

A Guide to British Columbia's Mountain Resort Associations Act



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What is the Mountain Resort Association Act?

The *Mountain Resort Associations Act* is designed to promote and facilitate the development, maintenance and operation of mountain resorts in British Columbia.

Under the legislation, the minister responsible for local government may formally establish "mountain resort areas," areas where year-round recreation facilities already exist or are proposed, including overnight accommodation and ski lift operations, which the provincial government would like to see developed further. The minister may also designate land within the mountain resort area as "resort land" and incorporate a group - a "mountain resort association" - to oversee the creation of recreational, residential and commercial facilities on that land.

Significant in the legislation are the important powers it gives local governments to facilitate ski resort development. Municipalities and regional districts are better able to provide the specialized amenities and community services that mountain resort communities require to sustain ski resort marketing and growth.

The numerous tools provided by the Act complement those already in place to assist and promote the ski industry in British Columbia, tools made available through the B.C. Commercial Alpine Ski Policy and the *Environmental Assessment Act*.

This guide presents information to help mountain resort communities - developers, operators, investors, elected officials and staff of local government - understand the development opportunities and options available to them under the *Mountain Resort Associations Act*. The guide explains:

- what the legislation involves;
- why it was introduced;
- what tools can be used by mountain resort communities to pursue their development goals; and
- how these tools might be used

Terms used in this guide:

mountain resort land - the land within a mountain resort area, designated by the minister responsible for local government, within which membership in the mountain resort association is required and from which monies can be raised.

mountain resort association - a legal entity with a built-in taxation system whose purpose is to promote the collective economic interests of a community through effective marketing and promotional programs.

mountain resort business improvement area - an area established by a local government by bylaw and using the local taxation system to assist businesses and property owners in financing effective marketing and promotional programs.

mountain resort improvement district - a special form of improvement district through which specific public services can be provided to a resort area where neither a municipality nor a regional district can provide such services.

mountain resort municipality - a special form of municipality for resort areas with expanded taxation and borrowing powers, used where the development is significant and remote from existing development or municipalities.

Why was the Act introduced?

Vast mountain ranges and glaciers, abundant snowfall, and accessibility to key markets have combined to give British Columbia the essential makings of a strong ski industry. Already the industry employs many British Columbians, and significant growth is expected into the future.

As the number of mountain resort communities continues to increase, so too does the need to satisfy demands for financing, developing, operating, protecting, maintaining and marketing publicly-oriented resort and community services for visitors and residents.

The demand for public services, such as sewers, water and fire protection, exists in mountain resort communities, as in any growing community. There is also a further need for coordinated private services, such as a central reservation system, signage and marketing. The provincial government and mountain resort communities face unique challenges:

- mountain resort communities are often located in unorganized, rural areas;
- mountain resort communities are usually surrounded by Crown land;
- mountain resort communities experience rapid growth and escalation in land values;
- populations fluctuate strongly on a seasonal and weekly basis, putting great pressure on both public and private services;
- a few initial resort owners have relatively large risks compared to later investors, and therefore risk much more if the resort community experiences financial difficulty; and
- individual businesses rely on collective success, and therefore everyone involved must be very focused on promoting the resort's businesses.

The *Mountain Resort Associations Act* addresses these issues. It offers growing mountain resort communities several means for providing, managing and paying for both private and public services and facilities.

The Whistler Model

Whistler is perhaps the best known example in British Columbia of a mountain resort community that has successfully reconciled the delivery of public services with the delivery of private services.

In 1975, the provincial legislature passed the *Resort Municipality of Whistler Act* to facilitate development of the ski resort. The Act granted to the residents of the area a unique combination of local government and, through later amendments in 1979, resort association powers. This enabling legislation is seen to be one of the key elements to the world class success of Whistler.

The *Resort Municipality of Whistler Act* created an "instant" municipality in relatively rural area, and bestowed on it several important features not generally given to other municipalities under the *Local Government Act*. Those features included:

Closer provincial supervision

The province was given greater control over Whistler than would have occurred in an ordinary municipality. Initially this control was exercised through the direct provincial appointment of a council member to oversee council actions, but it has continued through the minister's close supervision of bylaws, particularly those related to community planning provisions. The result is that the province can better assert its interests in economic development and environmental protection, and better support the local community in coping with the extreme pressures of growth.

