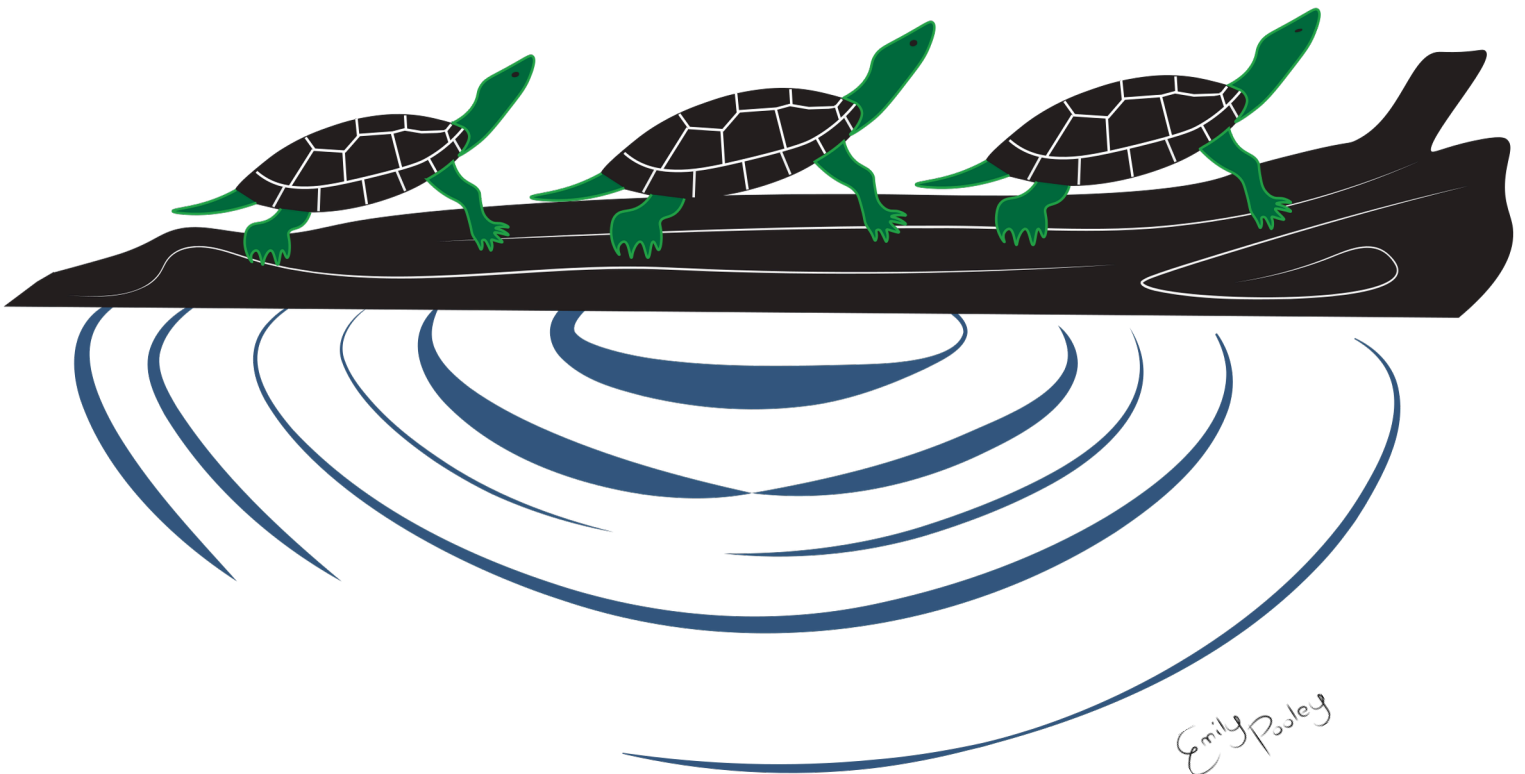




RDCO-WFN
INCLUSIVE REGIONAL GOVERNANCE
FINAL REPORT
2025

Prepared in collaboration with
JWR Business Group



Three Painted Turtles

Krystal Withakay (spaxwawlm / Northern Lights) & Emily Pooley (spapalina / Rabbit)

This concept is a collaboration from syilx Artist and Knowledge Keeper Krystal Withakay (spaxwawlm / Northern Lights) and syilx Youth Artist Emily Pooley (spaplina / Rabbit). It is a piece that commemorates past, present and future wisdom among the wetlands within syilx / Okanagan territory. The painted turtle is a gentle, patient, and wise creature that thrives in wetland areas. The intricate purpose the painted turtle serves to the well being of wetlands is remarkable and irreplaceable by any other species. The past, present and future painted turtles are a kind reminder to continue generating healthy relationships between the occupants and animals within the beautiful Okanagan Valley.

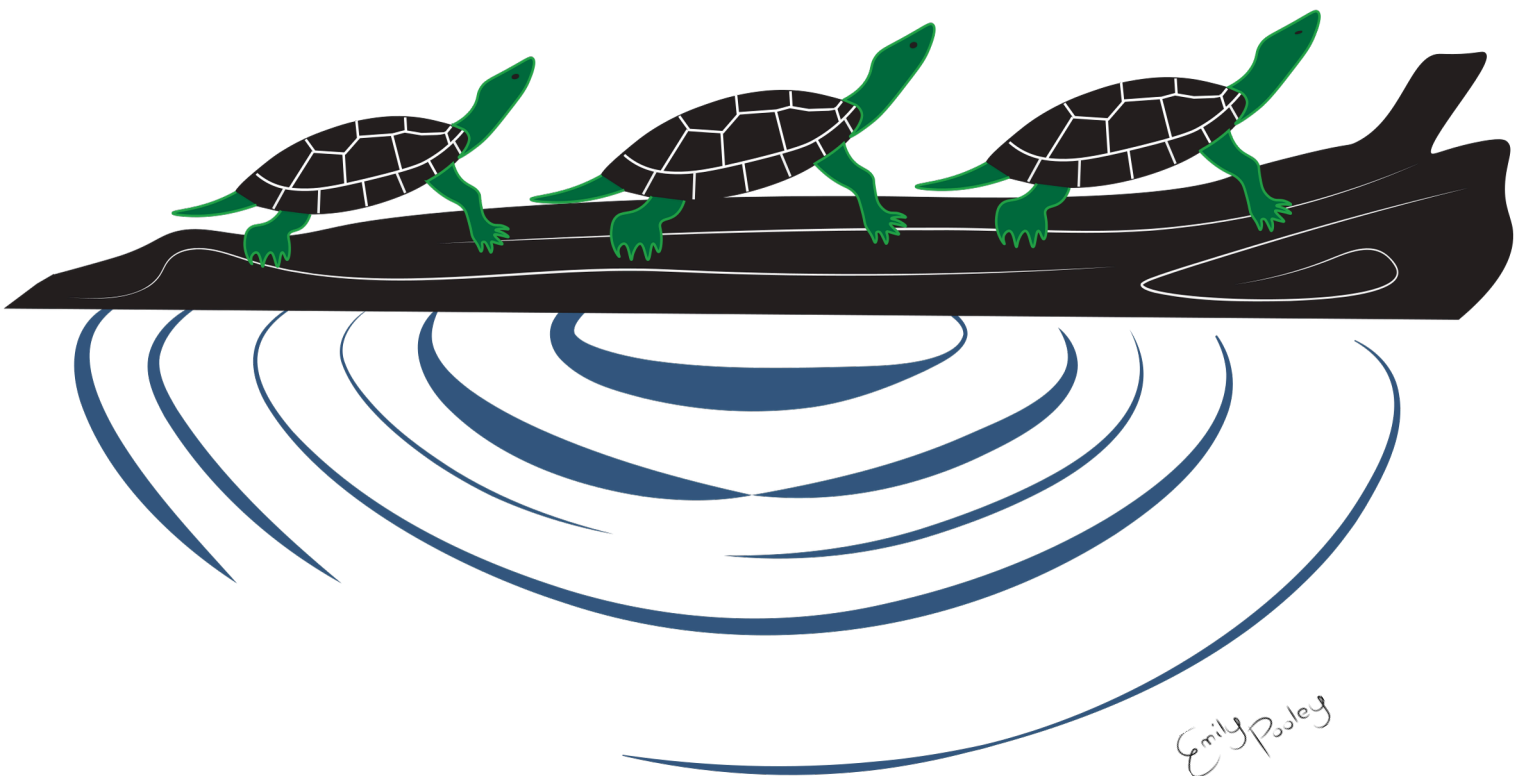


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Glossary of Terms

Action Plan: A five-year roadmap (2022–2027) by the Province of British Columbia to implement UNDRIP through DRIPA, including actions such as supporting First Nations participation in governance outside modern treaties.

Board: The Regional Board is the governing body of the RDCO, consisting of municipal council appointees and electoral area directors. The Board oversees regional governance, service delivery, and policy decisions. WFN currently holds a non-voting seat on the Board and participates in discussions without voting rights.

Comprehensive Community Plan (CCP): A holistic, community-driven plan defined by Indigenous Services Canada that sets a long-term vision and priorities for governance, lands, resources, health, housing, and culture; WFN uses its CCP as the primary guiding document for development and decision-making.

Chief and Council: The elected governing body of WFN, consisting of one Chief and four Councillors. They lead, make laws, and manage administration under *WFN's Self-Government Agreement*. Members serve a three-year term.

Community Charter (CC): BC legislation that sets out the legal framework for municipalities, inclusive of governance powers, responsibilities, and authority to provide services, regulate activities, and manage local affairs. It works alongside the *Local Government Act* to define municipal roles and decision-making.

Central Okanagan Regional Hospital District (CORHD): A regional board responsible for funding hospital and healthcare facility capital projects within the Central Okanagan.

Discussion Paper - RDCO/WFN Inclusive Regional Governance Initiative: A comprehensive research document prepared by JWR Business Group (January 9, 2024) for RDCO and WFN, outlining background, considerations, and five potential models for inclusive regional governance between WFN and the RDCO.

Declaration on the Rights of Indigenous Peoples Act (DRIPA): BC legislation that affirms the application of the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) to provincial law. DRIPA promotes inclusive governance by requiring collaboration with Indigenous peoples to align laws with UNDRIP principles and advance reconciliation. See also: UNDRIP

Emergency and Disaster Management Act (EDMA): Provincial legislation that replaced the Emergency Program Act on November 8, 2023, modernizing BC's approach to emergency management by emphasizing risk reduction, climate change adaptation, and inclusive governance, and enabling tools such as Multijurisdictional Emergency Management Organizations (MJEMOs).

Electoral Area East: The rural, unincorporated area east of Kelowna. Refer to the Regional District map on page 10.

Electoral Area West: The rural, unincorporated area on the west side of Okanagan Lake, outside West Kelowna and Peachland. Refer to the Regional District map on page 10.

Electoral Area Services Committee (EASC): A Committee of the Chair and Standing Committee that reviews matters related to electoral area services such as budgets, parks, water systems, and land use planning. The committee includes five members: the Electoral Area East Director, the Electoral Area West Director, one municipal Director, one WFN representative, and the Board Chair (ex officio). With the exception of the Chair, each member (including WFN) has one vote.

First Nations Finance Authority (FNFA): A statutory non-profit under the First Nations Fiscal Management Act that enables First Nation governments to access long-term, low-cost loans, investment options, and capital planning advice by pooling borrowing power to secure competitive rates for infrastructure and community development.

First Nations Fiscal Management Act (FNFMA): Federal legislation that supports First Nations in property taxation, financial administration, and access to pooled borrowing through the First Nations Finance Authority. It also establishes institutions to strengthen fiscal governance.

First Nations Health Authority (FNHA): The health and wellness organization responsible for planning, management, and delivery of health programs for First Nations in BC.

Glossary of Terms

Indian Act: A federal law that governs Indian status, band membership, and reserve lands, widely recognized as a colonial framework that limits self-determination; WFN operates under its own Self-Government Agreement, independent of the Act.

Indian Self-Government Enabling Act: Provincial law that permits Indian Act bands to levy property taxes on reserve lands and make service agreements with local governments. Most B.C. First Nations with property taxation, including WFN, operate under Part 2 – Independent Band Taxation.

Inclusive Regional Governance (Initiative): A collaborative effort between RDCO and WFN to explore governance models that strengthen WFN's role in regional decision-making. Guided by Reconciliation principles and DRIPA, it considers options for shared planning, joint decision-making, and enhanced RDCO Board representation. The goal is for WFN to become a voting member at the RDCO Board table.

Indian Reserve #8 (IR#8) - Mission Creek Indian Reserve: Located on the east side of Okanagan Land. Currently undeveloped and subject to future planning under WFN law. Refer to the map on page 10.

Indian Reserve #9 (IR#9) - Tsinstikeptum Indian Reserve: The largest and most populated reserve, located on the west side of Okanagan Lake within the boundaries of the City of West Kelowna (but not included in the City's Letters Patent).

Indian Reserve #10 (IR#10) - Tsinstikeptum Indian Reserve: The largest and most populated reserve, located on the west side of Okanagan Lake, also within West Kelowna boundaries but excluded from the City's Letters Patent.

Indian Reserve #11 (IR#11) - Medicine Hill Indian Reserve: Located on the east side of Okanagan Lake. Undeveloped and identified for potential future economic growth, requiring a neighborhood plan under WFN Law.

Indian Reserve #12 (IR#12) Medicine Creek Indian Reserve: Located on the east side of Okanagan Lake. Like IR#11, it is undeveloped and subject to future planning decisions under WFN Law.

Intergovernmental Working Group (IWG): A joint RDCO/WFN group established under a Terms of Reference to collaboratively develop an inclusive governance model that ensures meaningful WFN representation on the RDCO Board through a voting seat. The IWG's mandate includes defining objectives, composition, responsibilities, and procedures to advance shared decision-making.

Local Government Act (LGA): Provincial legislation in BC that provides the governance framework for regional districts and certain municipal functions. It regulates land use planning, service delivery, and local government structures, working in conjunction with the *Community Charter*.

Letters Patent: A formal legal instrument issued by a governing authority that establishes an organization or entity and defines its powers, responsibilities, and governance structure. In the context of regional districts, Letters Patent set out the framework for their creation and operation.

Local Services Agreement: A formal agreement between WFN and the RDCO, outlining the provision of municipal-type services such as wastewater, parks, and waste management to WFN lands. These agreements specify service standards, costs, and responsibilities, ensuring collaboration and continuity of essential services between WFN and RDCO.

Land Use Plan (LUP): A comprehensive planning document that establishes policies and designations to guide the use, development, and management of lands within a jurisdiction. It typically addresses housing, transportation, infrastructure, economic development, environmental protection, cultural and social needs, and includes maps and zoning frameworks to support sustainable growth. For example, the WFN LUP, adopted under the WFN Land Use Law, provides detailed land use designations and policies for WFN Lands.

Municipal Finance Authority: A provincial organization that provides low-cost borrowing and investment services to local governments and other eligible entities in BC through pooled financing.

Glossary of Terms

Ministry: Ministry of Housing and Municipal Affairs - The provincial ministry responsible for housing policy, local government legislation, and municipal affairs in BC. It provides funding and legislative guidance to support the exploration of governance models that enable meaningful WFN participation on the RDCO Board.

