RDCO/WFN INCLUSIVE REGIONAL GOVERNANCE INITIATIVE

DISCUSSION PAPER

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JWR Business Group
31 Weway Road
PO Box 762
Quathiaski Cove, BC
V0P 1N0

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INCLUSIVE REGIONAL GOVERNANCE INITIATIVE

WFN and the Regional District of Central Okanagan

1. INTRODUCTION

1.1 Inclusive Regional Governance Initiative

The Regional District of Central Okanagan ("RDCO") and Westbank First Nation ("WFN") have expressed an interest in considering a more inclusive system of regional governance, including potential options for WFN to become a full voting member of the RDCO. This vision is set out in both the WFN Comprehensive Community Plan[1] and in the RDCO's Regional Board Strategic Priorities 2023-2026.[2]

The WFN Community Plan commits to the following:

- "Continue to participate in Community-to-Community Forums with the City of West Kelowna, the City of Kelowna, the District of Peachland and the Regional District of Central Okanagan to discuss and make progress on developing communication and collaboration tools such as protocols or service agreements and memorandums of understanding for areas of shared/mutual concern and benefit."[3]

- "Explore formalizing a relationship with the Regional District of Central Okanagan on **becoming a voting member**." [emphasis added][4]

- Initiate discussions with the City of West Kelowna, District of Peachland, the City of Kelowna and the Regional District of Central Okanagan to develop a Community Accord and Protocol Agreement on Communication and Cooperation for foundational elements such as land use planning, economic diversification, protecting cultural and heritage resources, investment and employment sharing reciprocal services, communication on property taxation.[5]

The RDCO has set out six strategic priorities, one of which is Truth and Reconciliation, committing to the following regional and electoral area actions:[6]

- Complete the Regional District Reconciliation Framework to guide the actions taken by RDCO in its pursuit of Reconciliation with the syilx/Okanagan people;

- Develop government-to-government relationship with Westbank First Nation, Okanagan Indian Band and Okanagan Nation Alliance;

[1]WFN Comprehensive Community Plan (CCP), 2022. https://www.wfn.ca/our-community/community-planning-projects/comprehensive-community-plan.htm
[2]RDCO's Regional Board Strategic Priorities 2023-2026, https://issuu.com/regionaldistrictcentralokanagan/docs/2023_strategic_priorities_final_august_4_2023
[3]WFN Comprehensive Community Plan (CCP), 2022. Chief Bitterroot, Goal 4, Actions/Strategies 19, p 81
[4]WFN Comprehensive Community Plan (CCP), 2022. Chief Black Bear, Goal 2, Action/Strategies 10, p 105
[5]WFN Comprehensive Community Plan (CCP), 2022. Chief Black Bear, Goal 2, Action/Strategies 13, p 107
[6]RDCO's Regional Board Strategic Priorities 2023-2026, p 10.

- Continue work already underway to **explore full representation for Westbank First Nation on the Regional District Board** [emphasis added];

- Support the syilx/Okanagan people in their efforts to protect culturally significant areas.

In recognition of the shared vision for more inclusive regional governance in the Central Okanagan, the JWR Business Group ("JWR Group") has been contracted by the RDCO to prepare a discussion paper and facilitate an initial meeting between WFN and the RDCO to consider the Discussion Paper and next steps. The cost of this work is being covered through a grant provided by the government of BC.[7]

The Discussion Paper provides some background on Indigenous and regional governance generally, and more specifically in respect of WFN and the RDCO. Further, it considers the various governance arrangements that are already in place between local governments and self-governing First Nations in BC and the Yukon. The Discussion Paper then sets out some key considerations for RDCO and WFN and finally provides some ideas regarding potential models of inclusive governance. The models presented are intended to provide a starting point for ongoing discussions and are not meant to be exhaustive. Variations or combinations of models may also be considered, as well as innovative ideas outside of the models presented. The JWR Group will be facilitating a joint working group meeting between the RDCO and WFN to discuss the potential models and next steps, including key considerations such as decision-making criteria, communications, consultation, and approvals required.

It will be important for WFN and the RDCO to take the time necessary to consider the appropriate path forward, in what could end up being a multi-year process; particularly, if formal changes to governance structures of either be required. If the initiative is advanced further, it is expected that both WFN and the RDCO will be undertaking broad and meaningful engagement with the various constituencies they represent. Seeking the input of constituents will be critical to the ultimate success of the initiative. In addition to consultations, various approvals will be required from WFN, the RDCO, the Province of BC, and the government of Canada, depending upon the approach taken. It is hoped that regardless of the outcome, the

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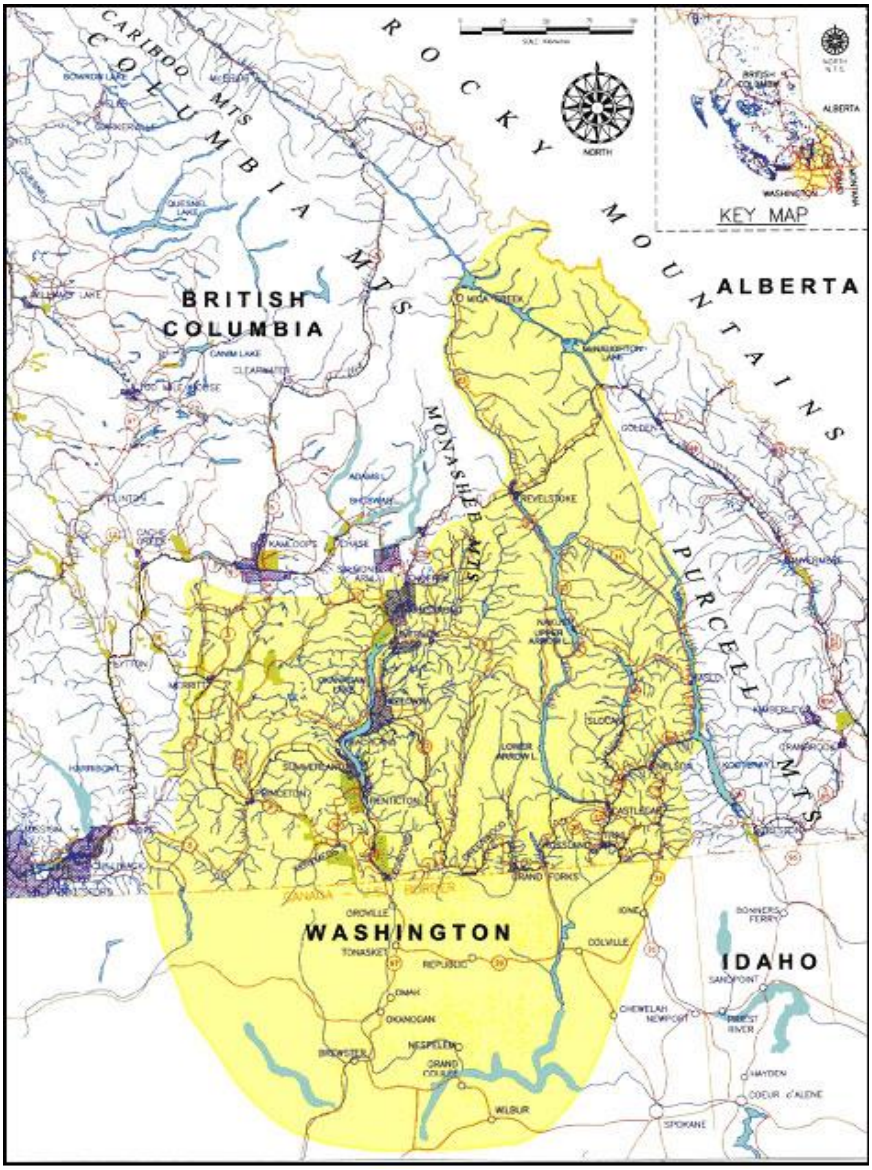
[7] The British Columbia Ministry of Municipal Affairs provides programs, problem-solving, advice, education, and oversight on local and regional governance, to advance effectively and collaboratively governed, well-structured, dynamic communities through the Governance and Structure Branch. Part of the Branch's work includes building local government relations with First Nations by influencing provincial processes and supporting local government-Indigenous community engagement to support reconciliation.

The Ministry is seeking to understand what system design changes, including potential legislative change, may be needed to enable further First Nations participation on regional district boards outside of the modern treaty process. The Ministry has provided grants to a select group of regional districts to undertake discussions with First Nations partners on their community governments' interests in furthering participation on regional district boards in different ways and through various mechanisms. Regional districts will then report back to the Ministry with their observations and findings from the engagement sessions.

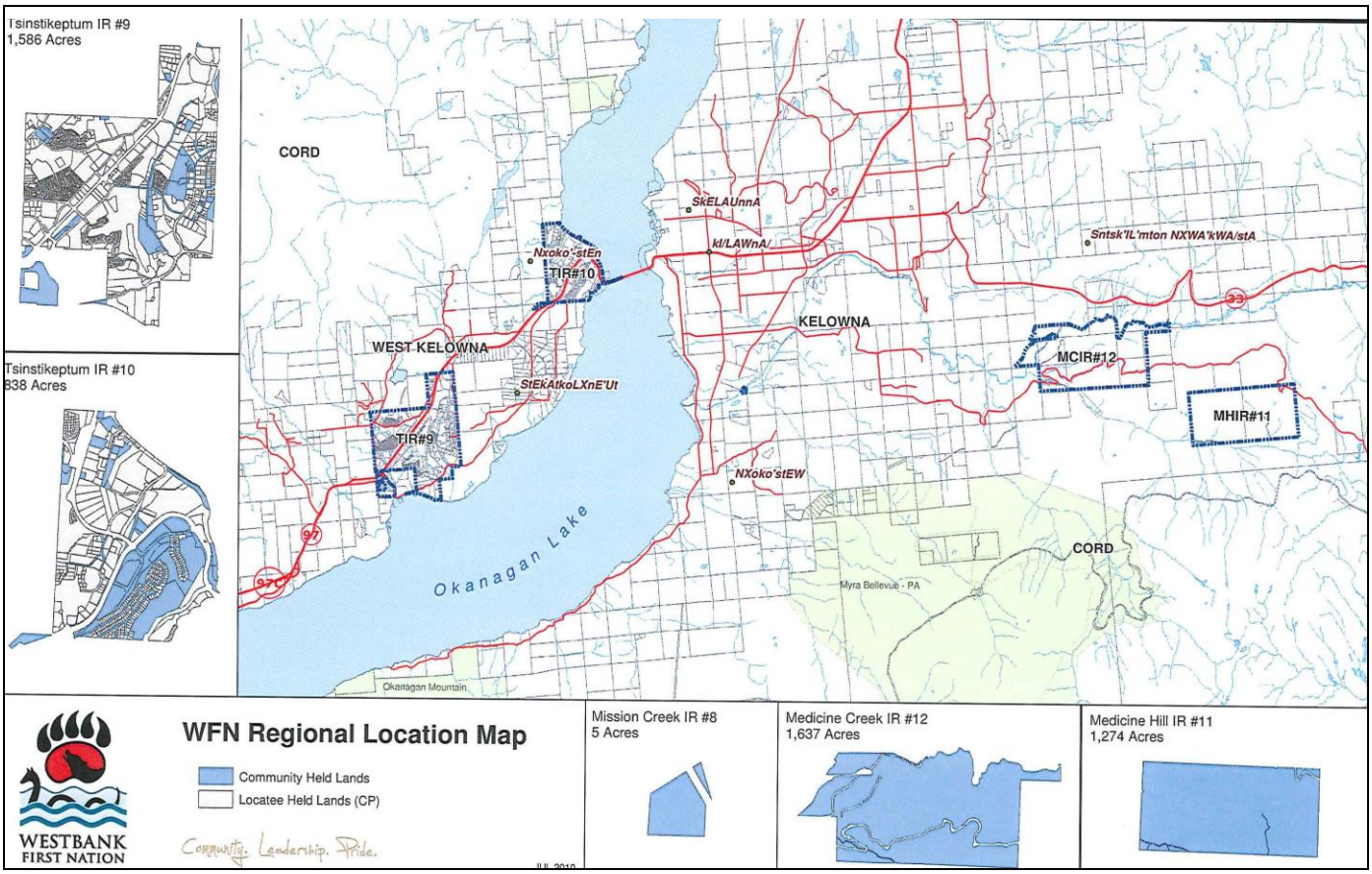
process will result in strengthened regional governance, and foster an even more strengthened relationship between WFN and the RDCO.

1.2 WFN



WFN is one of eight Okanagan Nation communities. The syilx traditional territory extend from the south-central interior of B.C. to north central Washington State. The syilx people are a division of the Interior Salish, speak the nsyilxcən language, and have inhabited the Okanagan and adjacent valleys for thousands of years. As a People, they have never surrendered their traditional territory to Canada through a treaty (either modern or historic). And, as with all First Nations in BC where no treaties were reached, small tracts of lands were unilaterally set aside by Canada for their use and benefit as “lands reserved for Indians”.

Today, WFN has five reserves totaling approximately 2,160 hectares. The populated reserves, Tsinstikeptum Indian Reserves #9 (IR#9) and Tsinstikeptum Indian Reserves #10 (IR#10), are located on the east side of Okanagan Lake and wholly encompassed within the boundaries of the City of West Kelowna. The other three WFN reserves, Mission Creek Indian Reserve #8 (IR#8), Medicine Hill Indian Reserve #11 (IR#11) and Mission Creek Indian Reserve #12 (IR#12), are located on the east side of Lake Okanagan and are currently undeveloped. Collectively, the lands that have been set aside as reserves by Canada for WFN (and any lands that will be added in the future), are referred to as "Westbank Lands."



WFN is one of only 29 First Nations that is recognized by Canada as a self-governing Indigenous government ("SGIG"), and one of only a handful of such arrangements negotiated outside of a modern treaty. Accordingly, and separate and apart from the other communities that comprise the Okanagan Nation, WFN is not principally governed by the *Indian Act,* but rather has its own legally enforceable Constitution.[8] In accordance with its Constitution, WFN makes its own laws in a number of areas of jurisdiction. Since becoming a recognized SGIG in the modern era, WFN has implemented one of the most comprehensive sets of community laws in Canada[9], including laws that cover the granting of interests in Westbank Lands, their development and regulation, and the raising of revenue. This body of law has facilitated and supported significant

[8] https://www.wfn.ca/docs/wfn-constitution.pdf?RD=1
[9] https://www.wfn.ca/your-government/law-enforcement/laws.htm

development on Westbank Lands. All persons residing or conducting business on Westbank Lands are subject to WFN land laws and other laws, as applicable, in accordance with the self-government arrangements.

Today, approximately 50% of Westbank Lands are developed and are fully serviced. IR#9 and IR#10 on the westside of Lake Okanagan are substantially developed or planned to be developed. The remaining reserves on the east side of Lake Okanagan, IR#8, IR#9 and IR#11, while potentially very desirable for future economic growth as the area responds to increasing demands for development, are subject to future planning decisions and will require a neighbourhood plan under WFN law.