Less stringent referendum requirements

Whistler, without seeking referendum approval of its residents, is allowed to undertake long-term borrowing for the construction of facilities to support the development of the community. Exempted is the ordinary requirement for a municipality to seek the assent of electors for loan authorization bylaws. However, the Inspector of Municipalities has the authority to override the exemption.

Broadened development cost charges

Whistler was given the ability to impose and collect "development cost charges" for a broader range of purposes than is done in other municipalities. Normally, the development cost charges imposed on people seeking building and subdivision approvals are used only to pay for the construction of road, sewer, water and drainage infrastructures and the acquisition and development of parkland. But Whistler, for

example, can require a developer to pay a development cost charge to cover the costs of providing affordable housing for resort staff.

Broadened development permit powers

Whistler has enhanced powers to control the external appearance of buildings and structures. In this way, the municipality can review development proposals to ensure that what is proposed fits into the community in terms of architectural theme, style and functional connection to other structures. Such control has been key to Whistler achieving the high-quality physical environment that has attracted investors and visitors.

Creation of a resort business association

In 1979, the *Resort Municipality of Whistler Act* was significantly amended to allow for the creation of the specially empowered "Whistler Resort Association." This association, empowered to encourage the development of the resort, has been a major force in the phenomenal economic success of the community.

Mandatory fees

The Whistler Resort Association has a built-in collection system of mandatory fees to pay for the services provided to the community. Section 19 of the *Resort Municipality of Whistler Act* empowers the association to make bylaws, including one for levying assessments on members. The underlying principle was to ensure that there was a known and continuing base of assessments so that the association could safely make necessary financial commitments to promote the development of Whistler. Unlike traditional methods of assessing municipal taxes, through the valuation of real estate, the association fees are assessed on the basis of "bed units" available and the leasable commercial area.

The Whistler model has worked well. In a relatively short time, the mountain resort community has become one of the premier ski areas in North America, The *Mountain Resort Associations Act* is intended to provide the tools to other areas of the province so that they might enjoy a similar success as Whistler.

How will the Act help promote Mountain Resort Development?

The *Mountain Resort Associations Act* has three major thrusts, it gives:

- other British Columbia mountain resort communities access to the benefits that are available to Whistler under the *Resort Municipality of Whistler Act*;
- Cabinet the ability to enhance the powers of local government to manage and deliver services; and
- mountain resort communities the opportunity to establish business promotion tools to facilitate the successful development of year-round resorts.

Access to the benefits enjoyed by Whistler

Before the *Mountain Resort Associations Act*, Whistler was the only ski resort to have the specially designed municipal powers. Now other mountain resort developers and mountain resort communities in the province can seek the same access to benefits that Whistler has enjoyed for years. The Act gives these communities and developers the opportunity to take advantage of the local governance, service provision and business promotion benefits of the Whistler model and introduces new tools not available to Whistler.

Enhanced powers of local government to manage and deliver services

Modelled on the *Resort Municipality of Whistler Act*, the legislation provides developers and mountain resort communities with the opportunity to supply and pay for "public" services through the modification of existing local government powers.

It is expected that the mountain resorts will move along the spectrum of local government options outlined in this document beginning with regional district services and ending with a municipality, depending on their circumstances.

Opportunities to establish business promotion tools

The *Mountain Resort Associations Act* gives ski resort communities the opportunity to create mountain resort business improvement areas or mountain resort associations having all the benefits required for the successful promotion of ski resort development.

The Act recognizes that growing mountain resort communities are more likely to be found in the province's rural areas than in its urban areas. Before the Act, there was no legislation that permitted a business organization in an unorganized rural area to charge for the private business promotion services needed for a mountain resort community. The legislation allows for the creation of business promotion organizations to do just that. Furthermore, the legislation augments the tools currently available for providing public services by allowing the creation of mountain resort improvement districts. These fill a gap where regional districts are unable or unwilling to provide local services.

Structure of Local Government

Responsibility for local government affairs is delegated by the province to local government through enabling legislation. The assignment of responsibility to local governments reflects the belief that the provision of local services by local people is the most efficient and equitable approach. British Columbia has three basic forms of local government:

- municipalities;
- regional districts; and
- improvement districts.