Multi-jurisdictional Emergency Management Organizations (MJEMOs): MJEMOs are community-driven structures that enable collaboration among local governments, Indigenous governing bodies, and the province to address emergency management needs. See *the Emergency and Disaster Management Act* above.

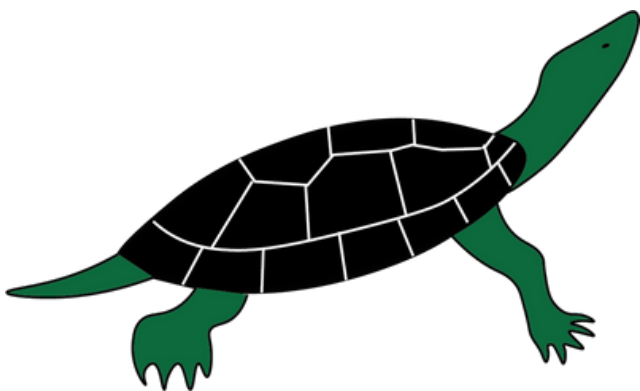
Non-Member: A person who resides on or uses WFN Lands but is not registered as a WFN member under WFN law. Non-Members may include leaseholders or residents and are subject to WFN laws and regulations but do not have voting rights in WFN elections. These electors can vote for the Electoral Area West Director.

Official Community Plan (OCP): A long-term policy document under BC's LGA that sets objectives and policies to guide land use, development, and servicing within a community.

Okanagan Nation: A Nation whose traditional territory includes the Okanagan Valley and surrounding areas, represented by member communities such as WFN.

Okanagan Indian Band (OKIB): A member community of the Okanagan Nation located near Vernon, BC, with reserve lands including Duck Lake IR#7 located within the District of Lake Country and the RDCO service area.

Okanagan Nation Alliance (ONA): A collective organization representing Okanagan Nation member communities, advocating for cultural, social, and environmental priorities.



Regional Growth Strategy (RGS): A long-term planning document adopted by regional districts to manage growth, land use, and infrastructure across multiple jurisdictions.

Regional Context Statement (RCS): A required component of a municipal OCP under section 446 of the LGA. It explains how the municipality's OCP aligns with the objectives and policies of the RGS. The RCS ensures consistency and coordinated planning across jurisdictions within a regional district.

Self-Governing Indigenous Government (SGIG): A First Nation recognized through a formal agreement with Canada that grants authority to the First Nation to govern its own affairs under its own laws rather than the Indian Act. WFN is one of only 30-plus First Nations in Canada with this designation.

Summary Report: Inclusive Regional Governance Initiative – Summary Report produced jointly by RDCO and WFN after the March 2024 working session, capturing key themes and endorsed recommendations for advancing inclusive governance.

Tax Requisition: The process by which a regional district requests its member municipalities and the Provincial Surveyor of Taxes (for rural areas) to levy property taxes on its behalf to meet annual revenue requirements, as regional districts cannot directly tax property owners.

Terms of Reference (ToR): A jointly approved document by RDCO and WFN that defines the mandate, objectives, composition, responsibilities, and procedures for the Intergovernmental Working Group to develop an inclusive governance model ensuring WFN representation on the RDCO Board through a voting seat.

Treaty First Nation: A First Nation that is a signatory to a historic or modern treaty with the Crown, establishing rights and obligations recognized under section 35 of the Constitution Act, 1982. *WFN is not a Treaty First Nation; it operates under a Self-Government Agreement.*

Union of BC Municipalities (UBCM): An organization representing local governments in British Columbia, providing advocacy, policy development, and networking opportunities.

Glossary of Terms

United Nations Declaration on the Rights of Indigenous Peoples (UN Declaration/UNDRIP): An international human rights instrument adopted by the United Nations in 2007 that sets minimum standards for the survival, dignity, and well-being of Indigenous peoples. It affirms rights related to self-determination, lands, resources, culture, and governance. See also: DRIPA.

Westbank First Nation (WFN): A self-governing First Nation located in the Central Okanagan, operating under its own Self-Government Agreement since 2005.

Westbank Lands (reserves): Lands under WFN's jurisdiction as defined in its Self-Government Agreement, including any lands set apart by Canada in the future under section 91(24) of the *Constitution Act*, 1867.

WFN Advisory Council : An elected body representing non-Member residents on Westbank Lands, providing input on WFN laws and local government services.

WFN Constitution: The foundational governance document of WFN that sets out its principles, structures, powers, and procedures for self-government, including membership rules, duties of Council, and accountability measures. It reflects WFN's inherent right of self-government under the *Westbank First Nation Self-Government Agreement* and ensures an open, democratic, and accountable government.

WFN Director: A representative appointed by the WFN Chief and Council to the RDCO Board. Currently, this role participates in Board meetings in a non-voting capacity, contributing to discussions and providing input on regional matters. When the WFN Director assumes a formal seat at the RDCO Board table with full voting rights and participates in budget deliberations, their decisions will be binding on WFN, ensuring equitable representation and advancing principles of inclusive regional governance.

WFN Member: An individual registered as a member of WFN under WFN Law, as defined in the Self-Government Agreement. Members have rights and responsibilities under WFN governance, including eligibility to vote in WFN elections and access programs and services.

WFN Self-Government Act: Federal legislation enacted in 2005, ratifying the *WFN Self-Government Agreement*. The Act provides WFN with authority to govern its own affairs under its own laws, independent of the Indian Act. It recognizes WFN's jurisdiction over areas such as land management, governance, and community services, and ensures constitutional protection under section 35 of the *Constitution Act*, 1982.

WFN Self-Government Agreement (SGA): A legally binding agreement between a WFN and Canada that came into effect on April 1, 2005. The SGA recognizes WFN's inherent right of self-government and provides authority to enact laws and manage governance outside the Indian Act. It establishes WFN's jurisdiction over Westbank Lands, defines governance structures, and sets out responsibilities for law-making, administration, and community affairs.



Executive Summary

This report represents a pivotal step toward Inclusive Regional Governance in British Columbia. It highlights the strong ongoing partnership between the Regional District of Central Okanagan (“RDCO”) and Westbank First Nation (“WFN”) as they work together to advance inclusive regional governance and chart a path for WFN to become a full voting member of the Regional District Board (“Board”). Supported by a study grant from the BC Ministry of Housing and Municipal Affairs (“Ministry”), this work forms part of the Ministry’s Inclusive Regional Governance Initiative (“Initiative”). The Initiative aligns with the Province of British Columbia’s 2022-2027 Action Plan (“Action Plan”) under the *Declaration of the Rights of Indigenous Peoples Act* (“DRIPA”), which supports First Nations participation in regional district boards outside of modern treaties. The Initiative reflects a shared commitment to reconciliation and equitable governance.

Through the Intergovernmental Working Group (“IWG”), RDCO and WFN have undertaken a comprehensive review of governance models, technical requirements, and legislative considerations. After evaluating five potential models, the Regional Board and the WFN Chief and Council identified **Model Five** as the preferred and most viable approach. A tailored framework that respects WFN’s self-government status while integrating effectively with RDCO’s regional governance system.

Key considerations explored include:

1. **Governance Structure (Legislative and Policy):** Designing a governance approach that reflects WFN’s inherent right of self-government while integrating effectively with RDCO’s regional system and broader provincial and federal frameworks.
2. **Voting Structure and Representation:** Determining a fair and effective approach to WFN’s representation and voting on the RDCO Board, including considerations for non-Member residents on Westbank Lands (reserves).
3. **Service Participation:** Transitioning WFN from purchasing services through a Local Services Agreement to fully participating in the design, development and adoption of RDCO services – across both mandatory and optional services.
4. **Financial Considerations:** Examining cost-sharing, taxation, borrowing, and liability requirements associated with full membership.
5. **Planning Frameworks:** Aligning regional and First Nation planning frameworks, including RDCO’s Regional Growth Strategy¹ (“RGS”) and Official Community Plan (“OCP”), with WFN’s Comprehensive Community Plan (“CCP”) and Land Use Plan (“LUP”).
6. **Emergency Management:** Enhancing joint readiness and response under the new *Emergency and Disaster Management Act* (“EDMA”).

The report draws on lessons from other governance arrangements, including Maa-nulth and Tla’amin Treaty First Nation, and the shíshálh as a unique model, to help inform a practical and principled approach for the Central Okanagan.

¹ The Regional districts with a RGS have regulatory powers that include powers to regulate, prohibit or impose requirements on land use, long-term community plans, and land management.

The RDCO and WFN urge the Province to act decisively to provide the necessary legislative authority and policy direction. By doing so, British Columbia will demonstrate leadership in reconciliation, foster equitable governance, and create a framework that ensures all voices are represented in shaping the future of the Central Okanagan.

These changes will establish a precedent for Inclusive Regional Governance that other non-treaty First Nations may follow, advancing reconciliation and strengthening regional collaboration.

RDCO Map



INCLUSIVE REGIONAL GOVERNANCE ROADMAP - SUMMARY

2022 - 2023

- WFN CCP defined a goal to formalize voting relationship with RDCO (2022).
- JWR Business Group (JWR) contracted to develop Inclusive Regional Governance. Initiative Report for RDCO / WFN
- RDCO Strategic Priorities (2023-26) included include Truth and Reconciliation and exploring full representation for WFN.
- Community-to-Community Forum between RDCO and WFN Leadership.

Jun - Sep 2024

- Special RDCO Board Meeting: Presentation on IWG Session Summary and Recommendations.
- RDCO / WFN formally endorsed the decision making framework and the composition of the Intergovernmental Working Group (IWG).
- Joint Presentation on Inclusive Regional Governance by RDCO / WFN at UBCM Convention.

Nov - Dec 2024

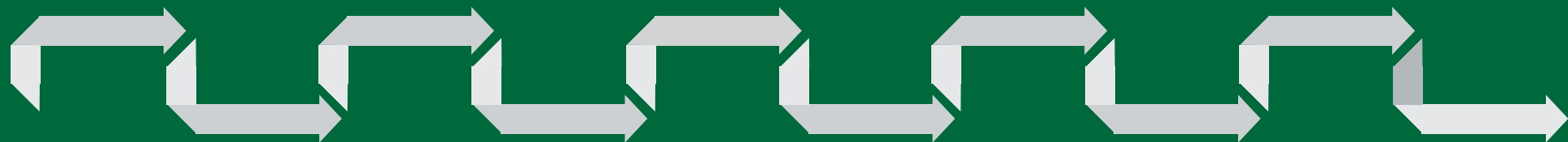
- IWG Terms of Reference developed and approved.
- Current legislation requires a regional context statement for Regional Growth Strategy (RGS); provincial input is required to determine if a Regional Context Statement (RCS) is required within a Comprehensive Community Plan (CCP).
- IWG created a tracking mechanism to document and summarize approaches for addressing key governance considerations.

Feb - Apr 2025

- Ministry may support temporarily stepping aside from a "one size fits all" policy approach; provincial representatives to meet with IWG for a policy session.
- Provincial staff to clarify if electoral assent is required to change boundaries of electoral area (removing IR#9 and IR#10); including implications on voting structure and representation for non-members.
- Reviewed Letters Patent and service agreement appendix against mandatory regional services; assessed alignment with WFN autonomy and liability; updates to *WFN Constitution* may be needed. Mandatory services not included in the current master agreement would need to be included in *WFN Constitution*.
- Undetermined whether a boundary adjustment will be required for Electoral Area West; need provincial input.

Sep - Dec 2025

- RDCO initiating RGS renewal (last updated in 2014) which must meet LGA requirements; WFN has historically participated in RGS planning groups, but further integration is needed; planning gaps identified between CCP and OCP; analysis prepared for provincial review and consideration.
- Ministry to determine voting units (currently 1.98 votes for IR#9 and IR#10) based on census data.
- IWG prepared an Inclusive Governance Final Report for WFN Chief and Council, the Electoral Area Services Committee, and the RDCO Board.
- Submitted the Final Report to the Ministry of Housing and Municipal Affairs.



Jan - Mar 2024

- RDCO Board Meeting: Presentation of the Inclusive Regional Governance Discussion Paper completed by JWR Business Group.
- JWR Completed and Presented Inclusive Regional Governance Summary Report.

October 2024

- RDCO / WFN Staff identified mandatory services provided by RDCO service establishment bylaw or by agreement.
- WFN / RDCO staff confirmed mandatory services; refer to s. 338 LGA.
- Discussion on amending the LGA to include Self-Governing First Nations; DRIPA-LGA conflicts noted; legislative change identified as one pathway. (to read Self-Governing and Treaty First Nations in the LGA).

January 2025

- Reviewed the *WFN Constitution* for amendment to enable WFN Council member to sit at RDCO Board via delegated authority.
- Joint presentation to Electoral Area Services Committee.
- Assessed implications of voting rights for non-Members on WFN Lands; reviewed Electoral Area West Director vote distribution and potential WFN voting unit strength if WFN becomes a voting member of the RDCO Board; requires further review by provincial policy team.
- CFOs addressed RDCO and WFN requisitions and implications on taxes.
- Deferred to the Ministry to explore language changes in LGA to include Self-Governing First Nations.

May - Aug 2025

- Ministry considered WFN Advisory Council broadly consistent with treaty requirements for non-Member engagement but recommended further analysis and consultation.
- The Ministry confirmed current legislation does not address removing Westbank reserve lands from Electoral Area West. Such a change would likely require amending the Regional District's Letters Patent, but the process and implications (representation, engagement, and governance models) need further policy work and consultation.
- Confirmed MFA legislation does not permit Self-Governing First Nations; additionally, the question of liability for debt was examined; direction from the Ministry is required in developing **Model Five**.
- WFN presented the Initiative to WFN Advisory Council.

2026 - 2027

- Continue to champion the principles of Inclusive Regional Governance Initiative to support equitable participation.
- Maintain dialogue with the Ministry of Housing and Municipal Affairs to advance legislative reform.
- Track and respond to provincial efforts to amend legislation enabling self-governing First Nations to participate in regional governance.
- Prepare for Integration of **Model Five**.

This roadmap summarizes key actions and considerations undertaken to better understand the implications for implementing Model Five. Please refer to Appendix H for more detail.

1. Introduction

1.1. Purpose and Scope of the Report

The RDCO received a study grant from the BC Ministry of Housing and Municipal Affairs² in respect of the Ministry's Inclusive Regional Governance initiative. This Initiative is considering mechanisms for First Nations to become full members of regional district boards outside of modern treaties. This report is submitted by the RDCO and WFN in fulfilment of the terms of the study grant. The work remains ongoing as RDCO and WFN continue, with the Ministry, to move the Initiative forward. Accordingly, the report should be read as a work in progress as not all matters have been fully canvassed, addressed, or resolved.

The Initiative is an outcome of the provincial government's 2022-2027 Action Plan to implement the United Nations Declaration on the Rights of Indigenous Peoples ("UN Declaration")³ and builds on previous work to support inclusive regional governance in BC, as has been advocated for by regional districts and First Nations, as well as the Union of BC Municipalities ("UBCM"). At the time of reporting to satisfy grant requirements, the work is ongoing between RDCO, WFN and the Ministry with respect to the Initiative as a mechanism to secure participation by WFN on the RDCO Board. This report builds on the RDCO/WFN Inclusive Regional Governance Initiative Discussion Paper,⁴ ("Discussion Paper") and the Summary Report⁵ ("Summary Report"), both prepared by the JWR Group for RDCO and WFN. The RDCO is appreciative of the Province's efforts and support for the Initiative, as securing WFN, as one of only 30 plus self-governing First Nations in Canada, as a full member of the Board is a shared priority of RDCO and WFN and is consistent with implementing the UN Declaration.