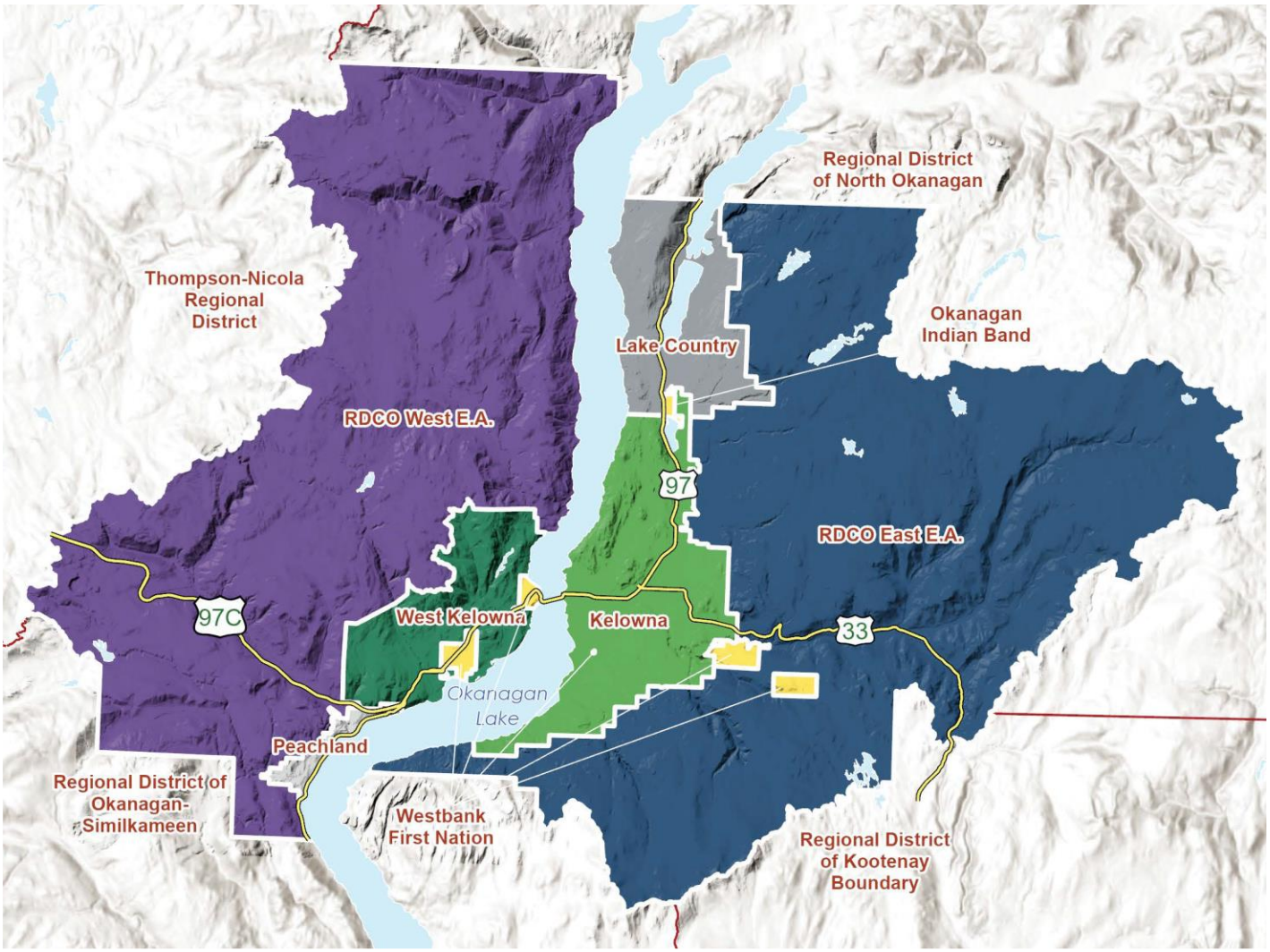
Through its administration, WFN provides a number of community programs and services including a daycare and pre-school services at the Westbank Child Development Centre and a kindergarten to grade six elementary school at the Sensisyusten House of Learning. WFN also provides social services, including social assistance, as well as a range of health services in addition to its extensive municipal type services.

At the time of writing there were 903 WFN Members, the majority of which reside on Westbank Lands. There are also over 10,000 non-Member residents residing on Westbank Lands.[10] While some non-municipal services are only provided to WFN Members or persons registered as "Indians" by Canada, all municipal services are provided to all residents.

1.3 Regional District of Central Okanagan

The RDCO is one of the 27 regional districts in BC. The RDCO covers over 314,000 hectares that straddle the shoreline of Okanagan Lake. With 194,000 people, it is the third largest urban area in the province. The RDCO currently includes the two unincorporated Electoral Areas of Central Okanagan East and Central Okanagan West, along with the member municipalities of the City of Kelowna, City of West Kelowna, the District of Lake Country, and the District of Peachland. WFN is not a member, but does participate on the Board with observer status.

[10] https://www.wfn.ca/business-development/business-services/economic-development/quick-facts.htm?RD=1



The six RDCO priorities (including "Truth and Reconciliation"), as set out in the Regional Board Strategic Priorities 2023-2026, are:

- **Emergency Preparedness**
  The RDCO will build on emergency response strengths while positioning the organization to respond to growing community needs and changes in provincial legislation (regional and electoral).
- **Environment and Climate**
  The RDCO is committed to climate action and the environment by reducing our corporate impact, adapting to climate change and delivering innovative services that better manage greenhouse gas emissions (regional).
- **Growth and Development**
  The Electoral Area Services Committee (EASC) identified responsible land use planning as a strategic priority to safeguard the environment and climate (electoral).
- **Health and Wellness**

The RDCO will make purposeful investments in health-care for physical and mental health benefits (regional and electoral).

- **Transportation**
  The RDCO will encourage the efficient and safe movement of people and goods within the Central Okanagan (regional and electoral).
- **Truth and Reconciliation**
  The RDCO is actively committed to Reconciliation with the syilx/Okanagan people within the Central Okanagan. The RDCO strives for collaboration through a meaningful and ethical government-to-government working relationship with the syilx/Okanagan people (regional and electoral).[11]

2. BACKGROUND – INDIGENOUS PEOPLES

2.1 Indigenous Governance – Context and Evolution

> "Simply defined, "Governance" means "establishing rules to coordinate our actions and achieve our goals." As societies, the institutions we create to make rules and then enforce them, we call "government." Governance and government come in many forms but are always needed. They can, of course, be done well or badly. Research and experts tell us that the quality of governance, much more than its specific form, has a huge impact on the fortunes of any given society. Ours are no exception. Societies that govern well simply do better economically, socially and politically than those that do not. Strong and appropriate governance increases a society's chances of effectively meeting the needs of its people."[12]

Prior to European contact, Indigenous Peoples in what would become Canada and the United States lived and effectively governed themselves according to their own laws and traditions. They were self-governing nations and controlled territory to the exclusion of others.

Pre-confederation and early "peace and friendship" treaties entered into between Indigenous nations/tribes and the representatives of the British and French governments were symbolic of a nation-to-nation relationship, and from an Indigenous perspective, established shared sovereignty. However, over time these relationships changed.

By the time of Canada's founding in 1867, although present in what was to become Canada, the Indigenous Peoples were not at the confederation table in Charlottetown. They were left out of the "founding" of the country; instead, Canada was born as a federation, dividing power between a federal government and provincial governments. Indigenous governments – their laws, jurisdictions, and authorities – were ignored, creating a massive and enduring obstacle for

[11] https://www.rdco.com/en/your-government/regional-board-priorities.aspx
[12] Jody Wilson-Raybould, *BCAFN Governance Toolkit: A Guide to Nation Building*, (BCAFN, 2014). https://www.bcafn.ca/sites/default/files/docs/Governance-Toolkit.pdf

Indigenous Peoples and ultimately the new country.[13] The federal government was given constitutional authority over "Indians and Lands reserved for Indians" (s.91(24)), to the exclusion of the provinces.

In terms of governance, the nature of the relationship with Indigenous nations changed significantly at the time of Confederation. This shift was characterized by the reports of the Royal Commission on Aboriginal Peoples (RCAP) as a period of containment and assimilation. The legal and policy framework that was established was intended to support this government-endorsed containment and assimilation program.

The numbered treaties 1-11, signed between 1871-1921, from the Crown's perspective, were not about shared sovereignty but really all about land acquisition. The objective was to acquire any interest in the lands that a nation or tribe of Indians might have and to subjugate the people to the Crown. The land and political power could only be surrendered to a representative of the Crown. This process continued after confederation and was substantially completed before the First World War throughout most of what was then settled Canada. The work, however, was not completed in BC, the North, or parts of the Maritimes and Quebec.

Following the signing of treaties, it was the intention of the federal government that the lands reserved for Indians and the Indians themselves would be governed under federal legislation and, where applicable, provincial laws (and not their own). The assumption being that at some point the Indians would assimilate into the body politic and become full citizens, and when so absorbed, the reserves would be disposed of. With no more Indians, there would be no more need for any reserves.

Over time, law became a tool to increasingly control Indigenous Peoples and eliminate their rights. The *Indian Act,* first passed in 1876, essentially set up the regulatory regime to govern Indians and lands reserved for Indians. Amongst its features was defining who was an Indian, banning cultural practices like the potlatch, creating the reserve system, and restricting Indians to reserves, including enabling a pass system on reserves to limit mobility. In addition, based on the *Indian Act,* Indians did not have the right to vote, the right to consult legal counsel or sue the Crown. Indigenous forms of governance were displaced by the *Indian Act* and replaced by a band council system. The *Indian Act* also established residential schools and enabled the removal of children from their homes until as recently as 1996. Ultimately, the *Indian Act,* in keeping First Nations separate and apart, became a key tool in displacing Indigenous legal traditions, governance systems and ways of life.

Both the Truth and Reconciliation Commission (TRC) of Canada[14] and the National Inquiry into Missing and Murdered Indigenous Women and Girls (National Inquiry)[15] commented upon the efforts to assimilate, and indeed eliminate, Indigenous Peoples:

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[13] See Jody Wilson-Raybould, *True Reconciliation: How to be a Force for Change.* (McClelland & Stewart, 2022), p. 43.
[14] https://nctr.ca/records/reports/#trc-reports
[15] https://www.mmiwg-ffada.ca/final-report/

> "Canada is a settler colonial country. European nations, followed by the new government of 'Canada,' imposed its own laws, institutions, and cultures on Indigenous Peoples while occupying their lands. Racist colonial attitudes justified Canada's policies of assimilation, which sought to eliminate First Nations, Inuit, and Métis Peoples as distinct Peoples and communities." ~ National Inquiry
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> "For over a century, the central goals of Canada's Aboriginal policy were to eliminate Aboriginal governments; ignore Aboriginal rights; terminate the Treaties; and, through a process of assimilation, cause Aboriginal Peoples to cease to exist […] The establishment and operation of residential schools were a central element of this policy, which can best be described as 'cultural genocide.'" ~TRC

Despite the attempts at assimilation, Indigenous Peoples did not give up. Quite the opposite. Protecting a way of life and identity was far too important, and Indigenous institutions persisted. Indigenous leaders continually defended their right to exist as distinct Peoples and Indigenous communities/nations continued to practice their ways, often in secrecy.

Now let us fast forward to the early 1980s, when Canada was looking to patriate the Constitution and sever ties with the United Kingdom. Indigenous Peoples strongly advocated and protested that this could not happen without Indigenous rights being addressed. There was a Constitutional train across Canada, judicial reviews in the UK, and much lobbying and protests. As a result of this advocacy, the *Constitution Act,* 1982 included section 35, which recognizes and affirms Aboriginal and treaty rights for Indians, Inuit, and Métis. This was very significant, and there was much anticipated change to follow in the relationship between the Crown and the Indigenous Peoples of Canada, including further clarification in the Constitution about self-government. For Indigenous Peoples, section 35 is seen as a "full box" of rights; however, governments did not take this position. Attempts were made to amend Canada's Constitution to specifically include Indigenous self-government, but these failed.[16] Canada and the provinces continued to deny the existence of Aboriginal rights, arguing that they had to be confirmed by a court or established by a treaty to exist.

So, as denial accompanied assimilation before 1982, it continued after the recognition of rights in Canada's highest law. Even with the adoption of section 35, the responsibility of proving that these rights exist was placed on Indigenous Peoples, often through extensive, lengthy and costly court processes. Today, some 41 years later, numerous decisions of the Supreme Court of Canada have confirmed that section 35 of the *Constitution Act, 1982*, with respect to self-government (among many other matters), recognizes and affirms the following:

- distinct cultural groupings of Indigenous Peoples continue to exist today, and that they have the right to determine their economic, social, cultural and political status;

[16] Four Constitutional conferences held between 1983-1987 and the Charlottetown Accord, 1992.

- First Nations and Inuit people had their own governments and laws, and exercised authority over their territories, prior to the arrival of Europeans, and they have the right to choose, develop, and continue their own forms of government and laws;
- the Métis have the right to choose, develop, and continue their own forms of government and laws; and
- Indigenous Peoples have deep connections to the land and resources of their territories.

At the same time Indigenous Peoples were taking government to court over their rights or defending themselves, others were negotiating at numerous tables to negotiate modern treaties, self-government, and other agreements. This has also proven to be both lengthy and costly, and without widespread and significant change (except for those groups that have been able to successfully negotiate agreements). All of this is on top of a troubled relationship on many other fronts, with social issues that arguably are incidental to the lack of recognition and respect given to Indigenous Peoples' political and legal rights.

When the Liberal government came into power federally in 2015, it sought to change the way in which the federal Crown approached its relationship with Indigenous Peoples. In the spirit of reconciliation, the intention was to base the relationship on the recognition of rights rather than denial. This is a work in progress that remains for the most part unfulfilled, although some steps have been taken.

In 2016, Canada fully endorsed, without qualification, the *United Nations Declaration on the Rights of Indigenous Peoples (*the *UN Declaration).*[17] Specifically, article 4 with respect to self-government sets out:

> "Indigenous Peoples, in exercising their right to self-determination, have the right to autonomy or self-government in matters relating to their internal and local affairs, as well as ways and means for financing their autonomous functions."

In 2018, The Department of Justice issued "Principles Respecting the Government of Canada's Relationship with Indigenous Peoples."[18] This document marks an important shift in federal policy as approved by Cabinet. Acknowledging the *UN Declaration* and section 35, it guides how Canada is expected to amend its policies, laws and practices based on rights recognition. The Principles need to be followed and fully implemented by Canada, which remains a challenge.

In BC, the current NDP government has also adopted principles similar to Canada, and legislation was passed to implement the *UN Declaration* in 2019.[19] In 2020, the Government of

[17] https://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf
[18] https://www.justice.gc.ca/eng/csj-sjc/principles.pdf
[19] *Declaration on the Rights of Indigenous Peoples Act*

Canada passed its own legislation to implement the *UN Declaration.*[20] Both jurisdictions now have Action Plans to begin the process of implementation. However, there is still much to do, and both Canada and BC really must now act on the rights that have been recognized, and ensure that they are collaboratively implemented in partnership with Indigenous Peoples. This is challenging work given the history and the pace at which governments work.

By way of summary to this part of the Discussion Paper, understanding the current context for Indigenous governance is understanding the arc of history with respect to the relationship between the Crown and Indigenous Peoples. This history is about colonization – how frequently things have been done **to** Indigenous Peoples, such as regulation of people through the *Indian Act*. This aspect has been examined in detail by the TRC's review of Indian Residential schools and the Royal Commission on Aboriginal Peoples. Another aspect of this history is a shift to doing things **for** Indigenous Peoples. Some examples include programmatic responses to address socio-economic issues. However, the current context must be a move to recognition, which means moving to doing things **with** Indigenous Peoples. Recognition covers co-development and partnership. As the arc of history unfolds (and moving forward), working together in a way where different values and approaches are fused to become a new way of working and making decisions is critical. We are moving in this direction, but we are not there yet.

That said, there has been some progress over the years with respect to self-government, from which we can learn and build on.

2.2 Modern Treaties & Self-Government Agreements

Unless a First Nation has negotiated self-government and is a SGIG, the *Indian Act* applies. Without an efficient and effective mechanism for First Nations to move out from under the *Indian Act*, the *Indian Act* still continues to govern most "bands." The *Indian Act* establishes a limited form of local administration that does not consider the specific circumstances of individual communities. Based on the system set out in the *Act*, First Nations typically elect chiefs and councils for a specified time and pass bylaws in limited areas.