Municipalities

Municipalities include incorporated cities, towns, villages and district municipalities. In British Columbia, there are 157 municipalities.

Cities generally serve 5,000 people or more, towns 2,500 to 5,000 and villages fewer than 2,500. District municipalities may be of any population size and tend to cover large areas. Municipalities are considered to be general purpose local governments which regulate a variety of activities and provide a wide range of services.

Regional districts

A regional district is an incorporated entity composed of municipalities and unincorporated areas called electoral areas. There are 27 regional districts in the province, covering all but the northwest (Stikine) area.

Regional districts are governed by a board of directors. The directors are appointed by the councils of the member municipalities or, for the areas lying outside municipal boundaries, are directly elected. The main functions of regional districts are to provide:

- services and governance to the entire region;
- inter-municipal or contract services to two or more regional district members; and
- local services and governance to non-municipal areas.

The regional district structure provides an effective means of coordinating services and governance between incorporated and unincorporated areas, and of delivering basic services to rural areas through the mechanism of the "service area."

A service area is primarily an administrative tool that enables a regional district to provide a single service to a municipality or unincorporated area. Legally, it circumscribes an area of the regional district that is benefiting from a particular service (such as fire protection, water supply or sewage disposal), and provides the district with a mechanism for recovering the costs of that service from the property owners of the area.

A service area by itself does not hold planning or regulatory power, nor do its residents receive any additional representation beyond that available through the electoral area director and the regional district board. However, the regional board may, with the assent

of the electors, delegate the administration of the service to an elected local community commission to provide additional representation.

Improvement districts

Improvement districts are another way of providing one or more services in rural areas. They are gradually being phased out as regional districts assume their service roles.

Improvement districts are managed by a locally elected board of trustees and authorized by Cabinet to provide the rural residents with a vehicle for supplying specific services and recovering costs from the users. The most common services are water supply and distribution, irrigation, fire protection, street lighting and garbage removal.

What tools are available for enhancing business promotion?

The *Mountain Resort Associations Act* gives municipalities and regional districts the opportunity to choose between two different approaches to create organizations for the promotion of the business interests of a mountain resort.

First, a municipality or a regional district can take a more direct role in promoting the business interests of a mountain resort by creating, through a bylaw, a mountain resort business improvement area. Such an area provides a means for supporting a private mountain resort business improvement association, an organization that can perform many of the same functions as a mountain resort association, except that it is responsible to the local government.

Second, the minister can directly create a mountain resort association. Modelled after the provisions in the *Resort Municipality of Whistler Act*, this association is an incorporated society with some powers similar to those of a local government, including the ability to levy and recover charges from its members. Although the local government approves the creation of the association and its bylaws, it does not oversee the operation of the association (as it does for the mountain resort business improvement area), nor is it involved in collecting the levy. The association operates at arm's length from the local government.

Mountain Resort Business Areas

Section 800 and 804 of the *Local Government Act* allows for the creation of special business improvement areas called "mountain resort business improvement areas" both in municipalities and regional districts.

What is a mountain resort business improvement area?

A mountain resort business improvement area is an area, designated by the council of a municipality or the board of a regional district, in which businesses and property owners have agreed to be taxed to finance effective marketing and promotional programs for the entire area.

Although quite similar to the business improvement areas provided for in the *Community Charter*, mountain resort improvement areas are distinct from the ordinary business improvement areas in several ways:

- They can be established in regional districts and not just in municipalities, as is the case with ordinary business improvement areas.
- They are more flexible in the way they define the basis for assessing and recovering costs, since the Act allows the council or board to determine the method of cost recovery according to "any factor set out in the bylaws."

What are the benefits of a mountain resort business improvement area?

A mountain resort business improvement area is an effective way to finance marketing and promotion programs.

For property owners and tenants, a mountain resort business improvement area is an effective way to use local government powers to finance business promotion programs. The collection of the levy is handled by the local government through the property tax system and the monies go to a non-profit association. The association administers the monies, and the local government provides an oversight role.

How is a mountain resort business improvement area created?