The UN Declaration recognizes the inherent collective and individual rights of Indigenous peoples. These rights include: a right to self-government; a right to cultural identity; a right to lands and territories; and the right to live free from discrimination. These rights constitute the minimum standards for the survival, dignity and well-being of the Indigenous peoples of the world.⁶ They also require states, in cooperation with Indigenous Peoples, taking the appropriate

² 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.

³ [United Nations Declaration on the Rights of Indigenous Peoples \(PDF, 150KB\)](#) – The UN Declaration, was adopted by a majority vote of the United Nations General Assembly on September 13, 2007. Canada along with Australia, New Zealand, and the United States, initially voted against the Declaration. In 2016, however, the UN Declaration was adopted without qualification by Canada. The UN Declaration is a culmination of international legal instruments addressing Indigenous peoples' rights as a sub-class of minority rights as these special rights have evolved over the years through a number of international ordinances. For a good overview of all the instruments and the place of indigenous peoples see the *United Nations Development Group Guidelines on Indigenous Peoples Issues*. These were written "to assist the United Nations system to mainstream and integrate indigenous peoples' issues in process for operational activities at the country level". They are perhaps the most detailed description of what it means. They are not binding.

⁴ See [Appendix A: RDCO/WFN Inclusive Regional Governance Initiative – Discussion Paper \(Jan 9, 2024\)](#)

⁵ See [Appendix B: RDCO/WFN Inclusive Regional Governance Initiative – Workshop Summary Report \(Mar 13, 2024\)](#)

⁶ UN Declaration, Article 45

measures, including legislative measures, to achieve the ends of the declaration.⁷ States, includes sub-national governments, which in Canada includes, provinces and local governments.

In support of implementing the UN Declaration, in 2019 the Province of BC enacted the *Declaration of the Rights of Indigenous Peoples Act* (“DRIPA”).⁸ DRIPA establishes the UN Declaration as the Province’s framework for reconciliation, as called for by the Truth and Reconciliation Commission’s calls to action.⁹

Key Sections of DRIPA:

- **Section 3:** Mandates the government to bring provincial laws into alignment with the UN Declaration.
- **Section 4:** Requires the Province to develop and implement an action plan, in consultation and co-operation with Indigenous Peoples, to meet the objectives of the UN Declaration.
- **Section 5:** Requires regular reporting to the legislature to monitor progress on the alignment of laws and implementation of the Action Plan, including tabling annual reports by June 30 of each year.
- **Sections 6 and 7:** Allow for flexibility for the Province to enter into agreements with a broader range of Indigenous governments and to exercise statutory decision-making authority together.

In order to implement DRIPA, the Province developed the 2022-2027 DRIPA Action Plan¹⁰, which focuses on four themes:

1. Self-Determination and Inherent Right of Self-Government
2. Title and Rights of Indigenous Peoples
3. Ending Indigenous-specific Racism and Discrimination
4. Social, Cultural and Economic Well-Being

Theme 1: Self-determination and inherent right of self-government, speaks to the support for more inclusive regional governance and is the basis for the Initiative:

Action 1.11: Support inclusive regional governance by advancing First Nations participation in regional district boards (Ministry of Municipal Affairs).

This action is the only action addressing regional governance per se. Other actions support self-government and governance reform, and nation rebuilding more generally. Action 1.11 does

⁷ UN Declaration, Article 38

⁸ Declaration on the Rights of Indigenous Peoples Act (DRIPA). Available at: <https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/19044>

⁹ Truth and Reconciliation Commission of Canada, Calls to Action (2015). Available at: https://www2.gov.bc.ca/assets/gov/british-columbians-our-governments/indigenous-people/aboriginal-peoples-documents/calls_to_action_english2.pdf

¹⁰ DRIPA Action Plan 2022-2027. Available at: https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan.pdf

suggest that an outcome could be a First Nation becoming a part of a regional district where it chooses to do so. This is currently the case where a First Nation, Canada and BC enter into arrangements contemplated as an outcome of negotiations leading to a modern treaty. WFN is not engaged in treaty negotiations, nor is the Okanagan Nation or any of the other member communities of the Okanagan Nation. It is not expected the government of WFN, which has previously engaged in treaty negotiations, will ever desire to conclude a modern treaty given current federal and provincial mandates. The UBCM, First Nations, and several regional districts have, over the years, directly requested that the Ministry explore how First Nations outside of treaty could become voting members of regional districts.

In total, the Ministry provided study grants to five regional districts who are working with First Nations located within their respective boundaries, to discuss how the regional district board might operate with the inclusion of First Nation Directors representing their community governments.¹¹ RDCO received an initial study grant with additional funding to continue its work with WFN and the Ministry.

As a result of the initial work on the Initiative, the RDCO and WFN have chosen a governance model - Model Five for more inclusive regional governance; namely WFN to become a full member of the RDCO and to participate as a “municipality” through arrangements to be negotiated with BC.

1.2. RDCO and WFN Background

Located within the Central Okanagan, the RDCO is located predominantly within the traditional territory of the syilx / Okanagan (“Okanagan Nation”) People, with overlap into claimed Secwépemc and Nlaka’pamux territory.

The RDCO covers over 314,000 hectares and has a population of approximately 194,000. It includes four municipalities (City of Kelowna, City of West Kelowna, District of Peachland and District of Lake Country) and two unincorporated electoral areas (Central Okanagan East Electoral Area and Central Okanagan West Electoral Area). RDCO’s strategic priorities include emergency preparedness, environment and climate, growth and development, health and wellness, transportation, and Truth and Reconciliation. WFN currently participates in RDCO meetings with non-voting status.

WFN is one of eight Okanagan Nation communities within syilx traditional territory that extends from the south-central interior of BC to north central Washington State. WFN has five reserves totaling approximately 2,160 hectares. Approximately 50% of Westbank Lands are developed and fully serviced. The populated reserves, Tsinstikeptum Indian Reserves #9 (“IR#9”) and Tsinstikeptum Indian Reserves #10 (“IR#10”), are located on the west side of Okanagan Lake and while wholly encompassed within the boundaries of the City of West Kelowna are not included in the City’s Letters Patent. WFN’s three undeveloped reserves, Mission Creek Indian Reserve #8 (“IR#8”), Medicine Hill Indian Reserve #11 (“IR#11”), and Medicine Creek Indian Reserve #12 (“IR#12”), are located on the east side of Lake Okanagan and while potentially very desirable for future economic growth as the area responds to increasing demands for development, are subject

¹¹ The four other regional districts are: Alberni-Clayoquot Regional District, Capital Regional District, Central Coast Regional District, and Regional District of Nanaimo.

to future planning decisions and will require a neighbourhood plan under WFN law. All five of WFN's current reserves are located within the jurisdictional boundaries of the RDCO.

WFN is one of only 30 plus First Nations recognized as a Self-Governing Indigenous Government ("SGIG"). The Westbank First Nation Self-Government Agreement ("SGA")¹² was concluded between Canada and WFN in 2005 and given the force of law through the *Westbank First Nation Self-government Act*.¹³ Accordingly, WFN is not principally governed by the *Indian Act*, but rather has its own legally enforceable *WFN Constitution* ("Constitution").¹⁴ WFN's governing body is a Chief and Council consisting of four councillors and one chief. The Chief and Council act as both the legislative arm, and the executive arm of government. There is also a five-member elected Advisory Council representing the non-Members in five wards.

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.

There are over 900 WFN Members, the majority of which reside on Westbank Lands. There are also over 10,900 non-Member residents residing on Westbank Lands.¹⁵ While some non-municipal type services are provided only to WFN Members, or persons registered as "Indians" by Canada, municipal services are provided to all residents.

The only First Nation, other than WFN, with reserves within the boundaries of the RDCO is the Okanagan Indian Band ("OKIB"). As of the 2021 Census, OKIB's Duck Lake IR#7 had a population of 1,847 residents, inclusive of both Members and non-Members. OKIB operates largely under the governance provisions of the *Indian Act*, which remains the prevailing legislative framework for many First Nations across Canada that have not transitioned to treaties or self-government agreements. Although this governance model differs from the self-governing regime of WFN, RDCO acknowledges the recognized jurisdictional status of both *Indian Act* bands and self-governing First Nations. While OKIB has not formally engaged in the current initiative, RDCO remains committed to future engagements aimed at strengthening relationships and advancing reconciliation within the region. Through this Initiative, RDCO and WFN are choosing, at this time, to work together based on their priorities for more inclusive regional governance building on their shared vision and established working relationship with RDCO delivering services on Westbank Lands. The RDCO does not deliver services on OKIB lands at this time.

¹² Appendix F: WFN Self-Government Agreement

¹³ WFN Self-Government Act. S.C. 2004, C.17 <https://laws-lois.justice.gc.ca/PDF/W-6.2.pdf>

¹⁴ <https://www.wfn.ca/docs/wfn-constitution.pdf?RD=1>

¹⁵ 2021 Census

1.3. RDCO and WFN Collaboration

The RDCO and WFN desire for more inclusive regional governance is reflected in both groups planning priorities that predate the Initiative. This vision is set out in the WFN Comprehensive Community Plan¹⁶ and in the RDCO's Regional Board Strategic Priorities 2023-2026.¹⁷

The WFN Comprehensive 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.¹⁸
- Explore formalizing a relationship with the RDCO on **becoming a voting member**.¹⁹ [emphasis added]
- Initiate discussions with the City of West Kelowna, District of Peachland, the City of Kelowna and RDCO 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.²⁰

The RDCO has set out six strategic priorities, one of which is Truth and Reconciliation, committing to the following regional and electoral area actions:²¹

- 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 WFN, OKIB and Okanagan Nation Alliance ("ONA");
- 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.

WFN and the RDCO have had a long, and at times, challenging relationship. While today the two governments work closely together on matters of mutual interest, this has not always been the case. The relationship has evolved, principally following the assumption, in the early 1990s, of property taxation on-reserve by First Nations, including WFN. The negotiations to reach the first Local Services Agreement in 1992, after WFN passed assessment and taxation bylaws in 1991, were challenging for both parties. A 15-year agreement was reached. However, in 1995, the

¹⁶ WFN Comprehensive Community Plan (CCP), 2022. <https://www.wfn.ca/our-community/community-planning-projects/comprehensive-community-plan.htm>

¹⁷ RDCO's Regional Board Strategic Priorities 2023-2026, https://issuu.com/regionaldistrictcentralokanagan/docs/2023_strategic_priorities_final_august_4_2023

¹⁸ WFN CCP, 2022. Chief Bitterroot, Goal 4, Actions/Strategies 19, p 81

¹⁹ WFN CCP, 2022. Chief Black Bear, Goal 2, Action/Strategies 10, p 105

²⁰ WFN CCP, 2022. Chief Black Bear, Goal 2, Action/Strategies 13, p 107

²¹ RDCO's Regional Board Strategic Priorities 2023-2026, p 10.

RDCO sued WFN and Canada and tried to have the Agreement overturned claiming it was unfair. The suit was unsuccessful.ⁱ

In 1991, WFN was one of the first *Indian Act* bands in Canada to begin assessing and collecting property taxes under bylaws made in accordance with section 83 of the *Indian Act*²². This was made possible after amendments to the *Indian Act* in 1988.²³ Prior to WFN assessing and collecting property taxes, property taxes were assessed and collected by the provincial Surveyor of Taxes on behalf of the RDCO. Prior to 1991, although property taxes were collected from Westbank Lands, it was not always clear what responsibility RDCO had to provide local services on Westbank Lands, and specifically to make capital investments (e.g., for roads, buildings, water and wastewater systems, regional parks etc.). In recognition of *Indian Act* bands assuming property taxation powers, the provincial government enacted the somewhat misnamed *Indian Self-Government Enabling Act* (“ISGEA”), which facilitated the negotiation of service agreements between local governments and now taxing First Nations.²⁴

Today, almost all bands in BC that have any sizable leasing of their reserve lands have passed taxation and assessment laws/bylaws, either under the *Indian Act* or the more recent *First Nations Fiscal Management Act* (“FNFMA”). The only band with any sizable property tax base that has not exercised this authority is OKIB. The FNFMA, is a sectoral governance initiative led by First Nations in the 1990s, which 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 a finance authority like the BC Municipal Finance Authority (“MFA”). WFN, while self-governing and heavily involved in the development of the FNFMA,²⁵ still collects property taxes under section 83 of the *Indian Act*. However, WFN retains the option to transition to the FNFMA framework through federal regulations made under the WFN Self-Government Act or the FNFMA. The work to develop these regulations is ongoing.

Prior to WFN taking over tax jurisdiction in 1991, the Central Okanagan Regional District (now known as RDCO) requested funds for the two electoral areas that included WFN’s reserves on the west side of Lake Okanagan, Tsinstikeptum IR#9 and Tsinstikeptum IR#10. Following the exercise of a First Nation’s taxation powers, either under the *Indian Act* or the FNFMA, regional districts have no authority to requisition funds from the First Nation or the province. Consequently, in order for the regional district to continue to receive funding for services provided to the First Nation, a service agreement with the First Nations is required. Prior to exercising jurisdiction over property taxation, First Nations were not typically involved in any meaningful way with regional district services, and a new conversation was required. In some cases, a First Nation may have had a service agreement for its members, where the funds for the services were

²² <https://laws-lois.justice.gc.ca/eng/acts/I-5/page-1.html>

²³ The 1988 amendments to the *Indian Act* led by the Kamloops Indian Band 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.

²⁴ As bands began to exercise jurisdiction and to avoid double taxation, BC passed the *Indian Self-government Enabling Act* (ISGEA)²⁴ 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 most, like WFN, have service agreements with local government where property taxes were previously going to those local governments.

²⁵ WFN through its Taxation Department under the leadership of Deanna Hamilton led the development of the FNFA which was originally incorporated in 1993 and eventually superseded by the special purpose corporation without share capital established under the First Nations Fiscal Management Act.

provided through a contribution agreement with Canada, however, but not for third parties with interests in the First Nations lands (whether legally established or not). WFN did not have any service agreements. Yet, WFN had a sizable tax base going into property taxation given the hundreds of leases and thousands of non-Member residents. Previously, the tax revenues had all gone directly to the RDCO, as requisitioned through the province.

Accordingly, because of WFN enacting assessment and taxation bylaws, WFN and the RDCO negotiated a Local Services Agreement in 1992.²⁶ This was 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.²⁷ 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.²⁸ The 2007 Agreement (as amended) was extended in November of 2022 for a year,²⁹ and then again for a further year in November of 2023, and again in 2024.³⁰

The second 15-year Local Services Agreement is considerably different than the first. Rather than buying all services at a fixed price that is adjusted, the second Agreement sets out which of the services WFN participates, and how the cost of the service is calculated. This is done in a manner like how the municipal 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 is an offset in cost for recognition of services provided by WFN to the RDCO.