Despite the fact that, in principle, having the *Indian Act* is wrong, it has been amended from time-to-time as a result of advocacy by Indigenous Peoples as well as the evolution of international law, such as the Universal Declaration of Human Rights in 1948. Amendments to the *Act* in 1951 resulted in eliminating the inability to consult counsel and sue the Crown. This resulted in significant legal decisions, such as the 1973 Supreme Court of Canada decision in *Calder*, that recognized the existence of Aboriginal title at the time of colonization, although the Court split on whether it still existed. Future decisions would say that it does[21] and one decision would grant a declaration of Aboriginal title.[22] The federal government response to the 1973

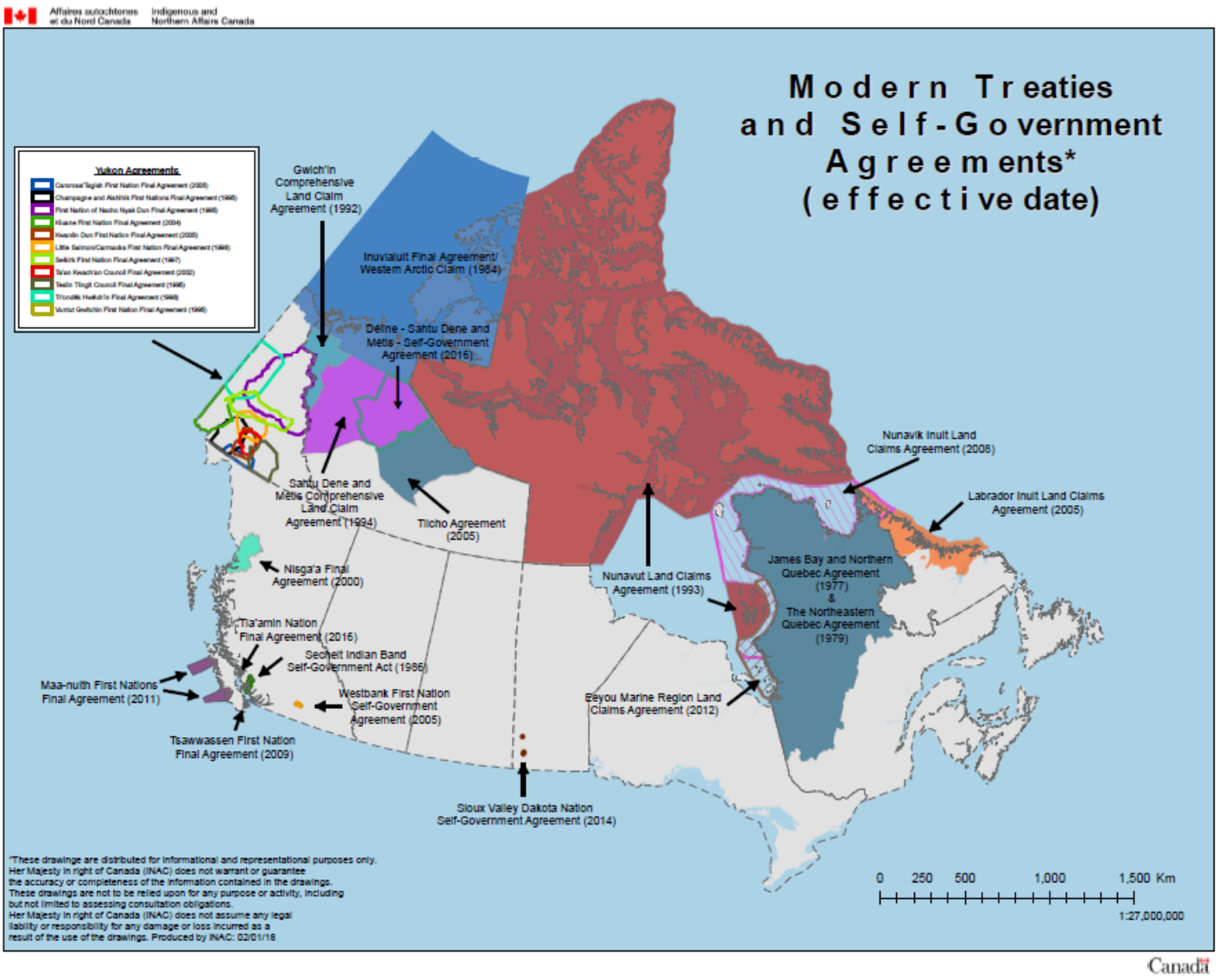
[20] *United Nations Declaration on the Rights of Indigenous Peoples Act S.C. 2021*, c. 14, https://laws-lois.justice.gc.ca/eng/acts/u-2.2/page-1.html
[21] Delgamuukw *v.* British Columbia, [1997] 3 S.C.R. 1010
[22] Tsilhqot'in Nation v. British Columbia, 2014 SCC 44, [2014] 2 S.C.R. 256

Calder decision was, in part, to adopt a Comprehensive Claims Policy with the intention to negotiate treaties and settle rights claims of Indigenous Peoples, including those related to lands in those parts of the country where historical treaties had not been concluded. Thus began the period of modern treaty-making.

In 1975, the James Bay and Northern Quebec Agreement became the first modern treaty. Since 1975, 26 modern treaties have been concluded. 18 of these treaties include self-government provisions or related self-government agreements. Modern treaties provide a framework for an ongoing relationship between the Crown and the Indigenous group, setting out objectives, obligations, and responsibilities. Generally speaking, modern treaties are intended to recognize the treaty rights of Indigenous groups to:

- have practical exclusivity with respect to jurisdiction and ownership over treaty settlement land;
- participate in land and resource management decisions outside of settlement lands;
- protect and revitalize tradition, culture, language and heritage;
- access resource development opportunities;
- predictability with respect to land rights;
- self-government rights and political recognition;
- improved social development through better outcomes in health, education and housing; and
- economic development and achieving greater self-reliance.

Modern land claim treaties have been controversial in that the Indigenous signatory either "cedes, releases and surrenders" their territory to the Crown (as was done in the numbered treaties) or agrees to other "certainty" techniques that put their Aboriginal rights into abeyance in exchange for the treaty rights. Modern land claim treaties are long and complicated documents and there are typically numerous associated documents to the "Final Agreement." Most modern land claim treaties, though, do address contemporary self-government and demarcate additional lands for the group beyond those lands set aside for them unilaterally before having a treaty. While in terms of population there are far fewer Indigenous people living under a modern land claim treaty than are not, over half of Canada's land mass is now covered by modern land claim treaties.



As an alternative to pursuing a modern land claim treaty, and particularly so where there is no "land claim" because the group has an historical treaty, an Indigenous group can pursue a standalone self-government agreement. Canada approaches the negotiation of self-government, be it stand alone or under modern treaty in accordance with the *Government of Canada's Approach to Implementation of the Inherent Right and the Negotiation of Aboriginal Self-Government* policy ("Inherent Right policy").[23] However, in BC and until recently, the federal government has preferred to only address self-government as part of settling the land question through the negotiation of modern treaties under the unique process established by First Nations, BC and Canada (the "BC Treaty process"), which is overseen by the BC Treaty Commission. Despite having one Inherent Right policy, Canada is not consistent in what, and how, it will negotiate at different tables.

[23] https://www.rcaanc-cirnac.gc.ca/eng/1100100031843/1539869205136

Under the Inherent Right policy, assuming a First Nation can get a negotiating table with Canada, a First Nation can potentially conclude an agreement that sets out law-making authority in several areas, including core governance, social and economic development, education, health, lands and more. The policy sets out which areas of jurisdiction can be negotiated and recognized in an agreement and which cannot. In theory, a First Nation has the option of tailoring its agreement to its needs and priorities, but in reality, Canada still has considerable say. Generally, self-government arrangements cover the following areas:

- the structure of the new government and its relationship with other governments;
- the areas of jurisdiction in which the First Nation can make laws and those areas in which it cannot;
- the relationship of laws for each area of jurisdiction, including what happens in the event of conflict of laws, and how different laws will work together;
- how programs and services will be delivered to community members;
- ways to promote improved community well-being, often with a focus on Indigenous languages, heritage and culture and socio-economic initiatives;
- preparations for when the agreement takes effect, such as implementation planning; and,
- new funding arrangements.

Self-government agreements negotiated to date, whether as a part of a modern land claim treaty or standalone, share common features, including:

- approval by the Indigenous people through a robust community approval process, which is typically through a referendum;
- being negotiated within the Canadian constitutional framework, with federal legislation giving the agreement the force of law;
- recognition that the Indigenous government will have its own constitution;
- setting out a number of areas of jurisdiction where the Indigenous government has law making authority;
- with respect to the priority of laws, Indigenous core governance laws and Indigenous laws in relation to lands and resources and the Indigenous people, including those protecting culture and language, generally take priority if there is a conflict among laws;
- that the *Canadian Charter of Rights and Freedoms*, the *Canadian Human Rights Act* and other general laws such as the *Criminal Code* continue to apply; and,
- that non-member residents on Indigenous lands will have input into decisions that directly and significantly affect them.

The powers, including law-making powers of SGIGs, can include powers typically exercised by a province or territory, select federal powers, and powers that a municipality/local government

might have as delegated provincially/territorially. For the most part, Indigenous powers of self-government are not delegated, but rather recognized and, in some cases, constitutionally protected under section 35.

To date, there are 25 comprehensive self-government agreements/arrangements (which include those that are part of modern land claim treaties) across Canada, that involve 43 Indigenous communities. Outside of modern treaty making, the first modern self-government arrangement in Canada was made with shíshálh Nation in 1986. The first stand-alone self-government agreement under the Inherent Right policy was with WFN in 2005. Since 2005, only Sioux Valley Dakota (Manitoba) and Whitecap Dakota (Saskatchewan) have signed standalone self-government agreements. The Whitecap self-government agreement is also a treaty. Before 2000, the constitutionally protected part of the modern land claim treaties was just the "land claim" part of the arrangements and not the self-government part. Where self-government was addressed at the same time as the land claim, it was ratified as a separate self-government agreement.[24] Since 2000, all modern land claim treaties have included both the land and self-government provisions in a single final agreement.

In addition to what is classed as comprehensive self-government, there are several sectoral self-government initiatives. There is one sectoral 'core' self-government agreement for five communities and two agreements specific to education that involve 35 communities. Further, there are also sectoral self-government arrangements addressing land management and finance, as well as legislation respecting jurisdiction over children and families that recognizes law-making powers of Indigenous groups.

2.3 shíshálh Self-government

The shíshálh Nation is located on BC's Sunshine Coast. The name shíshálh, from the language of sháshishálem, refers to the entire population descended from four sub-groups that officially amalgamated in 1925. They include xénichen (at the head of Jervis Inlet), ts ´únay (at Deserted Bay), téwánkw (in Sechelt, Salmon and Narrow Inlets), and sxixus. The membership of shíshálh is approximately 1,600 with about 625 living on shíshálh lands. There are also approximately 150-200 non-member lessees living on shíshálh lands.

In 1986, the shíshálh Nation became the first recognized modern SGIG in Canada. This was accomplished outside of a modern land claim treaty. In 1986, shortly after the failure of the Constitutional conferences in the early 1980s to define and set out Aboriginal self-government in Canada's highest law, the federal *shíshálh Nation Self-Government Act*[25] was enacted, along with the companion provincial *Sechelt Indian Government District Enabling Act*.[26] The shíshálh self-government arrangements do not include a formal self-government agreement as is the

[24] While the 1995 Yukon Umbrella Final Agreement (UFA) included both land and resources and self-government provisions the UFA was not legally binding and each of the individual First Nations had to ratify their own individual land claim and self-government agreements (11 of the 14 ratified and 3 did not).
[25] *shíshálh Nation Self-Government Act (S.C.* 1986, c. 27), https://laws-lois.justice.gc.ca/eng/acts/s-6.6/
[26] *Sechelt Indian Government District Enabling Act*, R.S.B.C. 1996, c. 416

case with all other SGIGs in Canada (either as part of modern land claim treaty or stand-alone), but rather were negotiated and implemented in accordance with understandings reached, and letter exchanges between, Canada, BC and shíshálh.

Interestingly, shíshálh is sometimes characterized in the literature as a municipal form of self-government. This is incorrect. The confusion is, in part, because in addition to the Council of the former "Band" and its provincial-type powers set out in the federal act, the arrangements through the federal and provincial acts also created a distinct shíshálh Nation Government District (SNGD). The SNGD is a part of the Sunshine Coast Regional District (SCRD). While the powers of the SNGD are recognized through the federal Act, BC has recognized the SNGD under provincial legislation and its great seal. The SNGD Council is the governing body of the SNGD, and is composed of the shíshálh Chief and Council. Where, in the exercise of its powers of self-government under the federal act, the shíshálh Nation Council enacts laws or bylaws that a municipality has the power to enact under a law of BC, those laws and bylaws are deemed by BC to have been enacted under the authority of BC. SNGD Council acts on behalf of all residents (shíshálh Nation Members and lessees) within SNGD.

Through these arrangements, shíshálh participates fully in the SCRD and is entitled to municipal benefits.[27] In part, these arrangements are tied to the arrangements with respect to the collection and expenditure of property taxes. The SNGD raises property taxes as part of the provincial municipal tax system and not under a federally supported system. In addition to taxation for local purposes, law (bylaw) making powers have been transferred to the SNGD, including: zoning and land use planning; building use, construction, maintenance, repair and demolition; public order and safety; regulation of traffic; road construction, maintenance and management; and operation of business and professions. Services provided to the SNGD from the SCRD include issuing building permits on shíshálh lands.

The shíshálh federal legislation was amended in 2022[28] for several reasons, including giving greater flexibility to shíshálh to amend its Constitution (previously amendments had to be taken to federal cabinet), and to address additional powers and advancements in self-government since 1986 when the federal legislation was first enacted.

WFN and shíshálh have a long-standing working relationship. WFN was one of the few First Nations to publicly support shíshálh during its quest for self-government, and the two First Nations have entered MOUs committing to work together and meet regularly. Shíshálh is

[27] *Sechelt Indian Government District - Sunshine Coast Regional District Participation Regulation*
1. Subject to a bylaw being enacted by the District Council adopting the contents of this regulation, the Sechelt Indian Government District is, by this regulation, made a member municipality of the Sunshine Coast Regional District, Part 24 of the *Municipal Act* applies to it and the District Council shall exercise the powers that the council of a municipality would exercise under Part 24.

[28] *An Act to give effect to the Anishinabek Nation Governance Agreement, to amend the Sechelt Indian Band Self-Government Act and the Yukon First Nations Self-Government Act and to make related and consequential amendments to other Acts*, S.C. 2022, c. 9.

unique in the way it is a part of regional governance in BC, and a model to be considered when looking at options for inclusive regional governance in the Central Okanagan.

2.4 Modern Treaty Making in BC and Recognition of Rights and Self-Determination (RIRSD) Tables

The history of treaty-making in BC is unique. Except for the pre-confederation Douglas Treaties on Vancouver Island and part of historical Treaty 8 in the northeastern part of the province, no other historic treaties were concluded. There are also only a handful of modern treaties. Therefore, the vast majority of BC is not covered by treaty of any kind, and Aboriginal title and rights remain unextinguished.

While treaty making had begun in BC, the work was never concluded, despite the lands not having been properly acquired for settlement as dictated by long-standing Crown policy. There are a number of reasons for this. In short, the policy of treaty making changed as successive Crown governments decided it was no longer necessary and did not matter—which remained the policy until 1973 after the *Calder* decision and comprehensive land claim negotiations began. In 1990, in the wake of the Oka crisis in Quebec, a tripartite BC Claims Task Force with representatives from First Nations, the BC government and the federal government was established with a mandate to recommend how negotiations could be improved to resolve the land question more expeditiously, and what a "made in BC" modern treaty negotiations process could look like. The Task Force made 19 recommendations, including the creation of the current six-stage treaty negotiations process to resolve the outstanding land question and un-extinguished Aboriginal rights in British Columbia, as well as the establishment of a Treaty Commission to oversee the BC Treaty process. WFN, through then and current Chief Robert Louie, was a significant player in moving the rights recognition agenda forward and establishing the contemporary BC Treaty process.

In 1993, the BC Treaty Commission was established as the independent "Keeper of the Process." Its mandate is to be the independent facilitator of negotiations amongst First Nations in BC, the Government of Canada, and the Government of British Columbia; allocate funding to First Nation for negotiations; and, to provide public information and education about treaty negotiations. In 2018, the Commission's mandate was expanded to include supporting negotiating parties in implementing the *UN Declaration*, the TRC Calls to Action, the Principles Respecting the Government of Canada's Relationship with Indigenous Peoples, and the recognition of First Nations title and rights.

According to the BC Treaty Commission, there are 66 groups representing 113 bands in BC, that have entered and participated in, or have completed treaties through, the treaty negotiations process. Currently, there are 38 groups representing 69 current or former *Indian Act* bands that

are in active negotiations or have concluded negotiations.[29] The process is highly regimented with six stages.[30]

The BC Treaty process, while making some progress, has seen limited success over the past 25 years, with few treaties concluded. While hundreds of millions of dollars have been spent, along with significant time and energy being devoted to negotiations, only three modern land claim treaties have been reached and implemented involving seven *Indian Act* bands. These are: Tsawwassen, Maa-nulth (Huu-ay-aht, Ka:'yu:'k't'h'/Che:k'tles7et'h', Toquaht, Uchucklesaht and Yuułuʔiłʔath) and Tla'amin.[31]

The Nisga'a treaty (with four former *Indian Act* bands) is the only other modern treaty in BC. It was negotiated outside of the BC Treaty process. These negotiations were underway under Canada's Comprehensive Claims Policy before the BC treaty process was established and these negotiations simply continued. In total, 11 former *Indian Act* bands in BC are now under a modern land claim treaty. Given there are over 200 First Nations in BC (depending on how you count), this is very modest progress to say the least.

While there are not many completed modern land claim treaties in BC, over half of BC First Nations have been involved in the BC treaty making process at some point. Others have never supported the process and have looked to resolving their issues and recognition of their rights in other ways, including going to court or simply exercising their rights. While there have been few modern treaties, there have been incremental steps taken through treaty tables to address matters of importance to the parties, including the identification of lands and resources to be transferred to a First Nation as an interim measure before a modern treaty is concluded.

For those groups that have signed modern land claim treaties, and where self-government has been achieved, whether in BC or elsewhere, they are widely regarded as leaders in good governance and are seen as progressive. The modern treaty process should not be viewed as the be-all to end-all, even though some in the federal and provincial governments, and indeed in some First Nations, may see it as the pinnacle of the "new relationship" and, in particular, "reconciliation" with respect to governance. There has, in fact, been much progress made on governance outside of modern treaty making through sectoral governance arrangements that deal with specific areas of jurisdiction—mostly notably in the area of lands and finance, and more recently child and family services. It is also important to keep in mind that most Indigenous Peoples are not going to be negotiating modern treaties to resolve "land claims," because they already have historical treaties, and the nature of their claims are different. Hence for most Indigenous groups going forward, self-government will not be achieved as incidental to a modern land claim treaty. This is very important to understand.