A mountain resort business improvement area is created through a bylaw. However, the municipal council or regional district board would want to see evidence of support from the business community (e.g. through a mountain resort business improvement association) before proceeding to the drafting of a bylaw to create the area. Before the bylaw can be adopted, the property owners within the area must approve the creation of the business improvement area. This can be done by the property owners petitioning for the creation of a business improvement area. At least two thirds of the owners in the area having at least one half of the net taxable values within the area must sign the petition.

Alternatively, the council or board can advertise its intention to create a business improvement area and invite property owners to object. In such cases, a majority of owners, representing at least half of the net taxable value of the parcels within the area, must object to prevent the local government from proceeding.

Following the successful completion of one of these initiatives, a council or regional board can adopt the bylaw creating the business improvement area.

Figure 1, on page 8, shows the process for creating and setting up a mountain resort business improvement area.

How does a mountain resort business improvement area operate?

The mountain resort business improvement area is a means for a local government to collect money for a separately incorporated business promotion association. Critical issues for the association to consider are the following:

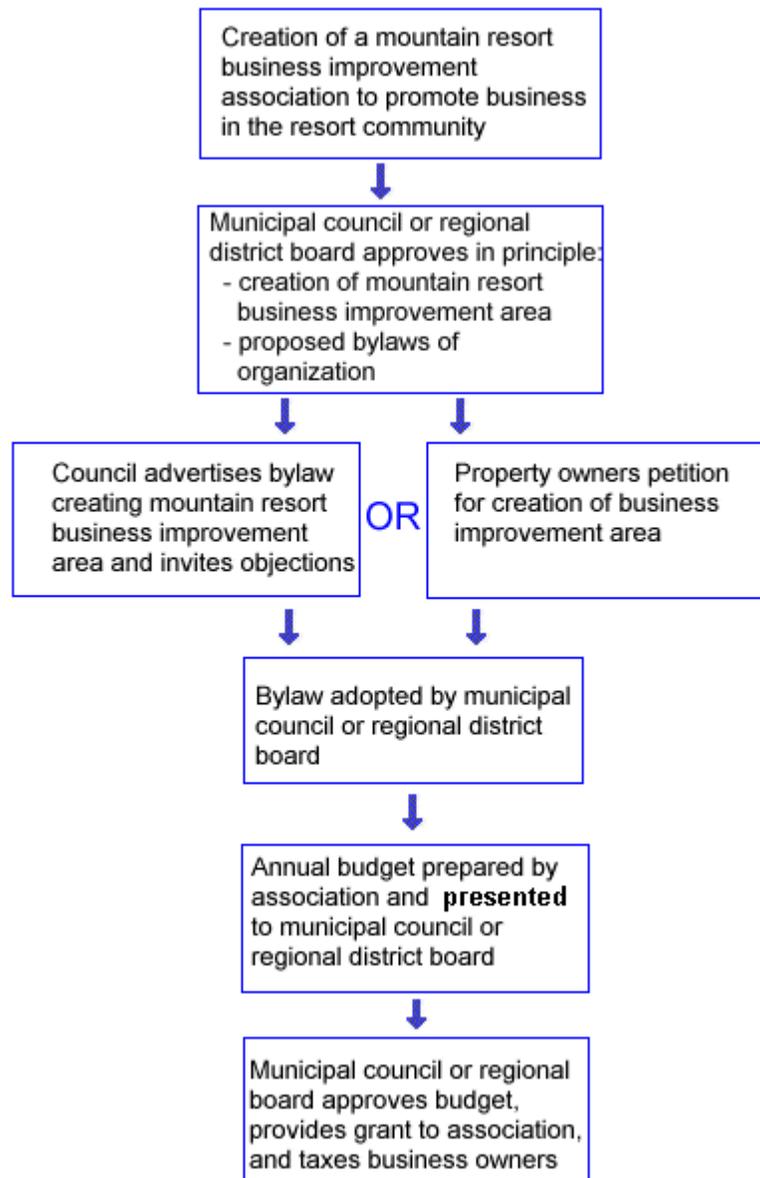
- membership;
- board of directors;
- staff and consultants;
- programs; and
- annual budget.