In early 2025, following a comprehensive review conducted collaboratively by WFN and RDCO, a new Local Services Agreement covering the 2025-2027 period was presented to WFN Chief and Council on January 13, and formally approved by the Board on February 20, 2025. This updated agreement reflects the evolving governance relationship and aligns with the broader initiative to explore WFN's potential full membership on the Board, at which point a service agreement would no longer be required.

1.4. Alignment with Provincial and Federal Legislative Frameworks

As a fundamental aspect of the Initiative, the Ministry is seeking to understand what system design changes, including potential legislative change, may be required to support and enable First Nations participation on regional district boards, without the requirement of entering a modern treaty. This would include First Nations that are 'Bands' under the *Indian Act* and are not recognized as self-governing, as well as SGIGs, such as WFN.

²⁶ Local Services Agreement between Westbank Indian Band, Her Majesty the Queen in Right of Canada, and Regional District of Central Okanagan, September 25, 1992.

²⁷ Local Services Agreement, between Westbank First Nation and Regional District of Central Okanagan, January 15, 2007

²⁸ Local Services Agreement Amendment, between Westbank First Nation, Regional District of Central Okanagan, September 8, 2014

²⁹ Amendment of Local Services Agreement between Westbank First Nation, Regional District of Central Okanagan, November 28, 2022.

³⁰ Amendment No 2 of Local Services Agreement between Westbank First Nation, Regional District of Central Okanagan, November 30, 2023.

For SGIGs and WFN specifically, it is understood there will need to be alignment between provincial and federal as well as First Nations' legislative frameworks. Like its member-municipalities, regional districts are established under provincial statute. These entities, as creatures of the province, have delegated authorities as permitted under statute. These are powers of a local or "municipal" nature. Federally, the government of WFN is recognized by Canada through the SGA. This Agreement is given the force of law through the *Westbank First Nation Self-Government Act* and WFN governs under the *Constitution*.³¹ In accordance with the *WFN Constitution*, the WFN government exercises jurisdiction (law making authority) in a range of subject matter that are based on its inherent right to govern. The areas WFN governs are set out in the SGA. Some of these powers are provincial-like, some federal-like, and some municipal-like. They are not delegated. Moulding these two different systems, with two different sources of authority, in order to work within one regional governing body is both challenging and necessary. That is where RDCO's authority is delegated provincially, while WFN's is inherent as recognized federally. In the context of modern treaties, this has been achieved through language in treaty agreements, the legal effect of enabling legislation, and amendments to the provincial statutes creating and governing regional districts, namely the LGA and the *Community Charter* ("CC"). Part 7 of the LGA sets out how Treaty First Nations can become a part of a regional district if their treaty permits it.³²

1.5. Overview of Methodology

In March 2023, the RDCO was provided funding through the Ministry to explore the advancement of First Nation participation on regional district boards, and specifically WFN becoming a full member of the Board in accordance with the vision of both RDCO and WFN.

The RDCO and WFN jointly agreed to engage JWR Business Group to assist in this initiative by providing insight on both local government and SGIGs. The information gathered was used to prepare a Discussion Paper which set out five models for inclusive regional governance for further exploration and discussion.

Following the completion of the Discussion Paper, the Ministry provided additional funding to RDCO to continue the work. The RDCO and WFN engaged JWR Group and Neilson Strategies Inc., working in collaboration with Urban Systems, to facilitate a workshop of RDCO/WFN elected officials on March 13, 2024, to consider the Discussion Paper and specifically the five models. An outcome report summarizing the workshop deliberations and direction was prepared ("Summary Report").³³ At the workshop, elected officials explored the proposed models set out in the Discussion Paper and provided further direction for advancing the work. The goal being to identify a governance approach that reflected the principles of collaboration, inclusion, and respect for the voices of all communities in the region.

³¹ *WFN Constitution*: <https://www.wfn.ca/docs/wfn-constitution.pdf>

³² Part 7 - Regional Districts: Treaty First Nation Membership and Services of the LGA: https://www.bclaws.gov.bc.ca/civix/document/id/complete/statreg/r15001_07#part7

³³ Appendix B: RDCO/WFN Inclusive Regional Governance Initiative – Workshop Summary Report (March 13, 2024)

The Summary Report was organized around three themes as set out below.

Theme 1: Joint Planning and Collaboration

Mechanisms that could be used to move the work forward were discussed in detail. Options included establishing a working group, a protocol agreement, and a community agreement.

Topics discussed included:

- Concerns Related to a Working Group,
- Composition of the Working Group; and
- Working Group Operation

Theme 2: Potential Models

The workshop participants specifically discussed the five models set out in the Discussion Paper and if any of them could be combined or blended in different ways to suit the needs of the RDCO and WFN, with the possibility of incorporating new ideas as well. For a more fulsome description see the RDCO/WFN Inclusive Regional Governance Discussion Paper. Elected officials agreed that Models One, Two and Three did not need to be discussed in any detail. The preference is for Model Four or Five, or a new model with elements of each. Accordingly, the discussion focused on Models Four and Five.

Topics discussed and considered included:

- Preferred Models
- Contextual Aspects
- Limitations of Existing Models
- Potential Best Practices
- Opportunities with Model Five

Theme 3: Key Considerations & Related Matters

Following the discussion on models, the elected officials focused its attention on some of the key considerations and related matters moving forward with the Initiative. Workshop participants discussed several issues that will need to be examined in more depth as work to bring together the two governments moves forward.

Topics discussed and considered included:

- Scope of decision-making
- Service participation
- Voting Structure and strength
- Non-Member representation on WFN Lands
- Financial Decisions
- Engaging with the province
- WFN's power, authorities, and traditional territories
- Central Okanagan Regional Hospital District
- Emergency Management

Two key outcomes of the March 2024 workshop were an agreement to focus on Models Four and Five, and an agreement to establish a working group to further consider the models and advance the Initiative.

Consideration was given to having a working group which would include a blend of political leaders and staff. It was subsequently recommended by the RDCO Chief Administrative Officer, and WFN Director of Operations, that an Intergovernmental Working Group (IWG) be established and comprised of senior staff. This was ultimately the direction taken, given the IWG would be predominately technical and not political in nature. The composition provides stability for the work to be completed, based on terms of reference that were developed and approved by both the RDCO Board and WFN Council. In establishing the IWG, it was understood by all that it will take significant time and effort to complete the work. In setting its agenda, the IWG has focussed on the topics highlighted in the Summary Report and has since added items that require further research or discussion. Since its inception in 2024, the IWG has been meeting monthly to explore and resolve issues within the scope of the favoured option for WFN participation on the RDCO Board.

The IWG is scheduled to complete its work by the end of 2025, or early 2026, at which point a final report will be written to present to the Board and WFN Chief and Council and forwarded to the Ministry. A final report will be presented to the RDCO Board and WFN Chief and Council to identify outstanding policy questions and any outstanding matters identified to be answered or resolved by the Ministry. The working assumption by both RDCO and WFN officials is that the Ministry, in moving the Initiative forward, will seek a mandate to take the steps necessary to make Model Five a reality. To make Model Five a reality, will likely require an agreement between WFN and the Province, legislative changes to the LGA, and potentially a RDCO/WFN specific regulation. The IWG and its work is described more fully below.

In addition to the ongoing work of the IWG, RDCO and WFN representatives have also participated in joint meetings between the Ministry and the four other participating regional districts in the Initiative.

2. Governance Model Options

2.1. Overview of Proposed Models

Five models were presented in the Discussion Paper and discussed at the workshop with senior leadership:

- **Model One:** Continue WFN participation through the WFN/RDCO Local Services Agreement. The “status quo plus” model.
- **Model Two:** Participate as a non-voting member through a mechanism separate and apart from the Local Services Agreement. The “expanded agreement” model.
- **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 LGA. The “modern treaty” model.

- **Model Four:** The Establishment of a separate WFN (Local) Government District as a quasi- municipal government to participate fully in the RDCO. The “shíshálh” model.
- **Model Five:** 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.

After consideration at the IWG, ultimately Model Five was chosen – consistent with the vision of both parties. All five models are described below as they were set out in the Summary Report.

2.2. Governance Model Five

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 and would require legislative amendments (and possibly regulations) that reflect the structure and intent of the WFN SGA. This could be through an amendment to the LGA (distinct from the “Treaty First Nation Membership and Services” provisions) or stand-alone. Provincial legislation/regulations would provide that WFN can appoint a member(s) of its governing body as defined under the *Constitution* to the Board and that WFN would be deemed a municipality for certain sections of the LGA. 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 FNFMA, 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.

Model Five proposes a distinct governance arrangement whereby WFN would become a full member of the RDCO, with status equivalent to that of a municipality, through legislative and regulatory amendments tailored to its Self-Government Agreement. For a detailed description of other models considered by the RDCO Board and WFN, please refer to [Appendix B](#).

2.3. Evaluation Criteria and Decision-Making

In evaluating the models, it was felt that Model Five best fits the vision of both WFN and RDCO in the WFN CCP and RDCO Strategic Plan.

On June 13, 2024, the RDCO Regional Board held a Special Board meeting and formally endorsed the decision-making framework and Joint Working Group composition from the IWG's Inclusive Regional Governance Working Session Summary and Recommendations, authorizing staff to seek WFN's endorsement. On July 2, 2024, WFN Chief and Council reviewed the IWG's proposal, including Model Five, and granted formal approval for the IWG to proceed on that basis.

3. Intergovernmental Working Group (IWG)

3.1. Terms of Reference

To support the IWG, a Terms of Reference ("ToR") was jointly developed and approved by both RDCO and WFN, as attached in [Appendix C](#). The ToR outlines the mandate, objectives, composition, responsibilities, and procedures for the IWG. The IWG's primary goal is to collaboratively develop a functioning inclusive governance model that ensures meaningful WFN representation on the RDCO Board of Directors through a voting seat.

3.2. Membership and Representation

The IWG comprises equal representation from both the RDCO and WFN. Members include:

- The WFN Director of Operations and the RDCO Chief Administrative Officer;
- Directors of Finance from WFN and RDCO;
- RDCO Corporate Services / WFN Legal Counsel;
- Communications representatives from WFN and RDCO;
- RDCO Indigenous Advisor;
- Ministry of Municipal Affairs Senior Planning Analyst, in an *ex officio* capacity, as a liaison to the Province of British Columbia;
- Any other observers or advisors deemed necessary by the IWG.

3.3. Meeting Schedule and Milestones (2024-25)

The IWG has been meeting once a month, or as needed, with meetings scheduled in advance. Meetings are being co-chaired by one representative from the RDCO and one representative from WFN and alternating between WFN's and RDCO's offices.

The IWG agreed on a methodology to commence its work based on each topic identified as a key consideration in the March 2024 RDCO/WFN Inclusive Regional Governance Initiative – Inclusive

Regional Governance Working Session Summary Report. Recognizing the complexity of the topics, additional research was identified as required for a “deeper dive” which has included the Ministry and will likely require additional legal review. A rolling list of agenda items was agreed.

The topics highlighted in the March 13, 2024, Summary Report are:

- Scope of Decision-Making
- Service Participation
- Voting Structure and Strength
- Non-Member Representation on WFN Lands
- Financial Considerations
- Engaging with the Province
- WFN’s Powers, Authorities and Traditional Territory
- Central Okanagan Regional Hospital District
- Emergency Management

Attached as [Appendix H](#) is the Inclusive Governance Roadmap, which outlines all IWG meetings to date and those scheduled, including the topics discussed, research required and outcomes.

4. Governance Context and Considerations

4.1 Scope of Decision-Making

There are significant governance issues with respect to how to bring together the municipal/provincial and First Nation/federal systems for the purposes of establishing WFN representation on the RDCO Regional Board. The context for this coordination was considered in depth the Discussion Paper and issues raised are being explored more fully through the IWG.

It was acknowledged that while the two governments have common interests, the regional district governance system and the First Nations governance system are distinct. Please note that the comparison of RDCO and WFN powers and authorities is set out in [Appendix A](#) of the Discussion Paper. Regional districts are a creature of the province, with delegated authority and specific legal powers and responsibilities. First Nations governance is based on inherent authorities that are being recognized and implemented. There are also geographical considerations with respect to the scope of decision-making powers for both systems. Ensuring an inclusive governance system requires both governments to understand what the differences are, and with that, the extent to which either system may need to change to accommodate more inclusive decision-making, and over what matters.

The Summary Report suggested that the full range of governance decisions that the RDCO makes should be discussed with WFN and then recommendations can be made about which decisions could be made jointly. For example, what should be the extent of joint decision-making related to regional planning and through the regional growth strategy? Should land use planning and development be part of joint decision-making?

4.2 Regional District Structure

BC's system of regional governance is unique within Canada. Established in the 1960s, regional districts are structured to include municipalities, electoral areas, and, more recently, Treaty First Nations. BC is organized into 27 regional districts which include 161 municipalities, eight Treaty First Nations and numerous electoral areas. Regional districts are considered as federations, intended to provide a political and administrative framework to provide aggregated regional services to the whole district or specific services to some of the members. Where there is no municipality, the regional districts provide services to electoral areas (non-incorporated and typically rural areas).

In summary, a regional district has three main roles:

1. Provide region-wide services such as regional parks, waste management, and 9-1-1 services.
2. Provide inter-municipal or sub-regional services, such as wastewater treatment, where residents of a municipality and residents in areas outside the municipality benefit from the service.
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 CC focuses on the core areas of a municipality's authority and powers, including interaction with a regional district (although much of Part 4 – Public Participation and Council Accountability also apply to regional district boards). At the same time, the LGA sets out the powers, activities and responsibilities of regional districts and municipalities. A regional district has a range of corporate and regulatory powers, as well as the ability to provide services to its members through service establishing bylaws and to public authorities through service agreements. 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 LGA, 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;
- aid 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.

4.3 Westbank First Nation Powers and Authorities

4.3.1 Federal Powers under Self-Government Agreement

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 the elected Chief and Council, responsible for law-making in accordance with the procedures set out in the *Constitution*. This process involves a high degree of citizen participation. As noted, the body is composed of one Chief and four Councillors.

The *Constitution* also sets out the procedures for the passage and amendment of Westbank laws (Part VI, s.43e). 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).

With respect to how Westbank Lands are held, and unlike for self-governing Indigenous governments (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 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 the WFN SGA, 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, as described above, continues to assess and collect property taxes under the *Indian Act*, with the option to come under the FNFMA. 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.

The IWG has considered the WFN SGA and discussed the implications of current and future exercise of jurisdiction by WFN. The working assumption is that WFN will not need to amend its *Constitution* to participate on the RDCO but would need to enact a law in order to appoint a representative and to provide the authority needed for that representative to act. The law may also be required to ensure that the bylaws of the RDCO can apply to Westbank Lands when they need to apply. This is a legal question that requires further consideration.

4.3.2 Traditional Territory Considerations

In addition to questions around the source of authority and structure of WFN government, there are also geographical considerations with respect to the scope and extent of decision-making powers. While WFN's recognized powers under the SGA are, for the most part, restricted to being exercised on Westbank Lands (reserves), WFN has a broader governance role within its traditional territory which is supported by its claims of Aboriginal title. It is quite common that a First Nation's traditional territory/ancestral lands will overlap with more than one regional district, and no First Nation's broader territory matches any regional district boundary exactly.