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[29] https://bctreaty.ca/negotiations/negotiations-update/

[30] The current BC Treaty process is a six-stage process. The process begins with a Statement of Intent to Negotiate, proceeds to Readiness to Negotiate, and then Negotiation of a Framework Agreement. An Agreement in Principle in negotiated in stage 4, with a Final Agreement negotiated in stage 5. Stage 6 is treaty implementation.

[31] The Yale Final Agreement was ratified but never implemented.

Much of the glacial pace of modern land claim treaty negotiations in BC has been due to positions taken by the Crown, that in the opinion of many First Nations are unjust and not respecting of the law, are not consistent with approaches taken elsewhere, or simply do not make sense from a good governance perspective. This can be attributed to a number of factors, including limited government mandates, take it or leave it positions, and not being based on the recognition of rights. It is also, sadly, a reflection of a party's inability to be creative and move from an assumption that, because it was done in one agreement, it must set a precedent for the next. It is fair to say that while there may be a few more modern land claim treaties in BC that are similar to those already concluded, there will not be many more. Other arrangements will be negotiated and in instances of new modern land claim treaties, they will be substantially different from their predecessors. So much so, that the existing modern land claim treaties in BC may need to be revisited: opened up and amended. A controversial statement for some, but something that ultimately will become a reality.

The federal department that is responsible for negotiations with Indigenous Peoples is now known as Crown Indigenous Relations and Northern Affairs Canada (CIRNAC). Canada, through CIRNAC, is now engaging in what are called Recognition of Indigenous Rights and Self-Determination (RIRSD) tables with willing Indigenous groups. Many First Nations in BC have taken the opportunity to engage with Canada through exploratory discussions at these RIRSD tables, outside of the BC Treaty process.

The BC government has also opened up rights recognition tables outside of the BC Treaty process, in an effort to further implement the *UN Declaration* and to address other long-standing issues. There are now many new arrangements with Indigenous groups, including addressing the transfer of lands and resources, revenue sharing and decision-making respecting land and resource development in an Indigenous group's territory.[32] Again, this activity is all outside of the BC treaty process—work that was expected modern treaties would resolve.

Given the movement to reach agreements outside of the treaty process, and with so many treaty tables stalling or collapsing, in September 2019, the Principals to the BC treaty Process (the First Nations Summit, BC and Canada) signed the "Recognition and Reconciliation of Rights Policy for Treaty Negotiations in British Columbia."[33] This agreement promises to substantially overhaul the BC treaty making process and bring it line with recent political and legal developments. This work is ongoing, which gives an indication of how much work is required to change the process and its patterns of behaviour.

It is fair to say that despite the effort to change the BC treaty making process, fewer First Nations in BC are relying on resolving matters with the Crown through the process. Rather, these nations are becoming more involved in other processes to address rights recognition and

[32] https://www2.gov.bc.ca/gov/content/environment/natural-resource-stewardship/consulting-with-first-nations/first-nations-negotiations/reconciliation-other-agreements
[33] https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/recognition_and_reconciliation_of_rights_policy_for_treaty_negotiations_in_bc_aug_28_002.pdf

reconciliation. For example, at RIRSD tables with Canada or at similar tables with the BC government as noted above.

In the early 1990s, WFN was one of the early and enthusiastic First Nations to file a statement of intent with the BC Treaty process to negotiate a modern treaty when the BC Treaty Commission opened its doors. WFN, however, formally suspended treaty negotiations in 2010, when it was determined there was no reasonable expectation that an agreement could be reached. By that time, WFN was already self-governing and other government mandates were not consistent with what had already been negotiated as part of self-government, and which were working on the ground. WFN now has an RIRSD table with Canada and a similar table with BC to ostensibly address land and resource-related matters in addition to building on their self-government agreement.

While there may be problems with the treaty process and few treaties, all the modern treaties in BC do address issues of local governance and relationships with regional governance within the province. Accordingly, there are models to consider from the treaty arrangements when considering options for inclusive regional governance in the Central Okanagan. These are discussed below.

2.5 Yukon First Nations Self-Government

In addition to the BC experience, it is useful to consider the relationship between local governments in the Yukon and Yukon SGIGs (although the situation is somewhat different given there is no comprehensive regional local governance structure in the Yukon as there is in BC). There are generally very good working relationships between the local governments and Yukon SGIGs. After shíshálh, the 11 Yukon SGIGs, have the most experience in self-governing after settling their land claims in the early 1990s.

There are 14 First Nations in the Yukon. On May 29, 1993, the Chiefs, on behalf of all 14 *Indian Act* bands, signed the Umbrella Final Agreement (UFA) with the governments of Canada and the Yukon. The UFA is not a legally binding document, but rather a political agreement between the First Nations signatories and the Crown, which required agreements to be ratified in each community independently of one another. The UFA provides the foundation for the individual Yukon First Nation Final (land claim) Agreements. Of the 14 signatory First Nations, 11 ratified their individual agreements. Unlike the UFA, these land claim agreements are legal, constitutionally protected documents. The UFA also served as the foundation for individual self-governing agreements made between each First Nation and the territorial and federal governments. These individual self-government agreements were signed between 1993 and 2006. The 11 self-governing First Nations in the Yukon have legislative and executive powers much like a province or territory, and are similar to the other SGIGs in Canada.

As with SGIGs in BC, the Yukon self-government agreements recognize the SGIGs right to develop their own constitutions and pass laws for their own settlement land and citizens. For example, SGIGs may enact policy for land management, justice, or education. Each SGIG has

created or embraced a different model of governance. It is really very diverse. Some are clan-based systems and others have chief and councils. While selection of the governing body is mostly through popular election, this is not always the case. SGIG representatives sit on land claims boards and in leadership positions within the Yukon Government, and in this regard are involved in regional governance at a territorial level.

As with all provinces and territories, there is a *Municipal Act* in the Yukon. In accordance with this act, there are several types of municipal governments, including: incorporated municipalities, rural governments, local advisory areas, and some limited regional structures. There is no comprehensive regional governance framework in the Yukon as there is in BC. In some areas where there is an SGIG, there is no effective comparable local government, so the SGIG deals directly with the Yukon Government.

The Yukon Government has a well-established Department of Community Services that works with local governments. Given the small size of many non-Indigenous communities and limited number of incorporated municipal bodies, Community Services can play a significant role in local planning and development. Certainly, more so than is typical in BC. Community Services is responsible for providing advice on a variety of matters including legislation, internal governance, local elections, and other relevant community concerns.

Unlike in BC, where under modern treaties First Nations can be a part of a regional district (as discussed in detail below), in the Yukon, SGIGs and local governments are separate entities. Accordingly, a comparison is not so useful if considering models of inclusive regional governance that involve models of shared governance. Also, prior to the UFA there were very few lands reserved for Indians (*Indian Act* reserves) in the Yukon. Rather the lands were held by Canada as something called "lands set aside" which are not considered "reserves" by Canada. Accordingly, to the extent local communities were incorporated and the municipal corporation boundaries included the adjacent First Nation's lands, municipal bylaws applied on these lands before the modern land claim treaty, and continued after the treaty. Generally, while a Yukon SGIG has broad law-making authority over their settlement lands, if those lands are within a municipal boundary, the local government's bylaws apply unless agreed otherwise through the self-government arrangements and by agreement with the municipal corporation.[34] Again, this is quite a bit different than in BC where local government bylaws do not apply before self-government and do not usually apply after.

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[34] *Yukon First Nations Self-Government Act*, S.C. 1994, c. 35, https://laws-lois.justice.gc.ca/eng/acts/y-2.6/FullText.html:

Powers restricted on certain lands - 12

(1) Where a first nation's self-government agreement so provides in relation to certain of its powers to enact laws, those powers may not be exercised in respect of portions of settlement land identified in the agreement.

Agreements with local governments

(2) Where a first nation's self-government agreement so provides, the Yukon Government or a municipal corporation in Yukon may agree to the exercise by the first nation of any of the powers referred to in subsection (1), for which that Government or corporation has responsibility, in respect of portions of settlement land identified in the agreement.

Not surprisingly, most of the municipal corporations in the Yukon are within close proximity to SGIG settlement lands or have settlement lands within their boundaries. In comparison to BC, where reserves and settlement lands in urban and semi-urban areas tend to be separate and apart and relatively contiguous, in the Yukon, within the incorporated areas there is often a checkerboard pattern of First Nation land holdings with sometimes very small lots. The unique history and the geographical pattern of settlement lands in the Yukon have created distinctive relationships between First Nations and municipalities, where working together is essential in order to plan and provide local services. Communities are often interdependent and share economic development opportunities, recreation activities and social events, as well as core local services. Most SGIGs have local service agreements. The success in the Yukon with local service agreements is, again, in large part due to the proximity between the Indigenous and non-Indigenous communities, the pattern of land holding and the long history of intergovernmental partnerships going back before the UFA. Today there are approximately 45 service agreements in the Yukon which include water, wastewater, animal control, fire protection, recreation, and solid waste.[35]

2.6 WFN Self-Government

WFN was negotiating self-government at the same time as the Yukon self-government arrangements were being negotiated and concluded. However, it wasn't until over a decade later that the WFN self-government arrangements were actually concluded and ratified. This was for a variety of reasons. As discussed above, the preference of some within the federal system was to tie self-government to a modern land claim treaty. Also, there were those that felt BC should be involved directly. Finally, it also took WFN three attempts to ratify self-government given the threshold for approval required.

After two decades of community development and negotiations, self-government was finally implemented on April 1, 2005. The Westbank First Nation Self-Government Agreement (SGA) is bilateral with Canada. The province of BC was consulted but was not a party. The SGA was ratified by the WFN Membership on May 24, 2003, and by Canada, by way of federal legislation: *An Act to give effect to the WFN Self-Government Agreement* (S.C. 2004, c. 17). Today, WFN governs in accordance with its Constitution, which was ratified at the same time as the SGA.

The Constitution states: "Through this Constitution, the Members of Westbank exercise their inherent right of self-government and provide for governance that is accessible, stable, effective, accountable and transparent." The WFN government is in the form of an elected Council consisting of one Chief and four Councilors who are elected and govern under the rules set out in the Constitution and Council Code of Expectations. Council serves a three-year term of office; the current term is 2022-2025.[36] There is also an Advisory Council of five non-

[35] For more background on the types of service agreements in the Yukon please see the, "First Nations – Municipal Community Infrastructure Partnership Program (CIPP) Yukon Service Agreement Primer" (The Federation of Canadian Municipalities, 2012) https://emrlibrary.gov.yk.ca/cs/cipp-yukon-service-agreement-primer.pdf
[36] https://www.wfn.ca/your-government/council.htm

Members, elected in districts, in accordance with the *WFN Advisory Council Law*.[37] A stated objective of the Chief and Council is to continue to grow the WFN economy and provide a solid and predictable economic climate in which business can flourish and members can prosper.[38]

Through the self-government arrangements, WFN is recognized as a separate legal entity with the rights, powers and privileges of a natural person with the capacity to perform various functions (SGA Part III, s. 19). The SGA also recognizes the public legal capacity of WFN as a government with the power to pass and enforce laws. The SGA recognizes the government of WFN and its institutions as "public bodies" for the purpose of tort claims (Part IV, s. 24). It also sets out the requirement for a Constitution to be consistent with the SGA and provide details of establishing the WFN government, system of administration, and the process for enactment of laws (Part VI, s. 42–52).

The SGA sets out that the Constitution provides for a democratically elected Council that acts on behalf of WFN in exercising jurisdiction. The Constitution also sets out the composition of the Council, its tenure and removal of Council members. The core institution of governance at WFN is an elected Chief and Council that is responsible for law-making in accordance with the procedures set out in the Constitution. This process involves a high degree of citizen participation. The number of Councillors has been fixed at four with one Chief, as noted above.

The Constitution also sets out the procedures for the passage and amendment of Westbank laws (Part VI, s.43€). WFN has the power to create other institutions of governance (Part VI, s. 47) and the power to make laws regarding the indemnification of officers (Part IV, s.24).

Of those First Nations with constitutions in effect in BC today, the WFN Constitution is the longest and most detailed, containing many provisions that most other First Nations have set out in separate laws. Perhaps the largest section of the WFN Constitution deals with lands and land management. Most First Nations with comprehensive governance arrangements have not set out detailed land rules in their constitution, but rather in a land act or equivalent. In part, the reason for having detail in the WFN Constitution was a result of WFN Membership's desire to ensure certainty in the governance framework, and to limit the powers of the governing body. Accordingly, the WFN Constitution and certain other laws made in accordance with the Constitution cannot be amended or repealed without significant community debate, and in the case of those elements in the Constitution, without a vote of the Members.

With respect to how Westbank Lands are held, and unlike for SGIGs as part of modern land claim treaties, Westbank Lands continue to be held by Canada as lands reserved for Indians under section 91(24) of the *Constitution Act, 1867.* In the modern land claim treaty model, the SGIGs settlement lands are held by the group in fee simple under provincial law. The SGA sets out that WFN has all the rights, powers, and privileges that Canada has as an owner, with

[37] *Westbank Advisory Council Law*, 2017 https://www.wfn.ca/docs/2017-04_advisory_council_law637351716505104804.pdf?LanguageID=EN-US
[38] https://www.wfn.ca/our-community/about-westbank-first-nation.htm

respect to Westbank Lands. Further, the SGA restricts the alienation (surrender) of Westbank Lands and severely limits federal expropriation powers. There are no provincial expropriation powers. Under WFN self-government, while there are private interests in Westbank Lands granted and governed in accordance with WFN law, WFN law cannot grant an interest in fee simple.

The SGA addresses agreements with other governing bodies and entities. WFN may enter into agreements with any level of government in Canada, including any government agency or entity or any other national, regional or local entity, group or organization, concerning delivery of programs and services on Westbank Lands (Part IV, s 27). This power supports WFN in purchasing local services from bodies such as the RDCO. However, the SGA is more limited with respect to the ability of WFN to delegate law-making powers to another body. The SGA contemplates that there may be occasion where WFN delegates to another recognized SGIG, but is silent with respect to non-Indigenous governments (VI, ss 49-52).

Various parts of the SGA address specific areas of jurisdiction where WFN has law-making powers (e.g., Lands and Lands Management, Wills and Estates, Landlord and Tenant, Resource Management, Agriculture, Environment, Culture and Language, Education, Traffic and Transportation, Public Works, Community Infrastructure and Local Services, Prohibition of Intoxicants, and so on). Of importance to the discussion regarding inclusive governance in the Central Okanagan is that WFN has extensive power to make laws in relation to public works and local services. These powers may be considered WFN's municipal like powers, in addition to its federal and provincial like powers.

WFN's jurisdiction in relation to public works, community infrastructure and local services includes works and services in relation to: (a) the collection, conveyance and treatment and disposal of sewage; and (b) the supply, treatment, conveyance, storage and distribution of water (Part XXI, s. 212). In fact, the WFN SGA goes into considerable detail about the jurisdiction over public works dealing with sewage and waste disposal, supply and distribution of water, community parks and buildings, pollution, fire prevention, building inspection, and so on.

To pay for public works, community infrastructure and local services on Westbank Lands, WFN has jurisdiction to establish a system under WFN law to levy and collect development cost charges, user fees and development permit fees (Part XXI, s. 214). This power is in addition to its powers to assess and collect property tax. Unlike with fees and charges, WFN continues to assess and collect property taxes under the *Indian Act*, with the option to come under the *First Nations Fiscal Management Act*. Section 83 of the *Indian Act* (money bylaws) is one of the few sections of the *Indian Act* that continues to apply to WFN as an SGIG.

WFN's jurisdiction to manage and regulate water use, insofar as it has legal rights to access the water, is also addressed in the SGA. This power is distinct from the jurisdiction that WFN has under its agreement over the supply, treatment, conveyance, storage and distribution of water

as part of its jurisdiction for public works. WFN has exercised this jurisdiction and enacted laws in this regard.

Under the SGA, WFN and Canada also agreed to new fiscal relations. Accordingly, there is a self-government transfer payment made to WFN to cover some of the costs of WFN governance and the programs and services provided by WFN. This is primarily for WFN Members. As with all SGIGs, WFN has a Fiscal (Financial) Transfer Agreement ("FTA") with Canada. SGIGs receive funding from Canada based on different authorities than *Indian Act* bands. Canada's approach to funding self-governments is set out in the Canada's collaborative self-government fiscal policy.[39] The FTA is "grant" funding, so while the SGIG must provide certain defined programs and services, for the most part it is strictly up to the SGIG to budget and expend the grant based on its priorities, and the SGIG is, accordingly, responsible for the funds transferred.

The SGA also contemplates additional agreements between Canada and WFN respecting the fiscal relationship beyond transfer payments, and specifically the raising of moneys through expanded taxation. The total operating budget for the WFN government from all sources of revenue is approximately $45-$55 million annually.

For more information, please see Appendix B –Comparison of Powers and Authorities – WFN and RDCO.