The new organization itself decides who can be a member. Potential candidates include business property owners and business operators within the mountain resort business improvement area.

Members must also decide the composition of the board of directors and its electoral procedures. Like other associations, the organization has to decide on a formal structure and may authorize the board to form sub-committees with specific jobs, such as preparing annual work programs and budgets. It can choose to depend entirely on volunteer workers or it can hire full- or part time staff, depending on its needs and financial resources.

At its annual general meeting, association members approve the budget for the next year. This budget is then presented to the municipal council or regional district board, which approves the budget and determines the tax to be levied and collected for the next year's activities. The association must report its expenditures yearly to the municipal council or regional district board.

**FIGURE 1:
The steps required to create a mountain resort business improvement area and association**



How is a mountain resort business improvement area funded?

Annual budgets for the new business improvement areas are funded through a special levy on business properties within the designated boundaries of the area. These levies are collected through the local government taxation system. As set out in section 216 of the *Community Charter*, the council or regional board can choose the basis for setting rates. "Bed units," for example, or square footage of business premises can be used instead of using a parcel, frontage or property value rate. Whatever basis is selected, this information must be included in the bylaw creating the business improvement area. As well, and unique to these mountain resort business improvement areas, local governments can establish different classes of business and set different levies on each class.

Mountain Resort Associations

A mountain resort association provides a high degree of local control and autonomy. Under the *Mountain Resort Associations Act*, a specially empowered mountain resort association (as occurred at Whistler) provides a growing community with access to an organizational structure with a built-in means for raising monies to support its operations. This differs from a mountain resort business improvement area, in which funding is acquired through the local government taxation system. An association may be created as soon as a "mountain resort area" is established where two thirds of the landowners, representing at least one half of the net taxable values within the mountain resort area, sign and send a petition to the minister.

What is a mountain resort association?

A mountain resort association is a non-profit society that is created to promote the collective economic interests of the community, which normally entail delivering private services such as central booking, marketing, signage, and special events planning. Associations tend to carry on activities that focus the community on its primary reason for existence, the mountain resort business.

Specific provisions of the *Society Act* pertaining to association bylaws apply to a mountain resort association. In addition, an association must be either a reporting society under the *Society Act*/or a reporting company under the *Company Act*. This ensures that there will be proper and regular filing of association information with the Registrar of Societies or the Registrar of Companies.

What are the benefits of a mountain resort association?

A mountain resort association provides a high degree of local control and autonomy. As a private organization with quasi-taxation powers, it is accountable to its members only and not to local government. It is controlled by a board of directors elected by its members and has bylaws to govern its operations. To be a successfully functioning organization, a mountain resort association relies on input from its members.

How is a mountain resort association created?

A mountain resort association is created through a Minister's Order. Before signing an order to create an association, the minister:

- determines whether the proposal is for a bona fide mountain resort;
- confirms local government has approved establishment of a mountain resort area and the proposed first bylaws of the association; and
- accepts a petition from at least two thirds of the property owners representing at least 50 per cent of the net taxable values in the approved area.