This is the case for WFN and RDCO. To date, the focus of the IWG has been on WFN reserves and treating WFN like a municipality for its participation in the RDCO. The reserves being the municipal lands as would be set out in Letters Patent for the purpose of participation.

With respect to the broader WFN territory, there are no lands within the boundary of the RDCO that are not a part of the traditional territory of WFN as part of the Okanagan Nation. However, WFN's and the ONA's ancestral lands extend well beyond the boundaries of the RDCO. There are also other Indigenous nations that make claims to lands within the RDCO boundaries. In addition to the map of the ancestral lands/traditional territory of the ONA, WFN has identified an area of responsibility within this territory for the purpose of governance. It is within this area that WFN consults and engages with other governments respecting land use and other decisions. The area of responsibility is predominantly within the area of the RDCO but not all of it. Accordingly, WFN's geographical scope of responsibility as an Indigenous governing body is greater than the RDCO and takes in several regional districts.

Part 7 of the LGA provides that a regional district can provide services to a member Treaty First Nation where some of those Treaty First Nations lands fall outside of the regional district's boundaries. In developing the model for WFN/RDCO it is not clear if this would be desired and it has not yet been addressed by the IWG. It is conceivable that reserves might be established for WFN outside of the RDCO boundaries.

4.4 Voting Structure and Representation

Today, if a reserve is geographically located within a municipality and included within its Letters Patent, an individual living on-reserve can be eligible to vote for mayor and council of that municipality. If the reserve is geographically located within a municipality and the Letters Patent excludes the reserve from being within the municipal boundary, you are eligible to vote for the Director of the regional district in which the reserve is geographically located.

If the reserve is partly located within a municipality and included within its Letters Patent, and you reside in that portion of the reserve you are eligible to vote for mayor and council of the municipality. If you live in the portion of the reserve that extends into the regional district, you are eligible to vote for the electoral area Director of that regional district. If the reserve is partly located within a municipality and the Letters Patent excludes it from being within the municipal boundary, eligible Indigenous or non-Indigenous electors for the entire reserve vote for the electoral area Director of the regional district in which the reserve is geographically located.

Prior to the creation of the City of West Kelowna, the WFN reserves were already a part of the RDCO, and eligible electors were able to vote for an electoral area Director. For many years there were two Directors. When the City of West Kelowna incorporated, the Letters Patent for the City of West Kelowna did not incorporate IR#9 and IR#10 which, therefore, remain a part of Central Okanagan West Electoral Area.

IR#8, IR#11 and IR#12 are not included in the City of Kelowna's Letters Patent. While there are currently no residents, any future residents would, under existing governance arrangements, be entitled to vote for the Electoral Area East Director. Consideration and potential boundary adjustments would be required.

4.4.1 Delegating Authority under Self-Government

As discussed at the IWG, it is anticipated that WFN will enact a law to delegate the necessary authority to participate on the RDCO Board as a full member. This would be complimentary to the authority under the LGA for the RDCO to include WFN and authorize WFN's participation in RDCO governance while ensuring WFN is bound by the LGA/CC as applicable. The WFN law could also set out the process by which WFN government appoints/selects a member of the governing body (council) or other person to the Board. This person would have all the powers, duties, and functions that a board member has, as if they were representing a municipality. The law could also spell out and confirm any qualification requirements if this is necessary. Part 7 of the LGA requires that a person appointed as a Treaty First Nation Director meets the qualification requirements of a Director under the Act.³⁴ Whether this becomes the Province's policy moving forward remains to be determined.

With respect to questions that were raised by the IWG with respect to the *Constitution*, on an initial review, it is not contemplated that any amendments to the *Constitution* would be required to permit WFN participating in the RDCO. However, if the community so desired the authority for local government relations and in particular participation in the RDCO could be set out in the *Constitution*. WFN is currently going through a review of its *Constitution* and at this point such an amendment has not been considered.

4.4.2 Non-Member Representation on WFN Lands

Today IR#9 and IR#10 are a part of Electoral Area West, the 10,900 residents are currently represented by vote for the Electoral Area West Director. The new model would address this issue and would increase the responsibilities as well as the voting strength of the WFN representative for IR#9 and IR#10 at the Regional Board table. However, the question of the non-Member residents not voting for their representative, if the person being appointed is from the WFN Council, has been raised as an issue for consideration. For the Treaty First Nations, Part 7 of the LGA specifically sets out that the representative is selected from the governing body of the Treaty First Nation. The IWG is exploring the ramifications that the Regional Board Director would be from the WFN Council, but that it doesn't have to be, subject to WFN law. There was some discussion between WFN representatives and the WFN Advisory Council that a Director could be chosen from the Advisory Council, perhaps where there is more than one WFN Director appointed to the Regional Board table. This remains an outstanding issue.

³⁴ LGA, s. 253 - Treaty First Nation Directors

(1) If a treaty first nation is a member of a regional district, the board of the regional district consists of municipal directors, treaty first nation directors and electoral area directors.

(2) For certainty, sections 196 [board membership] and 197 [weighted votes for municipalities and electoral areas] apply for the purpose of determining the number of directors and votes to which a treaty first nation is entitled.

(3) A treaty first nation must appoint a director to a board from among the elected members of its governing body.

(4) To be eligible for appointment under subsection (3), the person must be qualified to hold office as a member of a local government in accordance with section 81 [who may hold office].

(5) Section 82 (2) (a) and (3) (b) [disqualification of local government employees] does not apply in relation to a person referred to in subsection (3) of this section.

4.4.3 Provincial Direction WFN participation in RDCO and Boundary Change

The IWG has considered what if any, requirements there might be with respect to WFN joining the RDCO.

In the modern treaty context, the option to join a regional district is provided for in the treaty. While the treaty is ratified by the members/citizens of the First Nation, the actual decision to join the regional district is typically made by the First Nation after ratification and does not require elector assent of the RDCO electors. It is not expected that there will be any special requirement of elector assent of RDCO electors for WFN to join the RDCO. The working assumption is that the Chief and Council will initiate the process and WFN's joining of the RDCO will be in accordance with WFN law. Likewise, for RDCO, it is not expected there would need to be an elector assent of RDCO electors as the ability for WFN join RDCO will be provided for in accordance with the amended LGA and any regulations made under that Act. The IWG is looking to the Ministry to confirm this is correct and to provide an update on any voting processes for Treaty First Nations.

It is anticipated that IR#9 and IR#10 will need to be removed from Electoral Area West since non-Members living on WFN Lands will be represented by the WFN Council representative on the Regional Board. If this is the case, the RDCO will need direction from the Ministry on the process to realign the boundary for Electoral Area West to exclude IR#9 and IR#10.

4.4.4 Number of Directors

The number of Directors on a regional district board and the voting strength of each Director are based on population and the voting unit in the regional district's Letters Patent. In the Central Okanagan, each electoral area currently has one elected Director, whereas municipalities may have one or more appointed Directors depending on population. A Treaty First Nation may join a regional district and appoint one or more individuals from its governing body to the regional district board based on its Agreement and the LGA. 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.

Each member municipality and electoral area has a voting strength on the board based on population. The purpose of voting strength in regional districts is to ensure balanced representation and voting that reflects the relative strength of interest that a jurisdiction has in the matter being voted on. For example, in a regional district that has a voting unit of 2,500 persons, a member municipality that has a population of 25,000 would be entitled to two Directors on the regional district board using the standard division by five (for example, $25,000 \div 2,500 = 10$; $10 \div 5 = 2$). Each electoral area in the regional district is only entitled to one directly elected board member, regardless of population size.

In the RDCO, every jurisdiction receives one vote for every 5,500 residents, including residents who live on reserves. For the 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, including one from each of the two electoral areas, one from Peachland, one

from Lake Country, two from West Kelowna, and six from Kelowna. WFN appoints one non-voting Director to the Board for a total of 13.

In Model Five, as contemplated, the appointed WFN representative(s) from Chief and Council would represent all persons living on Westbank Lands (i.e., both WFN Members and non-Members and all reserves). WFN would have at least one, possibly two, Directors based on the current RDCO voting entitlement.

4.4.5 Weighted Voting and Electoral Area West Voting Adjustment

Regional districts have three difference voting mechanisms – unweighted corporate vote, weighted corporate vote and weighted participant vote. These voting rules take into account participation in regional district services, corporate structure of regional districts, and the population of jurisdictions in the regional district.

1. Unweighted Corporate Votes – Each Director on the board has one vote. Decisions that affect the regional district corporation and all jurisdictions within the regional district use a “unweighted corporate vote” to determine matters such as the decision to establish bylaws for services, regulatory bylaws, resolutions and bylaws related to the administration or conduct of the regional district board (e.g. procedure, bylaws, codes of conduct).
2. Weighted Corporate Votes – Financial decisions, such as adopting the annual financial plan, borrowing, property acquisition and disposal, and key contracts, are voted on by the regional district board using the “weighted corporate vote.” Each Director on the board is assigned a specific number of votes (voting unit) based on the population of the jurisdiction the Director represents.
3. Weighted Participant Vote – Decisions related to the administration and operation of regional district services are voted on using the “weighted stakeholder vote.” Only Directors representing jurisdictions that participate in the service are entitled to vote, and each Director is assigned to specific number of votes (voting unit) based on the population of the jurisdiction the Director represents.

As an exception to this rule, if only one Director would be eligible to vote on a resolution, then each Director who is present at the meeting is entitled to vote and has one vote.

In some instances, special voting rules may apply. These include voting on matters related to RGSs, Planning and Land Use Management, and other matters set out under Part 6, Division 3 of the LGA, in addition to fringe area planning agreements.

In Model Five as contemplated, an issue has been raised how this would impact weighted votes as every representative has voting strength based on the population represented. As WFN's Director(s) would be representing approximately 10,900 people, based on the current formula. WFN's Director voting strength could have two or more weighted votes at the regional board table. The Electoral Area West Director's voting strength would decrease for weighted votes. The voting strength for Electoral Area East would not change.

Population figures are determined by the Ministry of Housing and Municipal Affairs and are based on census data. The Letters Patent, issued via provincial authority set the voting unit number.

4.5 Service Participation

The IWG has considered several matters relating to WFN's current and ongoing participation in RDCO services. As discussed above, WFN currently purchases services from the RDCO under a local service agreement. Should WFN become a full member of the RDCO, several questions related to the existing service arrangements are being considered.

A key reason for participating on the Board is for WFN to continue to receive services from the RDCO but, moreover, to have a greater say in the design and delivery of those services. Aside from a few services that are 'mandatory', members of regional districts can choose the services in which the members wish to participate. Members participate in decision-making for the services they receive, participate in paying for them, and share liability. The IWG has had to consider how the existing services that WFN purchases will be addressed and whether WFN will become a full participant in the service, participating alongside other member jurisdictions in service governance, service funding and service liability. Additionally, the group considered whether WFN must participate (like municipalities) in mandatory services, in addition to the services WFN may choose to participate in.

Accordingly, as part of its work, the IWG asked the RDCO staff to provide a list of services provided to member municipalities and indicate which are provided by service establishment bylaw and which are by agreement. The RDCO was also asked to identify those services included in the current WFN/RDCO Service Agreement and to clarify which services that WFN participates in indirectly. This spreadsheet can be found at [Appendix D](#).

4.5.1 Mandatory Service

A significant issue for WFN and RDCO in the service agreement negotiations has been which legislatively required or optional services WFN would purchase. The first 15-year local service agreement was essentially an agreement to keep the status quo of services provided as a full bundle of services at a fixed price. The second 15-year agreement divided the services up and addressed each one separately in schedules to the agreement. Not all services were purchased and there was some accommodation made for services provided by WFN to RDCO. Today, at the end of the second 15-year service agreement and with the extension, the match between the description of services in the agreement and the actual services provided, has in some instances diverged. Where a service has changed or a new service added and not specifically included in the service Agreement, as a matter of practice, WFN pays the RDCO based on the invoice received.

Moving forward, in considering Model Five, it was important for the IWG to have identified what legislatively required services WFN may be required to participate and the mechanism to ensure such participation, thereby maintaining consistency among RDCO members.

As part of its work, the IWG considered the question of services that are legislatively required. A discussion took place to identify legislatively required services and services that make sense for

WFN to participate. The Ministry suggested to refer to LGA section 338 as a starting point and recommended working with legal counsel.

Unless an exemption applies, section 338 of the LGA requires that regional district boards adopt an establishing bylaw before operating most services.³⁵ An establishing bylaw officially creates a new service for the regional district. The requirement to create an establishing bylaw is important for providing accountability and transparency to the public about new regional district services. There are, however, some exceptions.³⁶

For municipalities and regional districts, there is a core framework of required functions required by legislation for the administration of the governing body. Under the LGA, regional districts must establish officer positions for corporate and financial administration to ensure accurate record-keeping, bylaw certification, and responsible financial management.

Today, WFN participates in selected RDCO services. WFN has indicated through the IWG it would not be averse to paying for a pro rated share of administration, as WFN would be participating as a full member.³⁷ For a list of services WFN participates in, please refer to Appendix D.

4.5.2 Optional Services

In considering optional services, the IWG recommends that WFN be treated like a member municipality and have the option to choose non-mandatory services.

4.5.3 Withdrawal Process for Optional Services

There is a legislated process for members of a regional district to exit from a service, and with exiting from a service, a member can rescind the authority it lends to a regional district. Some services, like general governance and regional parks cannot be exited. Given how these terms would impact WFN, it was recognized that the IWG needed to identify which services would be automatic for WFN and which would be optional, along with the associated responsibilities and liabilities. Ministry direction is required to establish the process for withdrawal of services outside of the existing legislative framework.

³⁵ Section 338(2) of the LGA sets out several exceptions for services that do not require an establishing bylaw: general administration (except for electoral area administration); electoral area administration; undertaking feasibility studies for proposed services; specific regulatory, coordination, and planning services, and emergency and economic development programs.

³⁶ Under section 339 of the LGA, an establishing bylaw for a new service must: provide a description of the service; define the geographical boundaries of the service area; identify all municipalities, Treaty First Nations and electoral areas included in the service; indicate how the service costs will be recovered (through property taxes or parcel taxes), and; specify the maximum amount of money that can be requisitioned for the service (can be a maximum dollar amount or a maximum tax rate). A 2025 amendment to the LGA (specifically, section 338(2)(j)) provided an additional exemption for fire inspection and investigation services. Regional districts are now able to implement these services, which are required under the *Fire Safety Act*, without first adopting a service establishing bylaw.

1. Service Withdrawal Provisions in Service Establishing Bylaw

Section 340 of the LGA outlines special options for regional district service establishing bylaws. One of these options is establishing terms and conditions for withdrawal from the service (e.g., a period of time for participant to remain in the service before withdrawal; notice of 1 year before withdrawal could be considered). Terms and conditions are in addition to the statutory provisions and do not mean the participant automatically withdraws from the service if they are met. The legislation provides that a participant may initiate the formal service withdrawal process even if the establishing bylaw provides terms and conditions for withdrawal under section 340(1)(f) of the LGA.

If a regional district service establishing bylaw establishes terms and conditions for service withdrawal, these cannot be altered without consent from all of the participants in the service (as opposed to the 2/3 consent available for other service establishing bylaw amendments). As noted, meeting the terms and conditions does not mean that the participant is automatically withdrawn from the service as this change is still be required to go through the bylaw amendment process under section 349 of the LGA (i.e., 2/3 consent).