3. BACKGROUND – REGIONAL DISTRICTS

3.1 Regional Districts in British Columbia

BC has a well-established system of regional governance. As part of its overall governance system, BC is organized into 162 municipalities and 27 regional districts. Regional districts were created in the 1960s, and each regional district can include municipalities, electoral areas and more recently, First Nations. These regional districts are essentially federations, intended to provide a political and administrative framework to provide aggregated regional services, like water and fire protection. A regional district has three main roles:

> (1) Provide region-wide services such as regional parks, and emergency telephone services such as 911;
>
> (2) Provide inter-municipal or sub-regional services, such as recreation facilities where residents of a municipality and residents in areas outside the municipality benefit from the service; and

[39] https://www.rcaanc-cirnac.gc.ca/eng/1566482924303/1566482963919

(3) Act as the general local government for electoral areas and provide local services such as waterworks and fire protection to unincorporated communities within the electoral areas.

Each regional district is defined and incorporated by its own letters patent that is a form of order in council adopted by the Lieutenant Governor on advice from the provincial cabinet. The powers, functions and activities of regional districts are set out in two pieces of provincial legislation, the *Local Government Act* and the *Community Charter.*

The *Community Charter* focuses on the core areas of a municipality's authority and powers, including interaction with a regional district. At the same time, the *Local Government Act* sets out the powers, activities and responsibilities of regional districts and municipalities. This Act was last significantly revised in 2015. A regional district has a range of corporate and regulatory powers, as well as the ability to provide services through service arrangements. While regional districts and municipalities have similar powers and authorities, the scope of powers of regional districts are more limited.

Regional districts can enter into agreements, including partnering with an external entity for the purpose of service delivery. In the *Local Government Act,* the regional district's corporate powers set out the authority to:

- Make agreements, including the undertaking, provision and operation of regional district services;
- Make agreements respecting the operation and enforcement of regulatory powers in relation to the regional district board's exercise of its regulatory authority;
- Provide assistance to citizens for the purpose of benefiting the community or any aspect of it;
- Acquire, hold, manage or dispose of land, improvements, personal property or other property;
- Delegate powers, duties and functions for specific purposes in accordance with the legislation;
- Engage in commercial, industrial and business undertakings, including incorporating corporations; and
- Establish commissions for specific purposes

Regional districts have regulatory powers that include powers to regulate, prohibit or impose requirements on land use, long-term community plans, and land management. While regional districts have access to the same planning tools and land use management processes as municipalities, regional districts do not have a direct role in approving the subdivision of land.

Regional districts also have a role in infrastructure. For example, where a regional district provides water and sewer services, the regional district owns the infrastructure. In some cases, the regional district is responsible for municipally based infrastructure.

In terms of how a regional district exercises its powers and makes decision, a regional district is governed by a Board of Directors. The Board consists of a chair (elected from the directors) with responsibilities set out in the legislation, and a number of directors. Each electoral area has one elected director, municipalities may have one or more appointed directors depending on population, and a Treaty First Nation (as defined in the *Local Government Act*) may join a regional district and appoint one or more individuals from its governing body to the regional district board based on its modern treaty (as set out in its final agreement). The municipal and Treaty First Nations directors serve on the regional board until the appointing body decides to change the appointment, while directors from electoral areas serve a four-year term.
The Board of Directors make decisions through one of two types of votes:

(1) Weighted votes – board directors representing densely populated areas have more votes than those board members representing less densely populated areas.

(2) Unweighted votes – each director on the board has one vote.

Generally, region wide issues are decided by unweighted votes, while budgetary matters go by weighted vote. The voting strength behind weighted votes is based on population and the voting unit in the regional district's letters patent. This is intended to ensure balanced representation. The number of votes each municipality, electoral area or Treaty First Nation has is determined by dividing the population number by the voting unit number set out in the letters patent of the regional district. For example, if a regional district has a voting unit of 2,500 persons, each director of the regional district receives one vote for every 2,500 persons in their jurisdiction. In that regional district with the 2,500-person voting unit, a director whose jurisdiction has 12,500 persons would receive five votes in all weighted vote situations (12,500 ÷ 2,500 = 5).

Notable Features of Regional Districts

Regional district governance is unique to BC. Instead of a top-down, hierarchal model that is based on delegated authority, municipalities are not “under” a regional district. Rather, the model is based on a municipality lending its authority to the regional district, based on the benefits of cost sharing and aggregation. The nature of the dynamic is more focused on consensus and shared benefits.

According to a study for the Institute on Governance by David Cashaback,[40]regional districts operate around the following principles, which we can attribute to helping make them an effective form of regional governance:

> (1) Federal – Confederal: Regional districts exist to further the interests of their members. They do not constitute a distinct level of government but are part of the municipal system.
>
> (2) Voluntary – Regional districts are voluntary organizations that are self-organizing. They provide services their members agree to support. Contrary to other models of aggregation (amalgamation or two-tier), unilateral offloading of services and responsibilities is not an option. Regional districts do as much—or as little—as their members see fit.
>
> (3) Consensual – Regional districts generally rely on borrowed power rather than on statutory authority or direct power. There are extensive procedures for obtaining consent of member municipalities and elector assent through referenda, petition and counter-petition.
>
> (4) Flexibility – the legislative framework provides for different approaches and the provision of different services
>
> (5) Fiscal equivalence – there must be close equivalence between the benefits and costs of services. Each service has a cost recovery formula.
>
> (6) Soft boundaries – services do not need to encompass the entire district. Boundaries can be modified; members of a regional district can opt out of, or choose to opt into, the provision of a service. In some cases, services can be provided to areas belonging to another regional district. For example, regional districts entering into agreements with neighbouring First Nations communities to deliver certain services.

In another useful study, in this case a report published by the provincial government to assist First Nations and regional districts understand how each operate and to help them work together,[41] the authors set out what they see as the benefits that arise from being part of a regional district. These are:

- Opportunities for greater service delivery efficiencies;
- Higher quality services for all;

[40] David Cashaback, *Regional District Governance in British Columbia: A Case Study in Aggregation*, (Institute on Governance, 2021) https://www.files.ethz.ch/isn/122231/RegionalDistrict.pdf

[41]Province of BC, *A Path Forward: a resource guide to support Treaty First Nation, regional district and local government collaboration and planning*, (Province of BC, 2012) https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/acrd-toolkit_final_hi_res_print_version.pdf

- Improved regional planning, including land use and economic development;
- Supporting regional sustainability planning initiatives; and,
- Creating a stronger voice for regional interests.[42]

A more specific feature of regional districts is that each regional district has its own financing authority as part of the broader local government financing system established under the Municipal Finance Authority of BC (MFA). Based on regional joint and several liability, the debt of one municipality or regional service is guaranteed by the entire regional district. For example, if a municipality defaults on a debt payment, the entire regional district will cover the debt payments. This provides greater assurance against default risk to bond holders, makes it easier for municipalities to secure capital, and supports a AAA credit rating for the MFA. First Nations have a similar vehicle through the First Nations Finance Authority (FNFA),[43] but where the joint and several liability is not tied to a regional structure but rather between all members Canada wide. WFN was instrumental in establishing the FNFA.

One of the powers and responsibilities of a regional district is developing a Regional Growth Strategy ("Strategy") as required and set out in Part 13 of the *Local Government Act*. The Strategy is important and is a foundational and comprehensive document for the operation of a regional district. It sets out a 20-year vision of social, economic, and environmental objectives, as well as an action plan, for the entire region. Actions and decisions taken by the regional district need to reflect the Strategy.

The Strategy represents the collective values and common interests of the regional district. Participating in the Strategy is an opportunity to directly influence outcomes in the regional district. It is also an opportunity for the regional district to leverage the different perspectives and values of its participants and citizens. In short, it presents a good opportunity to advance inclusive regional governance.

The Strategy moves beyond the provision of services in the district, and goes to the main point of governance—which is how decisions are made and the perspectives and values that go into decision making. Upon joining a regional district, members are referred to as "service participants" who are part of the "service area." This is distinct from simply having a service agreement with a district, which does not require any deeper interaction or collaboration. It is this opportunity for deeper interaction and collaboration that will evolve the nature of decision making on a Board and ultimately, transform regional governance over time.

3.2 Regional District of Central Okanagan – Governance

Created in 1967, the RDCO includes two unincorporated Electoral Areas of Central Okanagan East and Central Okanagan West, along with the member municipalities of the City of Kelowna, the District of Lake Country, the District of Peachland and the City of West Kelowna. The RDCO,

[42] Ibid, BC, *A Path Forward*, p 32
[43] https://www.fnfa.ca/en/fnfa/

being situated within the unceded traditional territory of syilx people, also encompasses all Westbank Lands (namely the five WFN reserves: IR#8, IR#9, IR #10, IR#11, and IR#12) as well as IR#7 of the Okanagan Indian Band.

With a total area of 3,145 km^2, the RDCO is one of the smaller regional districts in terms of geography. Its 2021 population of 220,315, however, makes the RDCO the fourth largest regional district in BC in terms of population. There are approximately 10,900 people living on Westbank Lands, all living on the westside of Okanagan Lake.[44] The IR#9 and IR#10 population numbers are included in Central Okanagan West which has a total population of 13,797.

In accordance with the *Local Government Act*, the RDCO has a Board of Directors that manages fiscal and policy issues arising as part of local governance. Appointed and elected members represent the four municipalities, the two electoral areas of the district, and WFN.[45]

Decision making is weighted based on population and size.[46] As discussed above, the voting strength of each municipality or electoral area in a regional district is a function of population size and voting unit. In the RDCO, the voting unit today is set at 5,500 people, which means that each jurisdiction of the RDCO receives one vote for every 5,500 residents, including residents who live on First Nations reserves (both WFN and Okanagan Indian Band). For municipalities, the resulting voting strength is divided by five to determine the number of directors appointed to the board. The RDCO Board consists of 12 voting directors,[47] including one from each of Central Okanagan East and Central Okanagan West Electoral Areas, one from the District of Peachland, one from the District of Lake Country, two from the City of West Kelowna, and seven from the City of Kelowna. In addition to electoral area and municipal directors, the RDCO Board also has (as already indicated) a representative from WFN who participates on the Board in a non-voting capacity.

The RDCO is responsible for a wide range of regional services such as 911, dog control, parks, and waste reduction, for both the Electoral Areas and the member municipalities. In addition, the RDCO provides wastewater treatment services for the City of West Kelowna, District of Peachland and WFN.

The *Local Government Act* requires the RDCO to develop and approve a five-year Financial Plan by March 31 each year. The RDCO financial plan consists of more than 80 budgets funding the delivery of regional, sub-regional and local services to over 195,000 residents, businesses and visitors throughout the region. The Regional District 2023-2027 Five-year Financial Plan bylaw has been adopted along with the Financial Plan and Capital bylaws for the Central Okanagan Regional Hospital District.

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[44] 2021 Census
[45] https://www.rdco.com/en/your-government/what-we-do.aspx
[46] After Neilson Strategies Inc, "North Westside Services and Governance Study – Committee Report", (Neilson Strategies Inc, 2022).
[47] https://www.rdco.com/en/your-government/voting.aspx

The 2023 RDCO operating budget totals almost $61.5 million, up 3.5% from 2022. An estimated $18.1 million in capital and infrastructure improvements are planned for 2023 including approximately:

- $7.8 million for Parks
- $3.4 million for liquid waste systems
- $2.9 million for Fire and Protective Services
- $1.7 million for improvements and upgrades to RDCO water systems.[48]

3.3 Indigenous Peoples & Regional Districts

Part 7 of the *Local Government Act* sets out the terms of membership for Treaty First Nations on regional district boards but not for other First Nations/bands. For the purposes of participation on a board, the *Local Government Act* states that a Treaty First Nation is treated like a municipality. A Treaty First Nation does not imbue a regional district with greater powers, and at the same time, the Treaty First Nation does not lose any of its jurisdiction. It is the "federal-confederal" principle.

The *Local Government Act,* however*,* presumes that a modern land claim treaty (a final agreement) is a pre-condition to membership in a regional district and is silent on membership or participation in regional districts for First Nations who do have a modern treaty. Stand-alone self-government agreements outside of treaty are not specifically mentioned in the Act.

In BC, as discussed above, four modern treaties (involving 11 former *Indian Act* bands) and two standalone self-government arrangements have been concluded, WFN being one of them. While all of these agreements restore the self-governance of the First Nations and have common elements, the arrangements are different in significant ways and each agreement is, to some extent, tailored to the specific needs of the First Nation and the path they took to self-governance.

Each agreement contains arrangements with respect to intergovernmental relations with BC and, in some cases, participation in local government through regional districts.

The Nisga'a Agreement includes the Nisga'a lands as part of an electoral area in the regional district, resulting in the area's representative also representing Nisga'a interests at the regional district. There is no direct participation in the regional district. The Tsawwassen, Maa-nulth and Tla'amin modern land claim treaties have specific chapters related to local government interaction, but each are slightly different. The Tsawwassen First Nation automatically became a full member of the regional district at the effective date of their treaty. The Maa-nulth Agreement sets out a ten-year time period for each of the five Maa-nulth First Nations to join the appropriate regional district, as well as a provision for the district to invite the First Nation to participate on a non-voting basis in the transition period. Tla'amin's agreement suggests that

[48] https://www.rdco.com/en/your-government/budgets-and-financial-statements.aspx?_mid_=39625

the First Nation "may" become a member of the regional district but is open-ended as to time period. Please see **Appendix A** for more information regarding interactions with regional districts.

Outside of a final agreement or specific arrangements set out in a self-government agreement, regional districts can amend their bylaws to include First Nation representatives. In 2021, the Capital Regional District (CRD), the regional government for 13 municipalities on southern Vancouver Island, which includes 20 First Nation communities, amended its bylaws to include First Nations elected representatives with voting rights on the district's standing committees on a rotating basis.[49] The standing committees make recommendations to the Board for decision. The CRD has been advocating for changes to the *Local Government Act* which limits participation on a regional district board to First Nations with a modern land claim treaty, as noted above.

Aside from formal participation on the board or committees of a given regional district, there is a range of options for collaborative governance that can be for a specific purpose or broader aims. These options are possible for both treaty and non-treaty First Nations, and include:

- Protocol agreements for communication and cooperation
- Economic development partnerships and joint ventures
- Servicing agreements
- Land use planning
- Education and cultural engagements

A comprehensive list of initiatives in BC that are examples of joint First Nation and local government can be found on the CiviInfo website.[50]

3.4 Maa-nulth and Tla'amin

As discussed above, as modern land claim treaty groups, both Maa-nulth and Tla'amin have addressed regional governance in their treaty arrangements. They have, though, taken different paths to joint governance. All five of the Maa-nulth First Nations have the option to become full members of the respective regional districts. Four of the five (Huu-ay-aht First Nations, Uchucklesaht Tribe, Ucluelet First Nation and Toquaht Nation) have joined the Alberni Clayoquot Regional District and the fifth, Ka'yu:'k't'h'/Che:k:tles7et'h', has the option to join the Comox–Strathcona Regional District. Tla'amin, on the other hand, has not joined the qathet Regional District but has the option of joining the regional district at any time. Tla'amin and the qathet Regional District have a history of joint agreements and have established a strong working relationship that is mutually beneficial. Both the Maa-nulth First Nations and Tla'amin

[49] https://www.crd.bc.ca/about/news/article/2021/01/13/crd-board-approves-inclusion-of-first-nations-in-regional-governance-and-decision-making and https://www.cbc.ca/news/canada/british-columbia/crd-first-nations-representation-1.5874366

[50] https://civicinfo.bc.ca/documents_search?collection=firstnationresource.

have demonstrated inclusive governance is the result of investing in building sustainable relationships through the use of tools that provide the structure for joint work that goes beyond contractual arrangements.

Maa-nulth: Collectively, the Maa-nulth First Nations have four Directors on the Alberni-Clayoquot Regional District Board, and John Jack, from Huu-ay-aht First Nation, currently chairs the Board. The Board is comprised of 13 Directors plus the Chair. Maa-nulth First Nations occupy 30% of the Board. According to the 2021 census, the total population of the district is 33,521, with a total Indigenous population of 6,420, or 19%. Those living on the settlement lands of the Maa-nulth First Nations totals 462, or 1.4%.

The Maa-nulth Treaty requires a First Nation to participate in two service areas of the regional district – the General Government Services and the Regional Hospital District. The General Government Services requires cost recovery by the regional district from the appropriate Maa-nulth First Nation for the costs of running the regional district system in which it is participating. Further, the Maa-nulth First Nation has to contribute to the Directors' indemnities, administrative salaries, office and building costs, audit, insurance and legal fees. In addition, the First Nation is required to join the Regional Hospital district and support funding for new hospital facilities.