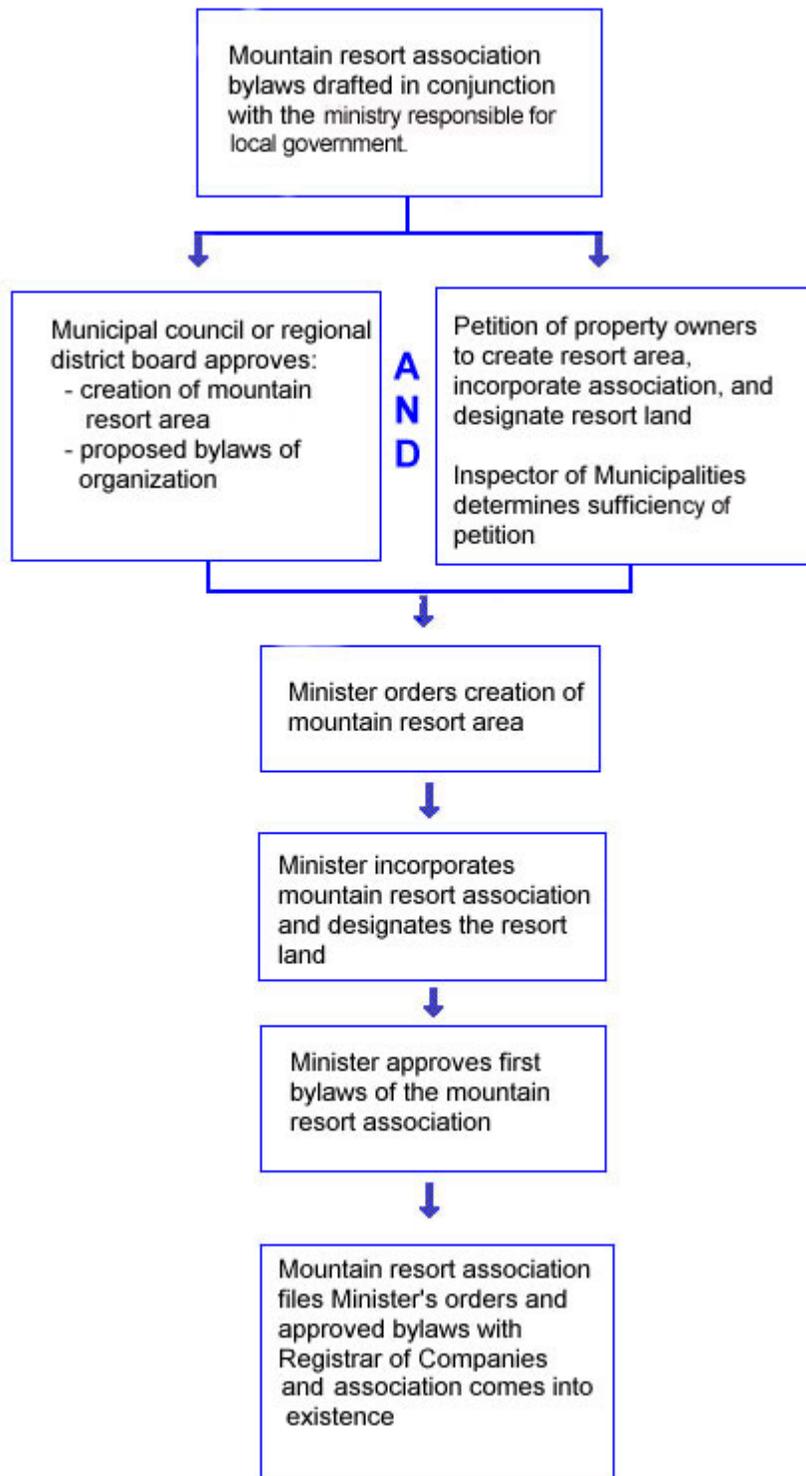
At the same time as creating a mountain resort association and specifying land within the mountain resort area as mountain resort land, the minister may approve the proposed first bylaws of the association.

What are some potential concerns about a mountain resort association?

A mountain resort association is a private rather than a public body which is focused on developing the economy of the resort. This may raise the concern that it is not working with local government. However, the legislation provides local government with a role in approving the creation of an association in order to ensure local input. As well, based on Whistler's experience, it is expected that resort associations will work closely with local government in furthering the interests of the resort community.

Figure 2 (page 10) shows the process for establishing a mountain resort association.

FIGURE 2:
The steps required to create a mountain resort association



What tools are available for enhancing local governance and service delivery?

The ministry responsible for local government and residents of a mountain resort community must make prudent decisions on appropriate local government structures for providing local governance and public services. There are essentially four alternatives to consider:

- expanded powers for existing municipalities;
- regional district service areas;
- mountain resort improvement districts; or
- mountain resort municipalities.

Expanded powers for existing municipalities

A municipal council, after obtaining the assent of electors, can request that the minister responsible for local government designate all or part of the municipality as a mountain resort area, and that Cabinet amend the municipality's Letters Patent to enable it to exercise expanded Whistler-type powers. This gives the municipality the option of exercising the following special powers within the mountain resort area:

- to waive the requirement for electoral assent for capital borrowing;
- to levy and collect development cost charges from developers for services in addition to those specified in the *Local Government Act* for normal municipalities; and
- to expand the use of development permits to include control of the external appearances and finish of buildings and structures.