Where there are no provisions for service withdrawal explicitly stated in the bylaw, a participant may withdraw from the service with consent of 2/3 of the participants.

Where the participants cannot come to agreement, there are dispute resolution provisions in the LGA that deal specifically with service withdrawal.

2. Service Review and Withdrawal Provisions in the Local Government Act

Where agreement cannot be reached between participants about service withdrawal, and informal measures have proven unsuccessful, there is a formal process for withdrawal for most services under Part 10, Division 6 of the LGA – Dispute Resolution in Relation to Services.

A participant in the service may only initiate a formal service withdrawal under the legislation if certain conditions are met, one of which is that a service review has been conducted within the past three years.

There are instances when a formal service withdrawal process cannot be used, such as, but not limited to: services that do not require an establishing bylaw (under section 338 of the LGA), a regulatory service, or a service prescribed by regulation.

Generally, participants may initiate a service review if the circumstances under section 357 of the LGA apply (e.g., participant has been in the service for 5 years, there has not been a service review in the last 3 years, there are no alternative review provisions in the bylaw and the participant considers the terms and conditions of participation in the service unsatisfactory).

Sample steps in the service withdrawal process:

- Written notice that a participant would like to withdraw from a service (establishing bylaw may require that a certain amount of notice must be provided)
- Discussion at the board table to remove a participant (discussion/negotiation/ on service assets and liabilities and possible changes to bylaw that will be required)
- If agreement can be reached to remove a participant, participants can use the provisions in section 349 of the LGA to amend the bylaw with inspector approval

- Where 2/3 consent cannot be reached to approve the amendment, the participants may initiate the following processes:
 - An informal service review, a formal service review under section 353-360 of the LGA, or an alternate service review as specified in the establishing bylaw (section 340 (e)) of the LGA)
 - If the problems cannot be solved after a service review, and the participant still wants to withdraw, and the service is one that the service withdrawal provisions apply to, a service participant may initiate the formal service withdrawal process under section 361-372 by providing written notice to the board, all other participants, and the minister
 - From there the minister will decide on next steps as per section 362 of the LGA.

Although the legislation provides that the minister may appoint a facilitator to monitor service review and withdrawals and to assist the parties on reaching agreement, facilitators are not routinely appointed and financial assistance for service reviews is not generally available. Due to staff commitments, the ministry has limited capacity to provide direct facilitation/mediation services to local governments. However, Ministry staff may assist with information about suitable external facilitator/mediator, if requested.

3. Service Withdrawal Provisions in Service Agreements/Contracts

The Ministry does not have an active role in service agreements, nor do these agreements fall under the withdrawal provisions in local government legislation. It is our understanding that withdrawal terms and conditions are established in the agreement and withdrawal managed between the parties (with the support of their legal counsel).

4.6 Central Okanagan Regional Hospital District

While not directly tied to becoming a member of the RDCO, but as a related matter, the IWG has been considering WFN involvement with the Central Okanagan Regional Hospital District (“CORHD”). It has been noted how hospital districts are tied to the concept of regional governance and that currently ratepayers on Westbank Lands do not participate or pay into the CORHD. It was noted that WFN and West Kelowna are growing rapidly and there may be an opportunity through the broader regional governance Initiative to ensure that the CORHD is appropriately supported. With increasing pressure on health care systems and hospitals, and increasing responsibility on regional districts, ensuring that the CORHD is able to meet its needs has been raised as a critical consideration.

It has also been noted that there is a province-wide First Nations Health Authority (“FNHA”) that has a relationship with WFN for Member health services. At the same time, consideration may be given to possible WFN participation in the CORHD as part of more inclusive regional governance. The role of FNHA will need to be taken into consideration, including ensuring that WFN Members have continued access to Indigenous services.

The IWG has been exploring these issues further and has sought additional information on the CORHD and the FNHA. The RDCO has also reached out to the Interior Health Board to see how funding works with the FNHA. Conversations are ongoing with the Ministry and the Ministry of Health regarding WFN participation with the CORHD and the IWG is helping to coordinate information sharing between WFN and RDCO’s finance department regarding financial considerations respecting CORHD.

5 Planning Frameworks

5.1 Comprehensive Community Plans, Land Use Plans, Regional Growth Strategy and OCPs

The RDCO and WFN operate under different legal requirements and authorities for planning. For WFN, as an SGIG, planning requirements are governed by its internal laws, whereas RDCO planning is provided for under provincial legislation, specifically in the LGA. WFN is required to have a LUP under its *Constitution* and has also adopted a CCP under a separate law. RDCO may create an OCP for electoral areas and can adopt an RGS, which it has done.

The *Constitution* states that “the use and development of Westbank Lands is subject to this *Constitution*, Westbank Law and other applicable laws”³⁸ and required WFN to have a Land Use Plan law within two years of the *Constitution* coming into force.³⁹ A LUP is described in the *Constitution* as, “a plan addressing housing, transportation, parks, economic development, infrastructure, social, cultural, environment and other needs in the use and development of Westbank Lands”. The WFN *Land Use Plan Law* was enacted in 2007.⁴⁰

In addition to the LUP, and while not required by the *Constitution*, WFN has enacted a law to bring into effect a CCP. The CCP was last updated in 2022 and now serves as a higher planning tool than the LUP, covering all areas of WFN government. The CCP is a community-led plan, and today, is the principle guiding document for WFN after the *Constitution*. The CCP guides WFN to sustainably manage its social, community, cultural, economic and land use interests over the long-term and applies to Westbank Lands (reserves), the WFN Area of Responsibility, and the broader traditional territory of the Okanagan Nation. The CCP looks to utilize traditional knowledge, teachings, practices, and governance to develop and propose principles and actions to help achieve WFN’s vision for the future.

The CCP is a “living document,” which means it can be updated to reflect changing needs and provides the strategic foundation for more detailed plans and policies across WFN departments. The Chief and Council strategic plan follows the CCP and must be consistent with it. Neither the *WFN Land Use Law* nor the CCP were a requirement of Canada in the SGA; rather they reflect the will of the WFN Members in developing the *Constitution* and the direction of its governing body and Membership.

In BC, First Nations and non-First Nation communities use different planning frameworks:

- RGS: A long-term strategic plan under Part 13 of the LGA to manage growth across multiple municipalities. It addresses housing, transportation, economic development, and environmental protection. When a regional district adopts an RGS, each municipal OCP must include a Regional Context Statement (RCS) under section 446 of the LGA to demonstrate alignment. WFN is not subject to this requirement, but the IWG has identified

³⁸ *WFN Constitution* s. 98.4

³⁹ *WFN Constitution* s.98.7: “Council shall, within two (2) years of the date this Constitution comes into force, refer a final draft Westbank Law to adopt a Land Use Plan to a Special Membership Meeting for enactment by Electors in accordance with section 63.3(e) of the *Constitution*.”

⁴⁰ *WFN Land Use Law* No. 2007-01. https://www.wfn.ca/docs/2007-01_wfn_land_use_law_2007-01637351716508194824.pdf?LanguageID=EN-US

the need for provincial consideration on whether an RCS should apply when WFN becomes a member of the RDCO Board.

- **OCP:** A statutory plan under section 473 of the LGA that guides land use, housing, transportation, infrastructure, and environmental management. It must include land designations, housing policies, and climate targets.
- **CCP:** Adopted by WFN Chief and Council and Members, a CCP is a community-led, culturally grounded plan supported by Indigenous Services Canada. WFN's CCP, last updated in 2022, it integrates cultural values, governance priorities, and long-term development goals.

While not required under the LGA, municipalities and regional districts may develop an OCP. However, if they choose to have an OCP, the LGA requires that all bylaws and public works be consistent with the OCP.⁴¹ Regional districts can develop an OCP for electoral areas. Each RDCO member municipality has an OCP. Additionally, Electoral Area West is covered by two OCPs (Rural Westside Bylaw 1274 and Brent Road Trepanier Bylaw 1303). Electoral Area East currently relies on Joe Rich Rural Land Use Bylaw 1195. Both electoral areas are respectively in the process of establishing current and formal OCPs.

Regional districts are primarily responsible for administering land use regulations, including OCPs, within their unincorporated electoral areas. When a regional district does adopt an OCP, it designates the specific electoral areas it applies to. Regional districts can also adopt an RGS.

An RGS is a long-range, strategic plan that coordinates the actions of a regional district and its member municipalities for managing growth over a 20-year period. An RGS provides a high-level framework rather than regulating land use directly. Its policies are implemented through local plans and bylaws. Accordingly, RGSs are designed to address regional issues that cross jurisdictional boundaries. Their main purposes include:

- **Preventing urban sprawl:** By guiding development toward existing communities, RGSs ensure efficient use of land and public infrastructure, such as transit and services.
- **Encouraging sustainable settlement:** The strategies aim to create socially, economically, and environmentally healthy communities.
- **Protecting important lands:** This includes conserving environmentally sensitive areas, parks, open spaces, and agricultural lands.
- **Coordinating services:** RGSs help coordinate the provision of regional services, such as transportation networks, parks, utilities, and emergency services.
- **Promoting affordable housing:** A central component of an RGS is to ensure adequate, affordable, and appropriate housing options.
- **Setting climate targets:** RGSs include policies and targets for reducing greenhouse gas emissions.

⁴¹ LGA, Division 4 of Part 14 – Official Community Plans

If a regional district has an RGS, all OCPs and subsequent bylaws and works must be consistent with the broader RGS. The development of an RGS is intended to be a collaborative process that involves multiple stakeholders, including First Nations.

The RDCO's RGS is a 20-year planning framework for sustainable development, guiding regional coordination on issues through a five-year Priority Projects Plan. The current RGS, adopted in 2014, focuses on key areas including housing, economic development, agriculture, transportation, and environmental stewardship, with the latest plan covering 2024 to 2028. In 2024, the RDCO Board directed staff to initiate the renewal of the RGS. Historically, WFN has participated in the RDCO RGS planning processes.

5.2 Alignment of Plans, Planning Department Coordination and Drivers of Growth

As the legal requirement for planning, and the plans themselves, are different for the RDCO and WFN, the IWG has considered the need for increased integration and coordination between WFN and RDCO in this area. As the IWG has continued its study, strong connections have been noted between the various planning instruments of WFN and the RDCO with discussion on how to better align the RDCO's RGS with WFN's CCP. Including what additional integration is needed beyond current collaboration.

Shared principles of sustainability, resilience, and community well-being are key areas of alignment. The RDCO RGS promotes communities that are socially, economically, and environmentally sustainable. The RGS, for example, guides decisions on how provincial programs are implemented and how resources are used efficiently. Similarly, the WFN CCP guides government decisions with the goal of creating a "healthy and prosperous future" and a "strong political, social and cultural community". This holistic, long-term approach to community well-being aligns with the RDCO's sustainability goals.

Governance Implications

With respect to collaboration and governance, the RDCO RGS relies on a collaborative, interactive process that involves member municipalities, provincial agencies, and First Nations including WFN. The WFN CCP is a community-driven process that also emphasizes partnership and communication with neighboring communities although there is no legislative requirement for WFN, other than in the plan itself, to consult and to cooperate with other governments, including the RDCO or its members.

It is important to keep in mind the different legal and governmental structures at play. WFN is a self-governing nation and has its own governance structure and laws for its lands, making its CCP an independent guiding document. While it can align with the RDCO, it is not directed by it, nor by the Ministry. On the other hand, the RDCO as a regional government through the RGS, sets the regional planning framework for its member municipalities (like West Kelowna) but must incorporate consultation with First Nations, as they are not subject to the RGS the same as municipalities.

The application of an RGS on Westbank Lands remains unclear when WFN is a voting member of the Regional Board. A question was raised regarding whether WFN would be expected to adopt an OCP, similar to a municipality, should it become a full member of the RDCO Board. The

Ministry has indicated that the Province would not mandate an OCP, given it is not required of a municipality or a Treaty First Nation. While Treaty First Nations are not required to have an OCP, part 7 of the LGA provides that any land use plan of a Treaty First Nation would be treated as an OCP if it serves a similar purpose. While WFN is not a Treaty First Nation, its CCP functions as an equivalent long-range planning instrument, though in broader scope and culturally grounded. It remains undetermined whether a CCP would require an RCS for alignment with the RGS, and this will require provincial direction. Whether an SGIG, outside of a treaty, would be required, by agreement or by law, to have a LUP meet certain requirements if participating on a regional board remains to be confirmed. Please refer to [Appendix G](#) for a comparative chart outlining the mandatory requirements for an OCP and the alignment within WFN's CCP.

Planning Gaps and Metrics

The IWG has requested that staff review and provide feedback on any planning gaps and needed alignment between RDCO and WFN long term planning initiatives. For example, the housing targets expected in an OCPs may not align with the CCPs and any gaps might need to be reconciled. Further, issues were aired with respect to the application of section 432 of the LGA⁴² and the relevance to RGS updates. Clarity from the Ministry is required.

The group discussed the use of planning metrics. The RDCO uses StatsCan data as a baseline. WFN also uses StatsCan data but is considering collecting its own census data in accordance with its legal authorities.

Legislative Context and Heritage Conservation

The IWG has also been inquiring about any legislative changes that might be forthcoming with respect to planning that might have a bearing on this initiative and coordination. The Ministry has indicated it is not aware of any current changes but will relay questions to provincial planners. With respect to heritage conservation, RDCO staff have raised questions about the "Transformation Project" and asked about timing of amendments that may affect OCP content. There are broader considerations regarding OCP policy amendments and the procedural implications these changes may have on development referral and approval processes. The Province will need to provide guidance on how RGS policies will apply to Electoral Area OCP updates and what this means for development application referrals and processing.

⁴² Requirements for adoption

432 (1) The following are required before a regional growth strategy is adopted:

(a) the regional growth strategy must be initiated in accordance with section 433;
(b) consultation must be conducted in accordance with section 434;
(c) the regional growth strategy must be accepted by affected local governments in accordance with section 436, except in relation to an amendment under section 437 [*minor amendments to regional growth strategies*].

(2) As an exception to subsection (1) (c), a regional growth strategy may be adopted without acceptance in relation to a specific provision if

(a) the provision is included on the basis that it is not binding on the jurisdiction of an affected local government that has refused to accept it, and
(b) the board considers that it is not essential to the regional growth strategy that the provision apply to that jurisdiction.

(3) A provision included under subsection (2) becomes binding on a jurisdiction if, at any time after adoption of the regional growth strategy, the affected local government for the jurisdiction indicates to the board that it accepts the provision.

Conflict Resolution and Relationship Building

The IWG has considered matters with respect to conflict resolution and ongoing relationship building. While no specific model has been adopted for recommendation at this time, both WFN and the RDCO recognize the importance of relationship preservation through mutually agreeable conflict resolution. The importance of anticipating challenges and focusing on solutions has been emphasized. It was suggested that provisions be included in an agreement to guide conflict resolution and preserve relationships.

Finally, the IWG has invited RDCO and WFN planning staff to discuss the potential for overlap and areas of synergy between WFN's CCP and RDCO's RGS. Moving forward, the IWG is encouraging more interaction between the WFN and RDCO Directors of Planning regarding drivers of growth for the RGS and the CCP and listing comparative land use planning requirements and alignment between RDCO's and WFN's long range plans.