An initial challenge Maa-nulth First Nations had with the mandatory participation in these two service areas was that the regional district's approach to apportioning costs for the services would not cover the Maa-nulth First Nation's share of the services. Regional districts commonly use net taxable property to apportion costs, and given the limited number of taxable properties on treaty settlement land at effective date (the date the treaty came into effect), another solution was needed. With respect to General Government Services, instead of changing the apportionment method, the Maa-nulth First Nations and the regional district agreed that the Maa-nulth First Nations would directly pay for the costs of their own Directors, and that this agreement would be reviewed as the net tax was expected to increase.

Tla'amin: For Tla'amin and the City of Powell River, a history of agreements was initially based in conflict, when the city's construction of a sea walk destroyed and buried significant cultural sites. As an act of reconciliation, the city turned the contract to build the sea walk over to Tla'amin. Shortly afterwards, a Community Accord was signed. This was followed by the Protocol Agreement for Communication and Cooperation. Soon thereafter, Tla'amin and Powell River entered into a joint venture related to purchasing land from a local pulp and paper mill operator. Tla'amin also worked with the regional district during its treaty negotiations to resolve issues related to treaty land selection. The result was a joint land use harmonization initiative that has led to joint land use planning. The city also designated two parcels of land in the town to Tla'amin as part of their Treaty Settlement Lands in 2014, with an additional two parcels similarly designated in 2018. Other joint regional district, City of Powell River and Tla'amin planning initiatives have included a Sustainability Charter (2009), Regional Emergency Plan (2013), Regional Transportation Plan (2013), Regional Trails Plan (2016) and a Regional Recreational Initiative (2018).

For a comparison of Indigenous participation in regional districts, please see **Appendix A** – Treaties & Self-Government Agreements: comparing regional district participation.

4. CONSIDERATIONS

4.1 Evolving Relationship between WFN and the Regional District of Central Okanagan

WFN and the RDCO have had a long, and at times, challenging relationship. Today the relationship is good, and the two governments want to work closer together on matters of mutual interest. The relationship has evolved, in many respects, following the assumption of property taxation by First Nations in Canada in the early 1990s.

WFN was, in fact, one of the first bands in Canada to begin assessing and collecting property taxes in 1991 under section 83 of the *Indian Act* after amendments to the *Indian Act* were made in 1988. Prior to WFN assessing and collecting property taxes under its own bylaws, property taxes were assessed and collected by BC on behalf of the RDCO. This was because the BC government takes the position that a province has the jurisdiction to assess and collect property taxes on reserves, even though it is questionable if this is legal. No other province does this. Prior to 1991, although taxes were collected from Westbank Lands, there was no concomitant responsibility for the RDCO to provide local services on Westbank Lands and, in particular, capital investment (parks, roads, administration building, water and sewer etc.).

The 1988 amendments to the *Indian Act* led by Kamloops First Nation clarified how property taxes could be assessed and collected on-reserves by establishing clarity between "designated lands" and "surrendered" lands for the purpose of the application of band bylaws. As bands began to exercise jurisdiction and to avoid double taxation, BC passed the *Indian Self-government Enabling Act* (ISGEA)[51] which made provision for property taxation by *Indian Act* bands and the transition from provincial taxation. Part 1 of the ISGEA provides for "Concurrent Taxation," while Part 2 addresses "Independent Band Taxation," including provisions respecting the entering into local services agreements. Part 3 "Indian District Enabling Provisions" provides for band taxation through "Indian Districts." All First Nations that collect property tax in BC do so in accordance with Part 2 of the ISGEA, Independent Band Taxation; and all, like WFN, have service agreements with local government where property taxes were previously going to those local governments.

Interestingly, Part 3 of the ISGEA, the Indian District Enabling Provisions, has never been used. While the ISGEA principally deals with the transition to *Indian Act* bands collecting property tax on-reserves (where previously it had been collected provincially), in theory Part 3 could provide for broader and more inclusive regional governance arrangements like Shíshálh (Part 3 was drafted with shíshálh in mind). Through the provisions in Part 3, BC can recognize Indian

[51] *Indian Self Government Enabling Act* [RSBC 1996] Chapter 219 https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/00_96219_01.

Districts and bring them into the fold of the provincial and regional governance structures, including for taxation purposes. The reason no First Nation has used this part of the ISGEA since it came into force some 35 years ago, is due to political considerations as well as legal issues with the way Part 3 is drafted, that make it hard, if not impossible, for most First Nations to come under this Part (assuming, of course, they would want to do so). For example, to be recognized, the “body of Indians" cannot be a Treaty First Nation but has to be a legal entity with jurisdiction over land and taxation under an act of Canada. This means they need to be out of the *Indian Act* and, presumably, in some way recognized as self-governing by Canada. At this point there are few First Nations in BC that would meet these criteria; WFN and possibly those First Nations that are signatories to the Framework Agreement on Land Management, and are no longer governing their lands under the *Indian Act* but rather under their own land codes, and for this purpose are recognized as legal entities.

Today almost all bands in BC that have any sizable leasing of their reserve lands have either passed taxation and assessment bylaws under the amended *Indian Act* provisions or have made laws under the more recent federal *First Nations Fiscal Management Act* (FNFMA).[52] The FNFMA, a sectoral governance initiative led by First Nations, provides an alternative and more robust option for First Nations to tax than under the *Indian Act.* The FNFMA also establishes other financial management tools for First Nations, including the establishment of the FNFA.

WFN, while self-governing and involved in the development of the FNFMA, still collects property taxes under section 83 of the *Indian Act,* but has the option to come under the FNFMA through federal regulations, made either under the *Westbank First Nation Self-Government Act* or the FNFMA. This work is ongoing.

As a result of WFN enacting assessment and taxation bylaws, WFN and the RDCO negotiated a Local Services Agreement in 1992.[53] This was also one of the first local services agreements in Canada. This 15-year Agreement was substantially renegotiated, and in January of 2007 a new 15-year Agreement was reached.[54] As a result of the incorporation of West Kelowna later that year in December, some services were assigned to West Kelowna. In 2014, the 2007 Local Services Agreement was amended to add additional services.[55] The 2007 Agreement (as amended) was extended in November of 2022 for a year,[56] and then again for a further year in November of 2023.[57] It is expected to be renegotiated soon.

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[52] *First Nations Fiscal Management Act* (S.C. 2005, c. 9) https://laws-lois.justice.gc.ca/eng/acts/F-11.67/
[53] Local Services Agreement between Westbank Indian Band, Her Majesty the Queen in Right of Canada, and Regional District of Central Okanagan, September 25, 1992.
[54] Local Services Agreement, between Westbank First Nation and Regional District of Central Okanagan, January 15, 2007.
[55] Local Services Agreement Amendment, between Westbank First Nation, Regional District of Central Okanagan, September 8, 2014
[56] Amendment of Local Services Agreement between Westbank First Nation, Regional District of Central Okanagan, November 28, 2022.
[57] Amendment No 2 of Local Services Agreement between Westbank First Nation, Regional District of Central Okanagan, November 30, 2023.

While today the relationship between WFN and RDCO is good, it has not always been the case. The negotiations to reach the Local Services Agreement in 1992 were challenging for both parties. In 1995, the RDCO sued WFN and Canada over the Agreement. Ultimately the court upheld the Agreement and sided with WFN and Canada.[58]

The second Local Services Agreement (2007) is considerably different than the first, in that rather than buying a bundle of services at a fixed price that is adjusted, it sets out in which of the RDCO services WFN participates. This is done in a manner similar to how the other RDCO members participate in RDCO local services, reflecting their authority and preference. The services are set out and described in schedules to the Agreement. For some services there can be an offset in cost for recognition of services provided by WFN. Today, the local services in which WFN participates through the Local Services Agreement are set out in the table below. The table also shows what services other RDCO members participate. It should be noted that not all the services as described in the 2007 Local Services Agreement as amended in 2014 are included in the table; either because they have been assigned to West Kelowna (in recognition of the shifted service responsibility and ownership of assets and where WFN is now paying/offsetting costs with West Kelowna) or the service has changed.[59] Accordingly, there may be some discrepancies. Further, in addition to services provided under the Local Service Agreement, there are other services that are being provided by RDCO and paid for by WFN in accordance with arrangements outside of the Local Services Agreement (e.g. Sanitary Sewer System,[60] Regional Geographical Information Systems.[61] Dog Control[62] and Mosquito Control). These are not specifically set out in the table and again there may be discrepancies.

[58] 95 0351- In the Supreme Court of British Columbia, Regional District of Central Okanagan vs Westbank Indian Band and Her Majesty the Queen in Right of Canada.

[59] The following District Services are listed in the 2007 Local Services Agreement as amended in 2014: Mt. Boucherie and Jim Lind Multiplex Arenas; Johnson-Bentley Aquatic Center; Westside Seniors Activity Centre; Westside Transit; Handi-Dart Transit (Westside); Regional Parks; Okanagan Basin Water Board; Effluent Disposal; Regional Rescue Services; 9-1-1 Emergency Call Centre; Crime Stoppers; Victims Services; Westside Sanitary Landfill; Regional Air Quality; Crime Prevention, and; Economic Development. The following services, under the same terms and conditions were assigned to West Kelowna after incorporation: Mount Boucherie and Jim Lind Multiplex Arenas; Johnson Bentley Memorial Aquatic Centre, and; Westside Seniors' Activity Centre. No new service agreement(s) were entered into between West Kelowna and WFN.

[60] Sanitary Sewer System Operation Agreement, between Westbank First Nation, Regional District of Central Okanagan, September 26, 2007.

[61] Memorandum of Understanding – Regional Geographical Information Systems (GIS) Services, between Regional District of Central Okanagan, the Corporation of the District of Peachland and Westbank First Nation, November 14, 2019.

[62] Dog Control Protocol, between the Regional District of Central Okanagan and Westbank First Nation, February 12, 2007.

RDCO Local Services & RDCO/WFN Local Services Agreement[63]

Service	RDCO Participants	Recovered through WFN/RDCO Local Services Agreement
Emergency and Protective Services		
Electoral Area Fire	Electoral Areas	No
North Westside Fire	RDCO West (portion)	No
Wilson's Landing Fire	RDCO West (portion)	No
Brent Road Fire	RDCO West (portion)	No
Ridgeview Fire (la Casa)	RDCO West (portion)	No
Regional Rescue	All	Yes
911	All	Yes
Alarm Control	all but WFN	No
Crime Stoppers	All	Yes
Victim Services	All	Yes
Crime Prevention	All but Kelowna	Yes
Planning and Development Services		
Regional Planning	All but WFN	No
Electoral Area Planning	All but WFN	No
Business Licenses	Electoral Areas	No
Building Inspection	Electoral Areas	No
Transportation Demand Management	Electoral Areas	No
Bylaw Enforcement Services		
Noise Abatement	Electoral Areas	No
Untidy Premises	Electoral Areas	No
Insect Control	All but Kelowna & WK and WFN	No
Weed Control	All but WK & WFN	No
Dog Control	All	No
Prohibited Animals	All but Central OK East, LC & WFN	No
Parks and Recreation Services		
Regional Parks	All	Yes
Westside Municipal Rec	RDCO West (portion)	No
Johnson Bentley Aquatic	RDCO West (portion)	No

[63] This table was adapted from information provided by Neilson Strategies Inc in the *Governance Study*, 2022 and cross referencing with the 2007 WFN/RDCO Local Services Agreement as amended and assigned - E&OA. It is for illustrative purposes only and should be verified by the RDCO and WFN.

Centre		
Killiney Community Hall	RDCO West (portion)	No
Westside Community Parks	RDCO West	No
Okanagan Regional Library[64]	Electoral Areas	No
Economic Development Services		
Central Okanagan Economic Development Commission	All	Yes
Environmental Services		
Okanagan Basin Water Board	All	Yes
Air Quality	All but Lake Country	Yes
Sterile Insect Release	All but WFN	No

As has been stated previously, although not a formal provision in self-government arrangements negotiated with the Crown as in the modern treaty context, WFN participates as an observer at Board meetings of the RDCO. This was agreed to by RDCO and WFN through the extension and amendment to the Local Services Agreement in 2007:

Representation

7. The First Nation Council shall, by resolution, appoint a representative of Council to attend meetings of the District's Board and to participate as a non-voting member.

8. Notwithstanding Clause 7, where a meeting of the District Board is in camera, the representative of the First Nation Council may attend at the invitation of the District Board.

WFN, by all accounts, is an active participant at the RDCO Board meetings as well as the Electoral Area Standing Committee and the Waste Water Treatment Plant Committee. However, the WFN appointed representative does not vote and does not count in the weighting of the RDCO Board meetings.[65] Rather, the population living on Westbank Lands are included in the weighting numbers for the Central Okanagan West Electoral District. This is, in part, a legacy of the incorporation of West Kelowna. Prior to the establishment of West

[64] WFN has a sperate agreement with the Okanagan Regional Library.
[65] WFN is a voting member of the Electoral Area Standing Committee (EASC): https://www.rdco.com/en/your-government/resources/Documents/Electoral-Area-Services-Standing-Committee---FINAL.pdf, and a voting member of the Waste Water Treatment Plant Committee: https://www.rdco.com/en/your-government/resources/Documents/Westside-Wastewater-Service-Standing-Committee_Terms-of-reference.pdf

Kelowna, residents on Westbank Lands voted for Westside Directors. When West Kelowna incorporated, Westbank Lands were deliberately not included within the letters patent. As a result, persons living on Westbank Lands continue to vote for a RDCO Director. Today, this is the Director for the Central Okanagan West Electoral District.

While WFN can, and does, negotiate the range and types of service that is provided from RDCO and can raise issues about service provision and budgets at Board meetings, WFN has no formal involvement in decision-making. This lack of involvement in decision making around changes to local services that are provided (including, for example, changing services that RDCO may be under contract to WFN to provide, establishing a new local service, its design and priorities of service, as well as budget allocation and the concomitant tax burden to ratepayers) is an issue. Among the obvious issues of fairness and equity, it also raises questions of accountability to WFN Members and ratepayers. These are all important considerations when looking at models for inclusive governance with respect to local services that are shared and paid for collectively.

A related issue to service provision is the scope of powers of the RDCO and its members, as compared to those of WFN and the source of those powers. It would need to be clear how WFN would delegate, if need be, its powers to the RDCO if not just buying services but rather participating in a truly shared governance model. Issues of shared liability and responsibility would also need to be considered.

4.2 Scope of Powers

WFN has a broader scope of powers and authorities than a regional district and participant local governments. WFN's are considered an aspect of the inherent right of self-government that Indigenous groups enjoy and are protected under section 35 of the Canadian Constitution. The SGA in implementing aspects of the inherent right of self-government is based on a "concurrent law" model, where federal and WFN laws apply, but where provincial laws of general application apply only where the matter is not addressed in the SGA or in WFN law. The SGA sets out which law applies in the event of a conflict. This is a different type of arrangement than for regional districts, and for that matter, SGIGs as part of modern land claim treaties.

In addition, WFN is governed by its own Constitution. A regional district's governance structure and how it makes its decisions is set out in detail in provincial legislation. The *Local Government Act* is prescriptive in terms of the processes that a regional district needs to follow. However, how the regional district's Board functions in practice is up to its members, as a regional district is based on a federative approach to governance and shared interest as discussed above. Further, developing a Regional Growth Strategy can be a good tool to be inclusive and creative.

Finally, when considering options to transform regional governance in the Central Okanagan and as discussed above, under the SGA, WFN has the power to delegate authority other than law making authority. Accordingly, whether WFN can transfer (by Westbank Law) powers to RDCO, and how RDCO bylaws might apply on Westbank Lands (to the extent they may need to) is a legal question that will need to be considered if a full shared governance model is

advanced. It is important to understand that today, while WFN purchases a bundle of local services from the RDCO, this in itself does not import RDCO bylaws onto Westbank Lands. This is why, for example, in respect of the fire protection agreement between WFN and West Kelowna, WFN has enacted a fire protection law similar to the bylaw enacted by West Kelowna. While not all local services may require a bylaw or law, all revenue raising and expenditure decisions do require a bylaw or law if they are to apply of their own force and volition. Again, how this would all work legally as well as politically in a shared governance model will need to be worked through by WFN and RDCO, if a shared governance model is considered further. These are matters that would have been considered in the modern treaty model.

Appendix B has a fuller comparison of powers and authorities between WFN and RDCO.

4.3 Community Engagement and Consultation

Moving forward, both WFN and the RDCO have both indicated they are committed to ensuring the various communities of the Central Okanagan are kept informed and help guide the work towards more inclusive regional governance. In the case of WFN, community approval will be required if the direction chosen requires amendments to WFN law, including potentially the WFN Constitution. Moving beyond the initial information gathering stage and the preparation of this Discussion Paper, developing the process for community engagements on the initiative will be critical. The bar has been set high in the Central Okanagan for involving constituents by both WFN and RDCO.

