing funds. For instance, the City of Edmonton recently considered green bonds as an energy transition funding option but found that it was cheaper and more flexible to continue to borrow through the Government of Alberta’s Alberta Capital Finance Authority.<sup>135</sup>

There are also limits to how much debt a municipality may accrue. Municipalities are prohibited from making a borrowing if it will cause the municipality to exceed its debt limit (unless approved by the Minister).<sup>136</sup> Most municipalities in Alberta have a total debt limit of 1.5 times their revenue, and a debt service limit of 0.25 times their revenue.<sup>137</sup> The cities of Calgary, Edmonton and Medicine Hat along with the Regional Municipality of Wood Buffalo have a total debt limit of 2 times their revenue, and a debt service limit of 0.35 times their revenue.<sup>138</sup> Note that a borrowing made by a municipality to pay for costs associated with clean energy improvements does not count against the debt limit or debt service limit.<sup>139</sup>

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<sup>130</sup> OFA Green Bonds Presentation, *supra* note 128 at 6.

<sup>131</sup> *Ibid* at 5.

<sup>132</sup> Blueprint for Action, *supra* note 129 at 5.

<sup>133</sup> RSA 2000, c M-25, s. 1.

<sup>134</sup> Blueprint for Action, *supra* note 129 at 5.

<sup>135</sup> Energy Transition Funding Options, *supra* note 121 at 12.

<sup>136</sup> MGA, s. 252(1).

<sup>137</sup> *Debt Limit Regulation*, A. Reg 255/2000, s. 2.

<sup>138</sup> *Ibid* s. 3.

<sup>139</sup> MGA, s. 252(2).

# Sources of Funding and Law Reform in Alberta

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Thus far, this report has looked at how Alberta municipalities are currently able to raise funds for conservation (mainly taxation), as well as the somewhat novel methods certain municipalities in British Columbia and Ontario are using to raise funds (conservation service funds and green bonds, respectively). Based on all of the above, what other options do Alberta municipalities have to increase funding for conservation?

Ideally, amendments to the *MGA* would give municipalities additional taxation powers; in particular, taxation powers that would enable municipalities to implement a general conservation services levy for prescribed purposes. This would overcome the lack of clarity and limitations of local improvement taxes and the constraints of other taxation options for the purpose of conservation and maintaining and restoring the quality of the environment within municipal boundaries.

Alternatively, another option would be the addition of other special taxes, such as those that benefit from a service (i.e., municipal fuel tax, parking levy, road tolls), to go either directly towards conservation funding or just to take some pressure off property taxes.

Some other options include (in no particular order):

- **Earmark a portion of existing property taxes for conservation** – municipalities could dedicate a set portion or percentage of property tax revenue to conservation purposes. Earmarking ensures there is a guaranteed source of revenue and encourages long term planning. It also removes conservation planning from annual budget “trade-offs”.<sup>140</sup> Conversely, it reduces municipal flexibility to respond to changing circumstances and sets both an upper and lower limit for conservation spending.<sup>141</sup>
- **Propose a Local Improvement Tax for conservation land acquisition** – in select circumstances it may also be possible for a municipality and/or a group of owners in a municipality to propose a local improvement tax to pay for a local improvement project, such as a conservation land acquisition or development. The “local improvement” must be a project that council considers to be of greater benefit to a particular area (rather than the municipality as a whole).
- **Introduce visitor user fees for conservation lands** – municipalities have the authority to impose user fees for the use of municipally owned protected areas or conservation lands. User fees are only likely to work where the public is actually willing

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<sup>140</sup> Kitchen, *supra* note 56 at 9.

<sup>141</sup> *Ibid.*

to pay for the use of said lands, and therefore the conservation lands should be sufficiently special or offer access to recreational activities. Nevertheless, in such cases user fees can help to support, maintain, and potentially expand existing conservation lands. Nevertheless, it is also important that there are waivers and/or exemptions in place to ensure access to those with limited means.

- **Issue green bonds aimed at conservation** – municipalities may also wish to issue green bonds to help raise funds and/or manage municipal expenditure for conservation projects. While there can be significant costs associated with developing the green bond framework, securing certification, and reporting on the use of proceeds, green bonds also have the advantage of helping to attract new investors and raise the environmental pedigree/profile of the municipality.

Municipalities are responsible for, among other things, land-use planning and management, which carry significant costs. Moreover, current sources of funding are insufficient: property tax is too blunt an instrument and grants are not a reliable or sustainable source. While municipalities can certainly look to some of the additional sources of funding outlined above to fill the gap, a more long-term solution would be to amend the *MGA* to give municipalities additional taxation powers.