The review of planning frameworks in alignment with the RDCO and WFN demonstrates significant common ground principles and objectives, despite differences in legal authority and planning instruments. Both organizations prioritize sustainability, resilience, and community well-being. Their respective strategies, RGS and CCP, share a long-term vision for growth and development. However, the questions remain regarding governance implications, such as the application of the RGS to Westbank Lands, whether the CCP can be accepted in place of an OCP, and whether an RCS should be required for WFN's CCP if the LGA is amended to include self-governing First Nations. Addressing these considerations, along with planning gaps and metrics will be essential to achieving an inclusive governance model that respects WFN's self-government while fostering regional collaboration.

6 Emergency Management

6.1 Legislative Requirements - Emergency and Disaster Management Act

The Emergency and Disaster Management Act (EDMA), which replaced the Emergency Program Act on November 8, 2023, modernizes BC's approach to emergency management. Co-developed with First Nations under DRIPA, EDMA reflects the realities of climate change, increasing emergencies, and the need for inclusive governance.

EDMA mandates planning across all four phases of emergency management: mitigation, preparedness, response, and recovery. It expands local government responsibilities, requiring risk assessments that incorporate climate change, Indigenous knowledge, and impacts on vulnerable populations. Emergency plans must ensure continuity of essential services and be based on these assessments. Full implementation of planning and risk assessment regulations is expected by early 2027.

The EDMA also strengthens Indigenous collaboration. Local governments must consult and cooperate with neighbouring Indigenous governing bodies throughout all emergency phases. Indigenous knowledge must be integrated into risk assessments and plans. The Act enables the

formation of Multi-jurisdictional Emergency Management Organizations (MJEMOs) to support collaborative compliance.

The existing emergency management partnership between RDCO and WFN presents a strong foundation for joint decision-making under the EDMA.

6.2 RDCO-WFN Coordination

WFN is a long-standing and active partner in the Central Okanagan Regional Emergency Program, coordinated by the RDCO. WFN participates in the Emergency Operations Centre, which supports coordinated response across RDCO jurisdictions including Kelowna, West Kelowna, Lake Country, and Peachland. The RDCO administers the regional emergency plan, addressing hazards such as wildfires and floods.

WFN is involved in regional training, public preparedness campaigns, and joint evacuation route planning. These efforts are supported by grant-funded initiatives and reflect a strong operational partnership.

Under EDMA, WFN is formally recognized as an Indigenous governing body, reinforcing its role in co-governance. The Act's emphasis on consultation, shared decision-making, and integration of Indigenous knowledge supports deeper collaboration between RDCO and WFN. This enhanced coordination builds on an already effective relationship, ensuring emergency planning and response are inclusive, equitable, and responsive to the needs of all Central Okanagan residents.

7 Financial Considerations

7.1 Calculation of Cost of Services

There are a range of financial considerations the IWG has been studying. Within the RDCO, services are cost-shared among participants, with allocations for most services driven by property assessment values. As a result, areas with higher assessed land values may experience increased service costs. Currently, the cost for services purchased by WFN from the RDCO is calculated using assessed land values as outlined in the local service agreement and is consistent with the approach used for all member municipalities. At present, the only service that WFN does not contribute to is the cost of the Regional Board. If WFN were to join the RDCO Board and begin contributing to this service, the estimated increase in its total payment would be approximately 1% or \$29,000. Greater representation and participation would not affect the allocation costs of other services. The IWG is also studying more closely the IRG Service Finance Models and Final Report documents produced by the Alberni-Clayoquot Regional District.

7.2 Borrowing and Liability

The IWG has been considering the question of capital financing and liability. A 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 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.

The IWG questions if WFN would share in the financial and legal liability for all the district's debt nor, that the RDCO would share liability with respect to WFN's long term debt for capital purposes. This is consistent with the approach taken for Treaty First Nations. The treaties all address this question, and part 7 of the LGA specifically excludes the application of the borrowing provisions to Treaty First Nations.⁴³ That said, the IWG is exploring all the options and is initiating a dialogue with the MFA on interest rates and other matters. As part of the review of its Constitution, WFN is looking at its own liability limits and rules regarding borrowing. Further, WFN is also looking to become a member of the First Nations Finance Authority ("FNFA") through adaption regulations to be made by Canada.⁴⁴

While the FNFA is similar to the MFA, unlike the MFA, the equivalent joint and several liability is not tied to a regional structure, but rather between all members of the FNFA, who are from Canada. While the FNFA borrowing members are currently all *Indian Act* bands, the FNFA recognizes that through regulations that adapt and restrict the Act, SGIGs, whether treaty or not, can continue to be, or become, borrowing members of the FNFA. It also contemplates SGIGs using other tools available under the Act (including exercising taxation powers). Draft regulations for SGIGs with respect to borrowing through the FNFA have been developed and were published for consultation purposes in the Canada Gazette in March 2025.⁴⁵ They have not been approved yet. Accessing financing through both the MFA and FNFA would create greater diversification and potentially more opportunity for financing projects. The extension of borrowing power provides an opportunity for First Nations to leverage their collective access to resources for large scale projects that may have been out of reach for the First Nations alone. While joint borrowing is not practiced by regional districts or municipalities, the ability for each entity to borrow individually in support of a collaborative initiative could significantly benefit WFN. In addition, the ability to pool resources means that shared interests can be acted upon.

7.3 Tax Requisitions, Invoicing and Budget Implications

Regional districts do not directly tax property owners. Rather they use a "tax requisition" process to obtain funding for local government services. Annually, regional districts determine their tax requirements and then requisition these funds from their member municipalities and the Provincial Surveyor of Taxes who is responsible for collecting taxes in the electoral (rural)

⁴³ Section 259 of the LGA clarifies that despite the general liability provisions (Section 412) and the financing of municipal undertakings (Section 410), a treaty first nation is not liable for regional district borrowing under section 410, nor can a treaty first nation director vote on such a bylaw.

⁴⁴ First Nations Finance Authority - <https://www.fnfa.ca/en/fnfa/>.

⁴⁵ Canada Gazette, Part I, Volume 159, Number 10: First Nations Fiscal Management Act Adaptation Regulations. <https://gazette.gc.ca/rp-pr/p1/2025/2025-03-08/html/reg1-eng.html>

areas. The member municipalities and the provincial Surveyor of Taxes then levy and collect the taxes on behalf of the regional district. The regional district provides the tax requisition to its member municipalities and the provincial Surveyor of Taxes by April 10th each year. Member municipalities remit the requisition amount to the regional district by August 1st each year. This process permits regional districts to fund the services it provides while relying on existing municipal and provincial tax collection structures.

The IWG does not contemplate the RDCO requisitioning funds from WFN as it does not do this today and would not have the power to do so under the proposed model. WFN's payment for local services will not always be from property tax revenues even if assessed values drive the calculation. This would be somewhat different than for Treaty First Nations where the default model is tax requisitioning under Part 7 of the LGA. Moving forward, the proposal is that RDCO would continue to invoice WFN as it does today, and that this would be clearly defined and provided for in the enabling legislation/regulations.

An issue raised at the IWG was whether WFN be required to report comprehensive financial data through the Provincial reporting portal, and if so, what would be the expectations or guidelines for this reporting? This question was posed to the Ministry, which explained that financial reporting is to ensure transparency and accountability for regional districts. The types of information reported include: the annual financial plan bylaw, the audited financial statements, and information on capital assets. From its response, the Ministry anticipates that WFN will not be required to report financial data through the provincial portal, unless WFN's financial information is consolidated in the audited financial statements of the RDCO. It is anticipated the relationship between WFN and the RDCO will not be of the nature that would require consolidation under Generally Accepted Accounting Principles for public bodies.

Another financial consideration that has been raised is how a budget item approved by the RDCO would be reflected within WFN's own budget framework. In BC, municipalities do not directly vote on a regional district's budget. Instead, municipal councils appoint elected representatives to the board based on population. The board is responsible for making decisions on financial matters, including the annual financial plan (budget). These decisions are made using a "weighted corporate vote," where each Director's vote is based on the population of the jurisdiction they represent. Under the regional district structure, once the budget has been adopted by the Board, the municipalities are advised of the amount they are required to pay, and this money is requisitioned.

When the WFN Director assumes a seat at the RDCO Board table and participates in budget deliberations and voting, their approval will be binding on WFN. In order to be able to do so, this power will be delegated under the WFN law, with budgetary oversight and transparency in accordance with the *WFN's Constitution* and other laws addressing financial administration. What will be required in the law is under consideration as the law is currently being developed by WFN.

7.4 Taxation Implications

Model Five contemplates no changes to the way WFN assesses and collects property taxes or raises fees or sets development cost charges. WFN will continue collecting taxes under section 83 of the *Indian Act* or the FNFMA. The RDCO will not requisition taxes through WFN but will continue to invoice for services in which it participates. Accordingly, there is not expected to be any tax implications for either party.

8 Legislative and Policy Review

8.1 Letters Patent and Disclosure Requirements

The IWG has asked the Ministry if a boundary change would be required to remove Westbank Lands (reserves) from Electoral Area West and Electoral Area East when WFN becomes a full member. If so, an outline of the process and the implications of such a change will be required.

Part 7 of the LGA addresses adjustment to Letters Patent to accommodate Treaty First Nations. Presumably this would also need to be done for non-Treaty. Accordingly, it is likely the Letters Patent for the RDCO will need to be amended.

The process to identify the lands as Westbank Lands in the Letters Patent remains an open question, as do any requirements for disclosure of land details and governance implications. Lessons can be learned from the process followed in the Treaty First Nation context.

8.2 Review of Comparative Models (e.g., Maa-nulth, Tla'amin, shíshálh)

The Discussion Paper provided a detailed description of other models of regional governance involving different Treaty First Nations and shíshálh. These models continue to be reviewed by the IWG for ideas and precedents and are, accordingly, briefly summarized herein.

Both Maa-nulth and Tla'amin addressed regional governance in their treaties. They have, though, taken different paths with respect to joint governance. All five of the Maa-nulth First Nations had 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 have demonstrated inclusive governance is the result of investing in building sustainable relationships using tools that provide the structure for joint work that goes beyond contractual arrangements.

An initial challenge the 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. The lessons learned with Maa-nulth are very

valuable and the IWG is paying particular attention to the materials produced by the Alberni Clayoquot Regional District with its IRG study grant.

In 1986, the shíshálh Nation became the first recognized modern SGIG in Canada. This was accomplished outside of a modern 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*⁴⁶ was along with the companion provincial *Sechelt Indian Government District Enabling Act*.⁴⁷ The shíshálh self-government arrangements do not include a formal self-government agreement as is the 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.

In addition to the Council of the former "Band" and its provincial-type powers set out in the Federal Act, the self-government arrangements established 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. The governing body of the SNGD is made up from 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 SCRCD and is entitled to municipal benefits.⁴⁸ 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 SCRCD include issuing building permits on shíshálh lands.

The shíshálh federal legislation was amended in 2022⁴⁹ 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.

⁴⁶ *shíshálh Nation Self-Government Act* (S.C. 1986, c. 27), <https://laws-lois.justice.gc.ca/eng/acts/s-6.6/>

⁴⁷ *Sechelt Indian Government District Enabling Act*, R.S.B.C. 1996, c. 416

⁴⁸ *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.

⁴⁹ *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.

Shíshálh remains unique in the way it is a part of regional governance in BC and was Model Four in the Discussion Paper. While not chosen, there are still lessons that can be learned from the model and precedents that can help in implementing Model Five.

8.3 *Local Government Act Amendments and Regulations*

The need for legislative changes to facilitate non-Treaty First Nations becoming full members of regional boards is being contemplated by the Ministry. However, to proceed with such changes, a mandate would need to be sought from Cabinet. The IWG is expecting that once the studies and policy work has been completed, a mandate will be sought for the necessary legislative change to be made to facilitate Model Five becoming a reality. The IWG has written to the Ministry inquiring as to the timeframe for a cabinet mandate and legislation.

The IWG has recommended initiating a formal dialogue with the Ministry to examine the proposed governance approach and explore legislative options. Specifically, the IWG proposes that legislative amendments to the LGA be considered that would explicitly authorize regional districts to enter into governance agreements with First Nations through mutual agreement. Such amendments would provide a clear and flexible legislative framework to support inclusive regional governance, recognizing the unique legal and jurisdictional status of First Nations and enabling tailored, collaborative models of participation in regional decision-making.

Recognizing that developing an option that might work for all First Nations could take some time and require considerable political effort, it is proposed that an RDCO/WFN interim solution be found. This would be appropriate given WFN is the only other SGIG in BC other than shíshálh and given the relationship between RDCO and WFN. Further, it is generally accepted that a “one size fits all” approach is not the best approach and would not be consistent with the province’s principles for recognition and reconciliation, DRIPA and the Action Plan.

One option that has evolved as a result of JWR Group’s review of the IWG’s work, is a suggestion to amend the LGA and provide regulation making power to permit the adaptation and restriction of the LGA, to facilitate WFN becoming a member of the RDCO. The adaptations and restrictions would not be significant and would be made primarily to Part 7 of the LGA, which addresses Treaty First Nations and their participation in Regional District Boards. Many of the provisions in Part 7 can apply in the RDCO/WFN model with little or no adaptation or restriction.

This concept is recommended as an area for further exploration to consider, rather than a decided course of action. This approach would involve WFN enacting a law to give effect to its participation in the RDCO and to be bound by the adapted and restricted LGA and CC. WFN law, among other matters, would set out the process by which WFN government appoints/selects a member of its governing body (Council) or other person to the RDCO Regional Board. Under the WFN law, the WFN Director would have all the powers, duties and functions that other Directors enjoy including the ability to bind the WFN. The WFN law could also spell out and confirm any qualification requirements for the WFN Director that might be required. WFN is currently working on a draft of its law.

It is also noted that the regulatory power in the LGA could be used for other First Nations wanting to join a regional district, either as an individual First Nation or applicable to a broader group.

9 Engagement Outcomes

To date, engagement outside of the IWG, the RDCO Board and WFN Council has been limited. That said, all reports to EASC and the Board have been made public during open meetings, and key documents, such as the Discussion Paper and the Summary Report, have been made publicly available online. There has also been some limited media coverage contributing to broader awareness.

Looking ahead, the IWG will consider how impacted communities will be engaged about potential changes once the direction has been confirmed. Consideration will be given to the appropriate level of consultation.

WFN and the RDCO have, where appropriate, raised the Initiative with representatives of the provincial government. The provincial government will need to participate where policy direction is required, including new mandates, regulations, and ultimately amendments to the LGA.

In June 2024, the RDCO Board and WFN Chief and Council jointly endorsed the IWG committee terms of reference and decision-making model. Updates after this time were first reviewed by EASC before proceeding to the RDCO Board and WFN Chief and Council for final approval.

9.1 WFN Engagement

9.1.1 Chief and Council

WFN Chief and Council have been regularly briefed on the activities of the IWG and the progress of the Initiative, which remains a priority as set out in the WFN CCP. The Initiative and the work of the IWG have been included on individual Councillor updates to WFN Members. Council updates are provided quarterly, in accordance with the *WFN Council Remuneration and Expense Law*. It has also been raised at the community AGM, ensuring broader awareness among Members. In September of 2025, WFN held an election for Chief and Council, resulting in the re-election of all sitting members except one councillor who had previously served on Council. As part of the ongoing collaboration, WFN and RDCO are co-developing the content of a joint presentation to be delivered to both WFN Council and the RDCO Board in mid-December 2025.