Through the WFN Constitution, and by convention, WFN arguably has one of the most advanced systems of participatory democracy in Canada. This system was codified based on traditional ways of governing when WFN became self-governing in the modern era and when the community voted to move out from under the *Indian Act*. Today, all important governance and land use decisions respecting Westbank Lands must be taken to the WFN community as part of a formal community engagement process. In many cases, decisions that elsewhere would typically be made by a Council or other governing body, require a vote to be taken at a community meeting or a full referendum of all adult members. Further, except for local revenue laws, all laws made by WFN require a second reading in front of community, and in some cases, this is followed by a referendum. This approach to governance is reflected in the development of the WFN Comprehensive Community Plan (CCP) which clearly demonstrates the important role of Members in determining the future direction of WFN. The CCP was developed through a Member-led approach, and is "guided by Membership and our long held traditional ways of living and governing."[66] This approach is mandated by the *WFN Community Plan Law*,[67] which sets out a community engagement process and gives the CCP the full force of law.

[66] https://www.wfn.ca/docs/westbank_ccp_web.pdf
[67] https://www.wfn.ca/docs/2020_wfn_community_plan_law.pdf?LanguageID=EN-US

The WFN administration and those tasked with policy development at WFN understand that Member consultation and feedback on WFN policies are crucial to developing policies that best serve the Membership and the broader community. In addition to the legal requirements under the Constitution and associated laws, including opportunities afforded at quarterly general community meetings, the WFN administration conducts inclusive community consultation on most, if not all, policy initiatives. Here Members can dialogue with one another as well as WFN staff to provide feedback and guidance on policy work being considered or underway. The policy development work with respect to inclusive regional governance will undoubtably follow a similar iterative community process.

In addition to the Members of WFN, there are also the more than 10,000 non-WFN Members living on Westbank Lands whose views will also need to be considered. With respect to the representation of the non-Member residents on Westbank Lands, the SGA provides that WFN shall establish in Westbank Law, mechanisms through which non-Members living on Westbank Lands, or having an interest in Westbank Lands shall have input into proposed Westbank Law and proposed amendments to Westbank Law that directly and significantly affect them.[68] This would include laws addressing inclusive governance on the Westside.

As noted in the governance section above, WFN has established, by law, an Advisory Council. In addition to giving non-Members a mechanism through which they have input into proposed Westbank Law that directly and significantly affect them, the law also provides for them to give advice on other matters as requested by WFN or when deemed necessary by the Advisory Council. It will be necessary and important to involve the Advisory Council, as well as the population at large in this initiative, both in accordance with WFN law and as a matter of wise practice.

One specific consideration will no doubt be in respect of the Central Okanagan West Electoral Area and voting. Depending on the model selected, the non-Member residents on Westbank Lands could potentially be removed from Central Okanagan West, resulting in both a change in the weighting of votes at the RDCO table and voting for the RDCO representative. Accordingly, there will be political or other considerations related to such a change.

For its part, while maybe not legislated in the same way as at WFN, the RDCO is equally committed to ensuring the involvement of the people of the Central Okanagan in the RDCO decision making processes. Through the public engagement program called “Your Say,” the RDCO creates opportunities for the public to contribute to problem-solving or decision-making about the RDCO’s policies, programs, projects, and services.

The program is based on the belief that residents, stakeholders, municipal and Indigenous partners should have meaningful opportunities to engage in the decisions that affect their communities. More than one-way communication, the approach welcomes participants into

[68] *Westbank Advisory Council Law*, 2017 https://www.wfn.ca/docs/2017-04_advisory_council_law637351716505104804.pdf?LanguageID=EN-US

the decision-making process by ensuring timely information and awareness of opportunities to provide input before decisions are actually made. The RDCO engages with the public based on the following guiding principles:

- *Transparency:* Public engagement opportunities are developed so that members clearly understand their role, the level of engagement and the decision-making process. Feedback is shared publicly.
- *Consistency:* Engagement opportunities are presented in a predictable and consistent manner to build understanding of members' roles and how they can be involved.
- *Inclusivity and diversity:* Public engagement processes allow all community members a reasonable opportunity to contribute and share their perspective. Effort will be made to ensure diverse voices are identified and these voices invited to participate.
- *Timeliness:* Public engagement is commenced as early as possible so the community and stakeholders have enough time to learn about the issues and actively participate.
- *Plain language/clear communication:* Information and instructions related to public engagement are provided in clear and simple language and easily understood by the community. Complex ideas will be shared in ways that are easy to grasp and the impact of different decision options will be explained.
- *Suitable process:* Design and implementation of public engagement processes that reflect the size, complexity and community impact of any initiative.
- *Regional perspective:* The RDCO recognizes the unique values and perspectives of its varied and diverse communities and stakeholder groups. Engagement activities are developed to balance the specific needs of individual communities with the region as a whole.[69]

It is assumed that these principles will guide this initiative.

5. POTENTIAL MODELS FOR INCLUSIVE GOVERNANCE IN THE CENTRAL OKANAGAN

5.1 Potential Models

The model of the regional district as a federation based on collaboration and shared interest of local governments is progressive, and has the promise of being open and inclusive to include First Nations. The following sets out some models for inclusive regional governance, including for WFN becoming a full participant on the RDCO through shared governance. To be clear, the models are not meant to be exhaustive but rather illustrative, and other models or combination

[69] https://www.rdco.com/en/living-here/your-say-rdco.aspx

of models could be developed before options are finalized. Some questions are also posed for consideration by WFN and RDCO representatives as the next phase of the inclusive governance initiative moves forward.

In considering models, it should be understood that full membership on the board of a regional district through shared governance does not automatically create inclusive governance. Conversely, participating in a regional district is not the only path to more inclusive governance. In some ways, the experience of the Yukon SGIGs and Tla'amin bears this out where there is no formal shared governance. There are a range of collaborative tools outside of participating on the Board that could be used to incrementally strengthen the government-to-government relationship, with or without joining the RDCO as a member. Tla'amin's work with City of Powell River and the qathet Regional District is often described as one of BC's most successful collaborative governance models.

Accordingly, in addition to the models of shared governance, there are several other tools that can be built that could be considered to help the parties to continue to work cooperatively and build on the trust that has already been developed. For example, tools like a Community Accord or a Protocol for Communication and Cooperation can help to set the foundation for an ongoing and solid working relationship. Such tools can establish a forum for continuous dialogue where expectations can be clarified, and roles and responsibilities can be better understood. A tool such as a joint planning framework that involves identifying common issues, setting common objectives, goals and actions can help grow and expand the capacity to make joint decisions and solidify shared interests and outcomes even where the parties do not share formal governance through one body. Also, a joint planning framework allows for a cooperative working relationship on more complex issues or projects, as well as solidifying deeper commitments. An example of a complex area could include land use management or major development projects involving a third party. Looking at other tools that could be used instead of WFN formally joining the RDCO, or as an interim measure when working towards joining the RDCO, is recommended. Further these tools do not necessarily need to end, should WFN become a full participant in the RDCO.

Finally, before looking at the models, it is important to remember that the nature of governance changes when a different structure is used to make decisions and when different perspectives are built into that structure. This, of course, can be a good thing. Something desired. Something inclusive. That said, whatever model or combination of models is ultimately chosen for the RDCO and WFN, inclusive governance requires the use of structures that enable working relationships to be sustainable and predictable with clear roles and responsibilities. This will support both clarity of decision making and accountability, reflecting the different pathways of decision-making and working together. In essence, this at once recognizes the differences as well as the interdependence and interconnectedness between WFN and the RDCO, as well as more harmonious relationships.

Model One: Continue WFN participation through the WFN/RDCO Local Services Agreement

The **"status quo plus"** model. In accordance with the Local Services Agreement, WFN to continue, by resolution, to appoint a representative of Council to attend meetings of the District Board and to participate as a non-voting member. New tools to be established such as a Community Accord or a Protocol for Communication and Cooperation.
Pros:

- Already working and in place, understood and accepted by ratepayers.
- Reflects a government-to-government relationship and the distinction of WFN self-government.
- New tools could strengthen the relationship and create more opportunities for shared planning and decision-making.

Cons:

- Out of date – there are new models of shared/cooperative governance involving SGIGs and local governments with innovative regional governance.
- WFN pays for services through the Local Services Agreement, and while WFN has input, is not a decision maker.
- WFN's vote is not officially counted – particularly important when changes to/or new services are being considered and for the annual budget development process.

Some Questions:

- How effective is WFN representation today? For meeting both WFN's interests, the interests of other local governments that make up the Board, and the Board's interests?
- Even though WFN's vote is not binding, are WFN's views/positions recorded and how?
- What matters/issues do the RDCO Board members who represent Kelowna, West Kelowna, Lake County and Peachland take back to their respective Councils and in what form? How does the WFN representative report to Chief and Council and on what matters?

Model Two: Participate as a non-voting Member through a mechanism separate and apart from the Local Services Agreement.

The **"expanded agreement"** model. A new agreement to be negotiated between the RDCO/WFN (BC may need to be a party) where WFN is a made a permanent non-voting member of the RDCO and where participation is not tied to the Local Services Agreement. Agreement would expand on the provision in section 7 of the Local Services Agreement with new tools to be established such as a Community Accord or a Protocol for Communication and Cooperation. RDCO may need to change its bylaws as did the CRD. There may be a desire or need to make amendments to the *Local Government Act* as has been recommended by the CRD.

Pros:

- The Local Services Agreement is not an evergreen document. It expires. If RDCO and WFN are to have a relationship than is more than just WFN purchasing services from the RDCO then a different type of agreement may be warranted.
- Reflects a government-to-government relationship and the distinction of self-government.
- New tools could strengthen the relationship and create more opportunities for shared planning and decision-making.

Cons:

- Amount of work required to what would be just strengthening and ensuring the continuation of the status quo.
- Does not address the desire of WFN/RDCO for WFN to be a full and voting member of the RDCO and for the parties to explore and develop innovate regional shared governance and decision making.

Model Three: WFN to become a full member of the RDCO and for this purpose be deemed a "Municipality" like a Treaty First Nation under the *Local Government Act.*

The **"modern treaty"** model. WFN would become a full member of the RDCO as a "municipality" including for weighting of votes, decision making, etc. WFN would appoint a member(s) of its governing body (Chief and Council) to be a Board member(s) of the RDCO. SGIG's that have modern treaties in BC (Treaty First Nations) can participate in a regional district in accordance with their Final Agreements and Part 7 of the BC *Local Government Act.*[70] While WFN is an SGIG, it is not a Treaty First Nation and so the provisions in Part 7 BC *Local Government Act* do not apply. An agreement with BC would be required along with amendments to the *Local Government Act*. May require WFN pass a law to delegate powers (from Chief and Council) as may be needed for the WFN representative to participate fully in the RDCO (e.g., in bylaw/law making functions as part of the RDCO Board).

Pros:

- Is an established model for consideration and appears to be working well where it has been implemented.
- Would be consistent with other existing SGIGs in BC under the BC Treaty model.

Cons:

- WFN is not a Treaty First Nation and has had issues with some approaches taken in modern treaty arrangements.
- The modern treaty model is tied to the adoption by SGIGs of the provincial property taxation regime which is different than the arrangements applicable to WFN under the Westbank First Nation Self-government Agreement. This could prove challenging to overcome.

[70] *Local Government Act, [RSBC 2015]* Chapter 1, Part 7 – Regional Districts: Treaty First Nation Membership and Services.

- There will be other recognized SGIGs outside of modern treaty making, so tying the WFN/RDCO arrangements to modern treaty groups might not make the most sense moving forward. Other models can and may be developed.

Model 4 – The Establishment of a separate WFN (Local) Government District as a quasi-municipal government to participate fully in the RDCO.

The **"shíshálh"** model. There would be established a separate and distinct WFN (local) Government District that would be a full member of the RDCO with all the same rights and responsibilities as a "municipality," including for weighting of votes, decision making, etc. The new WFN (Local) Government District would appoint a member(s) of its Council to be a Board member(s) of RDCO. Would require agreement with BC and use of provincial legislation (and possibly regulations). May require new stand-alone legislation/regulations (as was done for shíshálh Nation) or potentially coming under Part 3 (Indian District Enabling Provisions) of the *Indian Self-Government Enabling Act* (which itself may need to be amended). WFN would continue to purchase services from the RDCO. The RDCO would recover them from WFN as is done with a municipality. WFN representative to participate in bylaw/law making functions as part of RDCO Board.

Pros:

- Has been used at shíshálh for 37 years and is working in practice.
- WFN and shíshálh have much in common and work together.

Cons:

- Would require significant changes to WFN's governance structure.
- May have consequences for the collection of property taxes that could prove difficult to overcome.
- BC government may prefer not to deviate from their Treaty First Nations model.

Model 5 – WFN to become a full member of the RDCO and to participate as a "Municipality" through new arrangements to be negotiated with BC.

A new **"WFN/RDCO"** model. WFN would become a full member as an SGIG with all the same rights and responsibilities as a "municipality", including for weighting of votes, decision making, etc. WFN would appoint a member(s) of its governing body (Chief and Council) to be a Board member(s) of the RDCO. Would require an agreement with BC and provincial legislation (and possibly regulations) that reflect the structure and intent of the WFN SGA. This could be through an amendment to the *Local Government Act* (distinct from the "Treaty First Nation Membership and Services" provisions) or stand-alone. The provincial legislation/regulations would provide that WFN can appoint a member(s) of its governing body as defined under the WFN Constitution to the Board and that WFN would be deemed a municipality for certain sections of the *Local Government Act*. WFN would continue to purchase services from the RDCO. The RDCO would recover them from WFN as is done with a municipality. May require

WFN to pass a law to delegate powers (from Chief and Council) to allow for a WFN representative to participate in bylaw/law making functions as part of the RDCO Board.

Pros:

- Although this is a new approach and will take longer, it would be tailored to the WFN SGA.
- May be simpler than adopting the BC Treaty First Nations Model or the shíshálh model.
- As other non-treaty First Nations/regional districts look at similar arrangements, will be a model others might follow (e.g., First Nations that collect property taxes and local service fees under the *Indian Act* or *First Nations Fiscal Management Act,* and are moving towards self-government).
- Reflects a government-to-government relationship and the distinction of self-government.

Cons:

- Might take more time to develop and implement than other models as it would be new and potentially more complicated.
- BC government may prefer not to deviate from their Treaty First Nations model.

5.2 Approvals/Arrangements Needed

Depending on the outcome of the community and public engagement and decisions made by WFN and the RDCO, various approvals or new arrangements may be necessary to change the governance structure. For each of the initial models set out above, the associated potential approvals and/or new arrangements are briefly described. For example, model two would see WFN participate as a non-voting Member through a mechanism separate and apart from the Local Services Agreement. This would require a new agreement to be negotiated between the RDCO/WFN, and BC may need to be a party. Alternatively, if Model Three is considered, which would see WFN become a full member of the RDCO, and for this purpose be deemed a "Municipality" like a Treaty First Nation under the *Local Government Act*, many new arrangements would likely be necessary. For example, in this model an agreement with BC would be required along with amendments to the *Local Government Act*, and WFN may need to pass a law to delegate powers from Chief and Council.

For any changes to be made to the RDCO structure, the province will clearly need to be involved. Canada may also need to be involved with respect to WFN. This could include where there are changes required to legislation and regulations, either provincially or federally. Locally, WFN will likely require some form of Member approval if WFN becomes formally involved in regional governance, as set out in 4.3, above. This will certainly be the case if there is a transfer of any powers or authority to the RDCO or other new WFN municipal body, where that authority is currently exercised by the WFN Chief and Council. This would require WFN laws to be amended as the SGA is silent with respect to delegation of law-making authority to non-Indigenous governments. This issue may also need to be addressed with Canada should

clearer powers of delegation be necessary. This will need to be considered further if necessary, and legal advice sought.

If required, the SGA can be amended or a supplemental agreement with Canada reached. An important aspect of the SGA is that it is a living agreement. Part XXIV of the SGA, "Future Negotiations" contemplates that the SGA may be amended or supplemental agreements reached in several identified areas. It was the first, and for a long time, the only SGA that included such a part. At the WFN RIRSD table with Canada, WFN is exploring its options to update the SGA or reach further agreements on several matters that were not addressed during the initial negotiation of the SGA. This is similar in approach to what shíshálh Nation has accomplished with the recent amendments to its federal act. Should there be a need to make changes to the SGA or reach further agreement with Canada in order to implement a preferred option for inclusive regional governance in the central Okanagan, the RIRSD table would provide a mechanism and a place to have those conversations and reach agreement.

As the parties decide how they want to proceed and what they want to accomplish with respect to more inclusive government, it will become clearer what legal and other arrangements will be needed and these can be addressed and developed accordingly. For now, the models presented are for discussion only, and new ideas may arise through the process. Accordingly, it is not necessary to set out all potential approvals/new arrangements at this time.

6. CONCLUSION AND NEXT STEPS

WFN and RDCO have both indicated that greater WFN participation on the Board, and potentially as a full member, is an objective to pursue as part of more inclusive regional governance. Because it is a choice to join a regional district and not a mandatory requirement, joining should occur when it is in the best interests of the potential member to join and supported by the regional district. This decision should be driven by a shared political vision, as well the benefits of economies of scale and a significant overlap in common outcomes that are beyond what a service agreement or any other type of agreement covers.