The introduction of expanded municipal powers could be undertaken in conjunction with, or following, a municipal boundary extension to enclose a mountain resort. Section 13(4) of the *Local Government Act* makes legislative provisions for this, giving the minister authority to recommend boundary extensions to Cabinet.

Regional District Service Areas

The board of a regional district can, through bylaw, establish service areas for local services such as water, sewer and garbage collection that would likely be necessary for mountain resorts in rural areas. All bylaws establishing local services must receive the assent of the electors in the service area through a vote or petition and the approval of the Inspector of Municipalities. Regional district service areas have become the primary means for providing services in rural areas of British Columbia, replacing improvement districts. A regional board can, with the assent of the electors, delegate management of a service area or areas to an elected local community commission.

Information about service delivery options for unincorporated areas is available from local regional districts; information about the assent and consent process is available from the ministry.

Mountain Resort Improvement Districts

Where the regional district is not willing or not in a position to service a rural mountain resort community, the creation of a mountain resort improvement district is an option. Mountain resort improvement districts are intended to be temporary vehicles during the development period of a resort with the transfer of responsibility going eventually to a regional district or to a municipality. As a consequence of their role in the development of the resort, mountain resort improvement districts are not financed in the same way as conventional improvement districts. Specifically, they do not receive operating advances from the provincial government, nor do they have the ability to borrow through the Ministry of Finance.

Before Cabinet will consider creating an improvement district, the existing local government for the area must first give its approval. More information about mountain resort improvement districts is available from the ministry responsible for local government.

Mountain Resort Municipalities

A mountain resort municipality is incorporated in the same way that normal municipalities are incorporated, following a referendum of the electorate. However, under Section 11.2 of the *Local Government Act*, a mountain resort municipality may be incorporated without a referendum where a mountain resort improvement district exists and its Letters Patent indicate that it will evolve into a municipality without a referendum.

As with a municipality with a mountain resort included within its boundaries, a mountain resort municipality has access to expanded Whistler-type municipal powers. Specifically, the Letters Patent of the mountain resort municipality may give it the following options:

- to waive the requirement for electoral assent for capital borrowing;
- to levy and collect development cost charges from developers for services in addition to those specified in the *Local Government Act* for normal municipalities; and
- to expand the use of development permits to include control of the external appearance and finish of buildings and structures.

A mountain resort municipality would likely only be created in exceptional circumstances where the development is large and well removed from existing municipalities. Even here, the mountain resort municipality is intended to be a means for providing local governance and services once a resort is well established, the property ownership structure has diversified, and a permanent year-round population is evident.

Table 2 summarizes all of the tools now made available to mountain resort communities under the *Mountain Resort Associations Act*, and shows situations where they might be applied.

TABLE 2:
Tools available under the *Local Government Act* and *Mountain Resort Associations Act*, and where they might apply.

RESORT STATUS	TOOLS AVAILABLE UNDER THE <i>MOUNTAIN RESORT ASSOCIATION ACT</i>
New or expanded mountain resort development in a remote area	<p>Local Governance and Services:</p> <ul style="list-style-type: none"> - regional district service area - mountain resort improvement district - future mountain resort municipality <p>Business Promotion:</p> <ul style="list-style-type: none"> - mountain resort business improvement area - mountain resort association
New or expanded mountain resort development adjacent to an existing municipality	<p>Local Governance and Services:</p> <ul style="list-style-type: none"> - municipal boundary extension - mountain resort area designation with expanded municipal powers <p>Business Promotion:</p> <ul style="list-style-type: none"> - mountain resort business improvement area - mountain resort association
Existing resort development at some distance from an existing municipality	<p>Local Governance and Services:</p> <ul style="list-style-type: none"> - regional district service area <p>Business Promotion:</p> <ul style="list-style-type: none"> - mountain resort business improvement area - mountain resort association

Existing resort development within an established municipality

Local Governance and Services:

- mountain resort area designation with expanded municipal powers

Business Promotion:

- mountain resort business improvement area
 - mountain resort association
-

For More Information

A copy of the *Mountain Resort Associations Act* is available through Crown Publications.

To obtain further information about any of the opportunities and options described in this guide, contact:

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