The extent to which models of regional governance, including shared governance, can be developed within the existing framework based on fusing Indigenous governance with the regional district has still not been tested that widely. The shíshálh experience after 37+ years and the Maa-nulth experience after 10+ years of participation on a regional board will be insightful and important in this regard.

Clearly, work to establish a foundation for SGIGs participating in a regional district can lead to more successful participation and ultimately better governance. For example, during the Maa-nulth treaty negotiations, the regional districts participated in the sessions involving the local government chapter of the Final Agreement. This was intended to establish clear expectations, an understanding of roles, and to establish a working relationship. Also, once the individual Maa-nulth First Nations joined the regional district after treaty, a joint work plan was

undertaken to frame the regional district's work with the First Nations included. Together, they worked through a series of questions that started with confirming an understanding of where they were at, progressed to determining where they wanted to go, outlining a path to get there, and an approach to assessing the results. This is, in essence, the work that RDCO and WFN are embarking on, of course outside of formal treaty negotiations.

Moving forward, and regardless of the decisions made regarding inclusive governance, a strong cooperative working relationship between RDCO (and its members) and WFN is in everyone's best interest to strengthen governance in the Central Okanagan and to provide essential and quality local services for all. It is the authors hope that RDCO and WFN can continue to work in a manner that meets the interests of all, and in the process, improves the quality of governance and decision-making in the Central Okanagan and perhaps can establish a new model of cooperative governance.

Proposed Next Steps

With respect to next steps, the RDCO will be submitting a progress report to the Province of BC by the end of March 2024. During the remainder of the fiscal year, there are a number of activities that could be undertaken to support the initiative. These include:

1) WFN and the RDCO senior leadership teams review this discussion paper as the basis for ongoing engagement and planning;

2) The JWR Group to work with WFN and the RDCO senior leadership teams to design and deliver a facilitated session between the WFN and the RDCO leadership to:
   - establish a joint working group and agree upon associated rules and procedures;
   - consider potential models, including potential evolution of existing models. This portion of the session could include invitations to other First Nations and representative of regional districts to discuss their experiences with shared governance;
   - discuss key issues such as:
     - decision-making criteria – for example, what criteria will be used and how will it be weighted;
     - communications;
     - community engagement and consultation;
     - engagement with Canada and BC as required;
     - potential approvals required; and
     - agree upon timelines.

3) Development of a joint communications plan and associated materials;

4) Development of an overall strategic plan to guide this joint work over the next 1-2 years, including additional details and research necessary to guide the joint work and support decision-making.

Appendix A - TREATIES & SELF-GOVERNMENT AGREEMENTS: COMPARING REGIONAL DISTRICT PARTICIPATION

First Nation	Key Agreements and Governance elements	Location and Regional District	Regional District Interaction
shíshálh Nation	Comprehensive self-government agreement 1986: shíshálh Nation Self Government Act -recognized inherent right to self-gov't, control over resources and services, further implement UND -established the shíshálh Nation Government District -s. 17-22: establishes the shíshálh Nation Government District and sets out its capacity and scope of powers 1987: Sechelt Indian Government District Enabling Act -BC legislation that recognized the FN government as a local government and enabled the District to qualify for municipal benefits – e.g., enact laws, bylaws, taxes -municipal aspect of the broader shíshálh self-government arrangements 1994: entered the BC Treaty process; reached stage 4, but no longer negotiating and left process in 1999. 2016: shíshálh – BC Reconciliation Agreement and Government to Government Agreement	Regional District: Sunshine Coast Regional District (SCRD) -9 electoral areas + 2 municipalities + shíshálh FN -9 elected directors + 2 municipal directors who are appointed by the municipalities + 1 FN director who is appointed by the FN	-full member of the SCRD - appoints a Council member to the SCRD Board with voting rights -purchase services - fire protection, road maintenance, sewer collection and disposal, garbage collection and recycling services *not technically a Treaty nation, a requirement to be part of an RD under the BC Local Government Act Part 7, but have specific enabling legislation

First Nation	Key Agreements and Governance elements	Location and Regional District	Regional District Interaction
	2018: shíshálh - BC Foundation Agreement to support a long-term relationship and implementation of shíshálh's Aboriginal Rights and Title in shíshálh swiya 2022: shíshálh Nation Self Government Act significantly amended in the 44th Parliament by Bill S-10 in 2022 **specific section in the SGA that created the SNGD*		
Westbank	Self-Government Agreement - Inherent Right policy – Bilateral with Canada. 2005: Westbank First Nation Self-Government Agreement comes into effect -enables agreements & relationships with regional & local gov't Currently in stage 4, Agreement in Principle negotiations in the BC Treaty process (commenced negotiations in 1995) - suspended negotiations in 2009 as no reasonable expectation of being able to reach an	South central BC; Kelowna Regional District: Regional District of Central Okanagan (RDCO) -2 unincorporated electoral areas + 2 municipalities + 2 district municipalities + Westbank FN	-non-voting member of the RD Board, and by invitation, attends closed / in camera settings

First Nation	Key Agreements and Governance elements	Location and Regional District	Regional District Interaction
	agreement. 2023 - Recognition of Rights and Self-Determination (RIRSD) Table with Canada. **no specific reference to joining the RD; references to agreements with local and regional governments only*		
Nisga'a	Modern Treaty - outside of BC Treaty process 2000: Nisga'a Final Agreement comes into effect -ch. 18: specifies that the Nisga'a Lands are part of Electoral District A in the Regional District Kitimat-Stikine -sets out power to enter in agreements with the RD for services, planning, health services, and infrastructure -also provides for meetings between the Nisga'a Lisims Government and the RD at the request of either **inclusion or folding into electoral district A as opposed to having a separate seat as per BC policy*	Along the Nass River, north of Terrace Regional District: Kitimat-Stikine -6 electoral areas + 5 municipalities -Board consists of 12 individuals; Six Electoral Area Directors elected to represent residents in our rural areas in Local Government Elections (4-year term) and, six Directors who are appointed annually from their respective municipal councils. (Councillors or Mayors)	-part of electoral district A - no separate voting even though as a treaty nation, Nisga'a could have a seat with voting.

First Nation	Key Agreements and Governance elements	Location and Regional District	Regional District Interaction
Tsawwassen First Nation	Post 2000 Modern Treaty - BC Treaty process 2009: Tsawwassen First Nation Final Agreement comes into effect -ch.17: intergovernmental relations & services section specifies that on the effective date of the agreement, TFN is a member of the Greater Vancouver Regional District and may participate as a member; provincial settlement legislation to give effect to the participation of TFN in the GVRD and deemed to have the powers of a municipality **specific intergovernmental section and effective date in becoming a member of the GVRD*	South of Vancouver, near US border Regional District: Metro Vancouver Regional District (MVRD) -21 municipalities + 1 electoral area + 1 Treaty FN	-full member of the Metro Vancouver Regional District --voting strength: 1 vote on the MVRD, 1 vote on the Greater Vancouver Water District, and 1 vote on the Greater Vancouver Water District, but no vote on the Greater Vancouver Sewerage and Drainage District
Maa-nulth First Nations -Huu-ay-aht First Nation -Ka:'yu:'k't'h'/Che:k:tles7et'h' First Nations (formerly Kyuqout) -Toquaht First Nation -Uchucklesaht Tribe -Yuułuʔiłʔatḥ (Ucluelet First Nation)	Post 2000 Modern Treaty - BC Treaty process 2011: Maa-nulth First Nations Final Agreement comes into effect -ch. 14: specifies which regional district each member nation is located in -sets out the power to enter into a land use planning protocol and a service contract with any local government -RD can invite a nation to participate on a non-voting	West central Vancouver Island Alberni-Clayoquot Regional District - Huu-ay-aht First Nations, Toquaht Nation, Uchucklesaht Tribe and Ucluelet First Nation -1 municipality + 6 electoral areas + 2 district municipalities + 4 Maa-nulth treaty nations Strathcona Regional District - Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations	ACRD: -current Chair is John Jack, chief councillor from Huu-ay-aht First Nations -members include representatives from the other Maa-Nulth treaty nations in this RD -full voting members since 2012 SRD: -KCFN joined the Board for the first time as a full voting member in April 2021 - BC had to update the RD's letters patent to include KCFN's role in

First Nation	Key Agreements and Governance elements	Location and Regional District	Regional District Interaction
	basis during the transition period -requirement to signal intention to end the transition period and become a member of the RD before the 10th anniversary of the effective date -specifies powers of a municipality **10 yr. time period to formally become a member of the RD*	-4 electoral areas + 5 municipalities + 1 treaty FN	local government
Tla'amin Nation	Post 2000 Modern Treaty - BC Treaty process 2016: Tla'amin Final Agreement comes into effect -ch. 16: specifies local and regional government relations -16.9: "may" become a member of a regional district and where they do, Tla'amin will appoint an elected member to sit on the Board of the RD -also sets out powers to enter into agreements with the local government **joining the RD is at the option of the Tla'amin and is open-ended*	North of Powell River along the Sunshine Coast Regional District: qathet Regional District -5 electoral areas and 1 municipality -district is governed by a board of seven directors: five electoral area directors who are elected for a four-year term by voters in the electoral areas, and two municipal directors who are first elected to the City of Powell River's council and then appointed by council to the regional board	-not a member of the RD, but multiple collaborative agreements and protocols that date back to 2003 with the municipality

APPENDIX B – COMPARISON OF POWERS AND AUTHORITIES – WFN and RDCO

Powers & Authorities	WFN	RDCO
Purpose	Preamble & Part II, Westbank Self-Government Agreement (Westbank SGA) Recognition of WFN's Inherent right to self-government recognized in s. 35, Constitution Implement aspects of WFN's inherent right through setting out arrangements in a number of jurisdictions (preamble and s.1) Provide good governance for all persons on Westbank Lands (preamble) Ability to enter agreements and relations with local governments	Part 5: Regional Districts: Purposes, principles and interpretation ss. 185-192, Local Government Act RD is an independent, responsible and accountable order government Purpose is to: -provide good government for its community -provide services -provide stewardship of public assets -foster current and future economic, social and environmental well-being
Governance Structures	Part VI: Westbank SGA WFN to have a Constitution (s.42) which includes elections, internal financial management, conflict of interest, procedures for law making (s.43) WFN may delegate its jurisdiction (s.49)	Part 5: Regional Districts: Purposes, principles and interpretation Divisions 3-5 set out the composition of the Board and how the Board operates Division 7: Board may delegate its powers and authorities to a board member or committee, an officer or employee or another body established by the Board
Legal Status & Capacity	Part III: Westbank SGA In addition to the capacity to pass and enforce laws, WFN is a legal entity with the rights, powers and privileges of a natural person (s.19)	Part 6: Governance and Procedures Division 1, s. 193-195, Local Government Act RD is a corporation Governing body of an RD is it Board Board can only exercise its powers, duties and functions only within the RD's boundaries Divisions 3-5 set out the composition of the Board and how the Board operates Division 7: Board may delegate its powers

Powers & Authorities	WFN	RDCO
		and authorities to a board member or committee, an officer or employee or another body established by the Board
Powers	Part IV: Westbank SGA Legal capacity to govern itself (s.20) Act through Council to exercise powers (s.21) Law making and regulatory authority (s.22) First Nation & institutions are public bodies (s.24) Ability to enter into agreements related to land, waters, resources or air (s.25) In the exercise of its jurisdiction make laws related to immunity and vicarious liability (s.26) Ability to enter into agreements related to program and service delivery (s.27) Ability to enter into agreements to receive delegated powers (s.28)	Part 8: General powers and responsibilities Division 1 – General powers – s. 263-265 Board has corporate powers to make agreements related to the RD's services, the operation and enforcements of its regulatory authority and management of its property Board can enter agreements with public authorities Board can provide assistance to benefit the community Board can acquire, manage and dispose of land and property interests Board can delegate its powers Board can engage in commercial undertakings Board can establish commissions
Law-making/bylaw making	SGA sets out areas for WFN to exercise law-making the following jurisdictions: -Membership – Part VII -Wills and Estates – Part VIII -Financial Management – Part VIX -Lands and Land Management – Part X -Landlord and Tennant – Part XI -Resource management – Part XII -Agriculture – Part XIII -Environment – Part XIV -Culture and Language – Part XV -Education – Part XVI -Health services – Part XVII -Licensing, regulation and operation of business – XIX -Traffic and transportation – Part XX -Public works, community infrastructure and local services – Part	RD has legislated authority to enact bylaws in enumerated areas Part 9: Specific Service powers, Divisions 1-7 Areas of regulation: -building regulation -fire, health and hazard protection -drainage and sewerage -waste management -regulation of animals -noise, nuisances and disturbances Exercise of powers through Part 10, Service Structure and Establishing bylaws Enforce bylaws through Part 12 – fines, penalties, imprisonment

Powers & Authorities	WFN	RDCO
	XXI -Public order, peace and safety – Part XXII -Prohibition of intoxicants -Part XXIII Part XVIII – Enforcement of Westbank law – procedures are similar to federal or provincial powers	
Title and Interests in Lands	Part X, Westbank Lands & Land Management Title and Interests; s. 87-91 Federal Crown holds lands for the use and benefit of WFN and WFN has all the rights and powers of an owner related to the lands and can grant licences & interests	Part 8, Division 5 Property powers and Division 6 Disposal of Land RD has possession and control of Crown lands outside a municipality that is designated as a park or public square RD can sell or exchange a regional park or trail RD can exchange land RD can accept land or property on trust RD can dispose of land in a public process
Expropriation	Part X, Westbank Lands & Land Management Expropriation; s. 105 WFN has jurisdiction to expropriate within Westbank Lands for a community purpose Compensation is required s. 35 Indian Act interests cannot be expropriated Interests held by Canada cannot be expropriated	Part 8, Division 7 RD can expropriate in accordance with the Expropriation Act -any inconsistency between the Expropriation Act and a final agreement or treaty, the final agreement or treaty applies Compensation is required
Land Management	Part X, Westbank Lands & Land Management Register; s. 96-101 – WFN has jurisdiction to establish a lands register; until register is established, lands are registered in accordance with Regulations made under the Westbank First Nation Self-Government Act or an alternate register by agreement.	Part 14, Planning and Land Use Management -authority is limited to the part of the RD that is not a municipality -authority to establish an advisory planning commission to provide advice on land use, community planning, bylaws and permits -process must be public; ie., public hearing before adopting a bylaw

Powers & Authorities	WFN	RDCO
	Part X, Westbank Lands & Land Management Governance of lands; s. 103-104 WFN has jurisdiction to manage, administer, govern, control, regulate, use and protect Westbank Lands Includes jurisdiction over foreshore and waterbeds that are part of Westbank Lands Includes jurisdiction for the establishment of interests in Westbank Lands includes jurisdiction over zoning and land use planning Westbank Lands are protected from expropriation; federal gov't can expropriate in limited circumstances and there is no power for the provincial government.	Division 4 – Community plans -statement of objectives to guide planning and land use decisions related to the regional growth strategy -community plan can include policy statements -requirement for a public hearing -must specifically consider whether consultation is required with key groups, including First Nations Division 5 – Zoning -authority to divide RD into zones -authority to regulate within the zone – eg., use of land, buildings, size, etc. -authority to enter into housing agreements for affordable and special needs housing Division 6 & 7 – Development and Development permits -authority to review, approve and issue permits for projects -ability to limit developments -ability to issue temporary permits -ability to issue variances
Natural Resources	Part XII Resource Management Renewable Resources; s. 135-137 Jurisdiction for resources on, under or above Westbank Lands includes protection, conservation, management, development and disposition of all wildlife and forest resources Jurisdiction to manage and regulate water use Co-management arrangements related to migratory birds Non-renewable Resources; s. 138-139 Jurisdiction for oil, oil shales, gas, gravel, clay, sand, soil, stone, peat,	

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	coal, bitumen, limestone, marble, gypsum, ash, marl, any building stones mined for building purposes or any other element forming part of the agricultural surface of Westbank Lands Minerals and uranium mining, refining and handling is excluded Jurisdiction includes authority to make laws and regulations s. 140: priority to Westbank law in the event of a conflict	
Economic development	Not specifically referenced in the SGA WFN has a comprehensive community plan in accordance with its Constitution and laws WFN has its own Economic Development Strategy	RD is responsible for a regional growth strategy; parameters and principles are set out in Part 13, Regional Growth Strategies -strategy needs to cover a minimum 20-year period -needs to include a comprehensive statement on the future of the region, including social, economic and environmental objectives -could include actions related to housing, transportation, services, parks and natural areas and economic development -strategy will apply to entirety of regional district -must be accepted by all local governments before adoption by bylaw -once adopted, all actions of the RD must conform to the growth strategy -intergovernmental advisory committee is required when a strategy is initiated or proposed to be amended; committee works with local governments and liaises with province