9.1.2 Member Feedback

There has been limited feedback from WFN Members on the Initiative, which has mainly come from those who are on Council or work in the administration. The Initiative has been raised at community meetings and incorporated into Councillor reports. It is important to recognize that this work is guided by the WFN CCP, which was voted on and endorsed by Members, and the Initiative remains aligned with its direction. As the Initiative progresses, the WFN law development process will ensure WFN Member participation. As WFN law will be required, this will ensure steps are taken to provide for Member feedback. In accordance with the *WFN Constitution*, any proposed laws must be presented to a special Membership meeting as part of second reading.

9.1.3 Non-Member Feedback

WFN's General Counsel has updated the WFN Advisory Council on the Initiative and the IWG 's progress. While some members of the Advisory Council expressed concern about non-Members potentially having no ability to vote for an RDCO Electoral Area representative, there was appreciation for the Initiative's objective of fostering more inclusive regional governance.

The IWG has asked the Ministry whether the current Advisory Council structure would be considered a sufficient representational voice from the province's perspective. If not, the request for the Province is for guidance on what further governance structure might be required to enhance this representation.

In response, the Ministry noted that the Advisory Council established through *WFN's Constitution* appears similar to Treaty Nations requirements. And that while this is likely sufficient, additional analysis of options and implications of different approaches continues and consultation with First Nations on proposed approaches will be needed. The Ministry encourages the IWG to discuss what engagement with non-Members could look like if WFN were to join the RDCO. These discussions could include:

- Determining what would be considered directly and significantly affecting non-Members.
 - What process, for example, might be used to gather Advisory Council perspective on joining the RDCO.
 - What communication materials and strategies would WFN, or the Advisory Council use to educate non-Members on future initiatives, such as formal membership on the RDCO board.
 - What appeal and review procedures might need to be re-examined.

9.2 RDCO Engagement

9.2.1 Electoral Area Services Committee

EASC received a progress update in January 2025 on the Inclusive Regional Governance Initiative, a strategic priority of the RDCO Board. The presentation highlighted the collaborative efforts of the IWG to develop a governance model and outline the topics beings explored. The Committee endorsed the update and supported its advancement to the RDCO Board and WFN Chief and Council.

9.2.2 Regional Board

The RDCO Board received a progress update on the Inclusive Regional Governance strategic priority in February 2025, highlighting continued progress by the IWG in developing Model Five to formally empower WFN with voting rights on the RDCO Board. Board members engaged in discussion on several key topics:

- The pace of progress relative to other regional districts and whether RDCO/WFN's advancement would be considered independently.
- The importance of recognizing WFN's longstanding efforts to advance this work, noting that a "one-size-fits-all" approach is not feasible given the diversity of First Nations governance structures.
- Clarification sought from the Province regarding legislative requirements, non-negotiables, and opportunities for flexibility.

The Board acknowledged the Province's commitment to ongoing collaboration, including the assignment of a liaison to support the process. The Inclusive Regional Governance update was accepted, and the project received support for advancement.

As a distinct agenda item during the meeting, the Regional Board also reviewed an updated service agreement between RDCO and WFN. This revised agreement consolidates several previous agreements into a single, modernized document, reflecting the evolving nature of the RDCO/WFN relationship. The original agreement had been in place for 15 years, with two extensions. The update marks a significant step toward streamlining service delivery and strengthening intergovernmental collaboration.

9.3 Engagement with the Provincial Government

9.3.1 Ex-Officio Role

RDCO and WFN have been mindful of the likely legislative changes required to implement more inclusive regional governance, and consequently the need to work with the province at an early stage. The Ministry has provided an ex-officio representative to support the IWG and ensure at one level, ongoing engagement with the province.

9.3.2 Liaison with Ministry of Housing and Municipal Affairs

In March 2025, the IWG submitted correspondence to the Ministry outlining several questions that emerged during its deliberations and requesting confirmation that the necessary legislative amendments would be undertaken to support the implementation of Model Five. The IWG asked the degree to which the Province would be willing to amend the LGA to include Self-Governing Nations in addition to Treaty First Nations.

10 Provincial Considerations and Legislative Pathways

The IWG would like to thank the Ministry for financial and resource support for the Inclusive Regional Governance Initiative. As the work of the IWG comes to a close, we look forward to the Ministry's review of this report and the guidance on next steps to ensure WFN becomes a full voting member at the RDCO.

The IWG seeks confirmation from the Ministry that efforts to advance the Inclusive Regional Governance initiative will remain a priority and request that the Ministry provide a timeline and key

milestones to achieve inclusive regional governance at the RDCO. The IWG recommends initiating a formal dialogue with the Ministry to review the proposed governance approach and identify legislative pathways to advance Model Five.

Both RDCO and WFN recognize that policy development within the Ministry is ongoing and that significant work is required to implement this initiative.

Proposed Actions to Advance Model Five:

1. Governance Structure (Legislative and Policy)

- Seek Cabinet mandate for amendments to the *Local Government Act* and enabling regulations to authorize participation by self-governing First Nations outside treaty.
- Confirm process for Letters Patent amendment to remove Westbank Lands from Electoral Area West and define WFN as a member jurisdiction.
- Assess voting structure implications when WFN joins the RDCO Board and determine if WFN non-Member Advisory Council is sufficient representation.
- Maintain dialogue with the Ministry to advance legislative reform and track provincial efforts to amend legislation enabling Self-Governing Nation participation.
- Letters Patent(s) will need to be amended (confirmed as part of legislative review).

2. Voting Structure and Representation

- Provincial staff to clarify referendum requirements for WFN joining RDCO, including implications on voting structure and representation for non-Members. The Province currently has no set referendum guidelines and must consider representation for non-Member residents (beyond WFN Advisory Council) and potential endorsement from both member and non-Member representatives.
- Assess implications of voting rights for non-Members on WFN Lands; review Electoral Area West Director vote distribution and potential for one, likely two WFN votes when WFN formally joins the RDCO Board; requires further review by provincial policy team.
- Provincial staff to clarify if electoral assent is required to change boundaries of electoral area (removing IR#9 and IR#10); including implications on voting structure and representation for non-Members.
- Minister to determine voting units (currently 1.98 votes for IR#9 and IR#10) based on census data.
- When WFN gains a voting seat at the RDCO Board, how does voting unit apply for non-WFN electors on WFN Lands (currently voting for EA West Director but ineligible to vote for WFN C&C). Need to clarify whether WFN Advisory Council sufficient representation for non-members, and how many Directors WFN would have on the regional board based on the current RDCO voting entitlement (1 per 5,500); 2026 census data will confirm eligibility. Provincial input is required.

3. Service Participation

- Provide direction on shared liability framework for RDCO services.

4. Financial Considerations

- Confirm expectations for transparency and reporting. The Ministry has indicated WFN will not report through the provincial portal unless its financial data is consolidated with RDCO's audited statements, which is not anticipated.
- Clarify that WFN will not assume joint and several liability for RDCO debt, nor will RDCO assume liability for WFN debt, consistent with treaty precedents.
- Confirm whether WFN's participation requires any legislative provisions regarding borrowing authority or liability limits.
- Ensure enabling legislation and regulations formalize that RDCO will continue invoicing WFN for services rather than requisitioning taxes, maintaining the current model.

5. Planning Frameworks

- Evaluate whether WFN's CCP can be recognized as an alternative to an OCP under the proposed governance model.
- Confirm whether the LGA requires WFN to incorporate an RCS within its CCP.
- Assess potential legislative and policy impacts via Heritage Conservation Transformation Project and monitor timing of related amendments that may affect OCP content
- Identify any forthcoming legislative changes to planning processes that could impact coordination under the proposed governance model.

For more details, please refer to [Appendix I – Provincial Considerations and Legislative Pathways](#).

This report represents a significant milestone in advancing inclusive regional governance in British Columbia. It reflects a collaborative effort between the RDCO and WFN to design a governance model that is principled, practical, and aligned with the Province's commitments under the DRIPA Action Plan.

WFN is a recognized Self-Governing First Nation under federal law, operating pursuant to its own *Constitution* and SGA. WFN is not a Treaty Nation; its governance framework is distinct, robust, and constitutionally protected. The proposed RDCO/WFN governance model respects this status while enabling full participation in regional decision-making through legislative and regulatory amendments tailored to WFN's unique legal context.

The proposals set out herein, including amendments to the *Local Government Act*, enabling regulations, and complementary WFN law, are essential to operationalize this model. These changes will establish a precedent for inclusive governance that other non-treaty First Nations may follow, supporting the Province's reconciliation objectives and strengthening regional collaboration.

The RDCO and WFN urge the Province to act decisively to provide the necessary legislative authority and policy direction. By doing so, British Columbia will demonstrate leadership in reconciliation, foster equitable governance, and create a framework that ensures all voices are represented in shaping the future of the Central Okanagan.

These changes will establish a precedent for Inclusive Regional Governance that other non-treaty First Nations may follow, advancing reconciliation and strengthening regional collaboration.

Appendices

A

RDCO/WFN Inclusive Regional Governance Initiative - Discussion Paper (January 9, 2024)

B

RDCO/WFN Inclusive Regional Governance Initiative - Workshop Summary Report (March 13, 2024)

C

Intergovernmental Working Group - Terms of Reference

D

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Inclusive Governance Roadmap - Timeline and Task Overview

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About the Appendices

This companion document provides supporting materials referenced throughout the Inclusive Regional Governance Final Report. It includes legislative context, planning frameworks, governance distinctions, and technical references that inform the recommendations and findings. The appendices offer additional clarity on the roles of First Nations and local governments in regional planning, with a focus on the evolving relationship between Westbank First Nation and the Regional District of Central Okanagan.

Looking Ahead

As Inclusive Regional Governance continues to evolve, the materials in this document highlight key considerations, including the potential implications of legislative amendments to the Local Government Act. If Westbank First Nation joins the RDCO Board as a voting member, considerations must be given to ensure alignment with local government processes while maintaining WFN's inherent self-governing rights.



APPENDIX A

RDCO/WFN Inclusive Regional
Governance Initiative – Discussion Paper
(January 9, 2024)



RDCO/WFN
INCLUSIVE REGIONAL
GOVERNANCE INITIATIVE
DISCUSSION PAPER

January 9, 2024

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Appendix A – Treaties & Self-Government Agreements: comparing regional district participation

Appendix B – Comparison of Powers and Authorities – WFN and the RDCO

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 Plan¹ 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;

¹WFN Comprehensive Community Plan (CCP), 2022. <https://www.wfn.ca/our-community/community-planning-projects/comprehensive-community-plan.htm>

²RDCO’s Regional Board Strategic Priorities 2023-2026, https://issuu.com/regionaldistrictcentralokanagan/docs/2023_strategic_priorities_final_august_4_2023

³WFN Comprehensive Community Plan (CCP), 2022. Chief Bitterroot, Goal 4, Actions/Strategies 19, p 81

⁴WFN Comprehensive Community Plan (CCP), 2022. Chief Black Bear, Goal 2, Action/Strategies 10, p 105

⁵WFN Comprehensive Community Plan (CCP), 2022. Chief Black Bear, Goal 2, Action/Strategies 13, p 107

⁶RDCO’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

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.

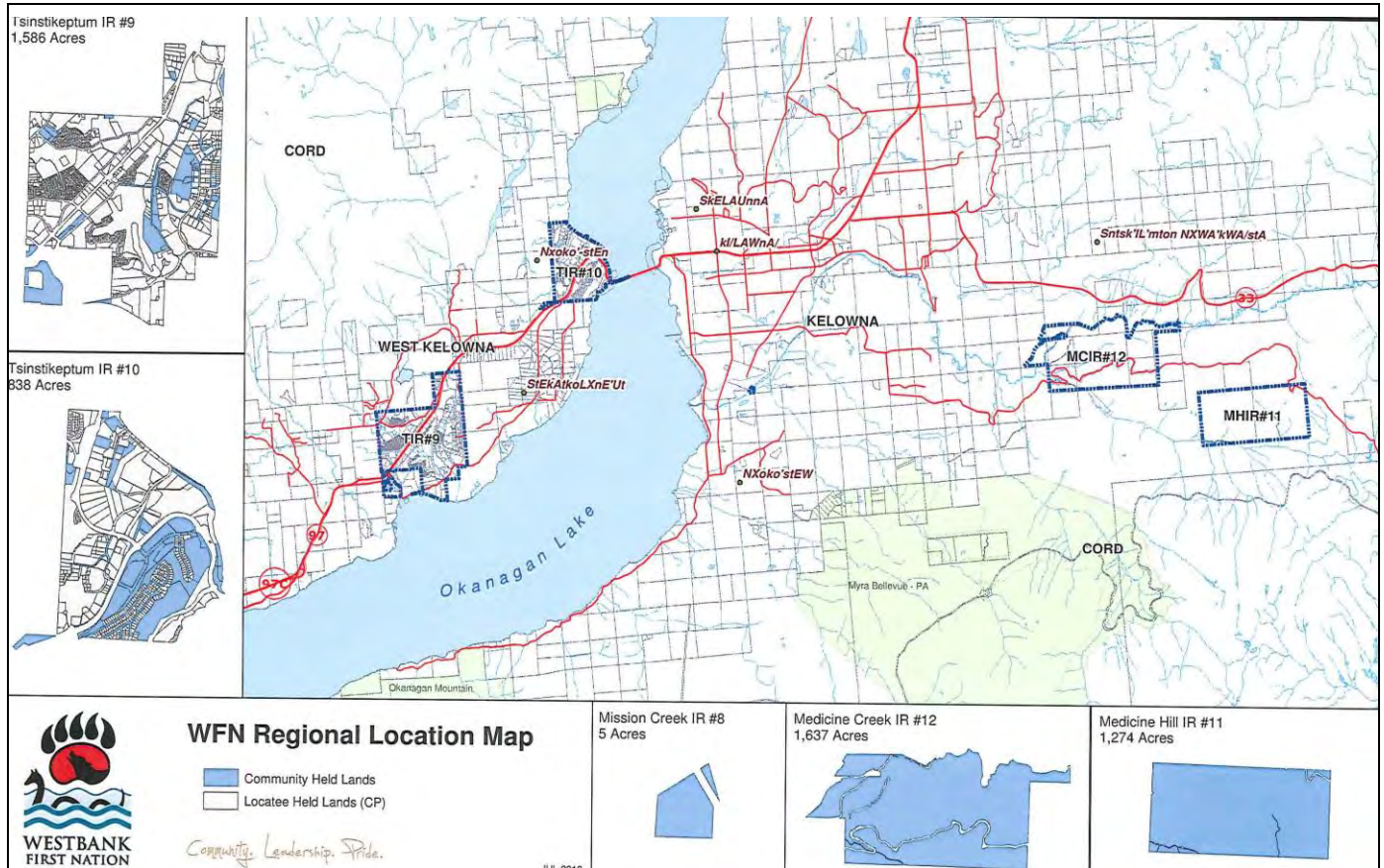
process will result in strengthened regional governance, and foster an even more strengthened relationship between WFN and the RDCO.

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 Canada⁹, 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.

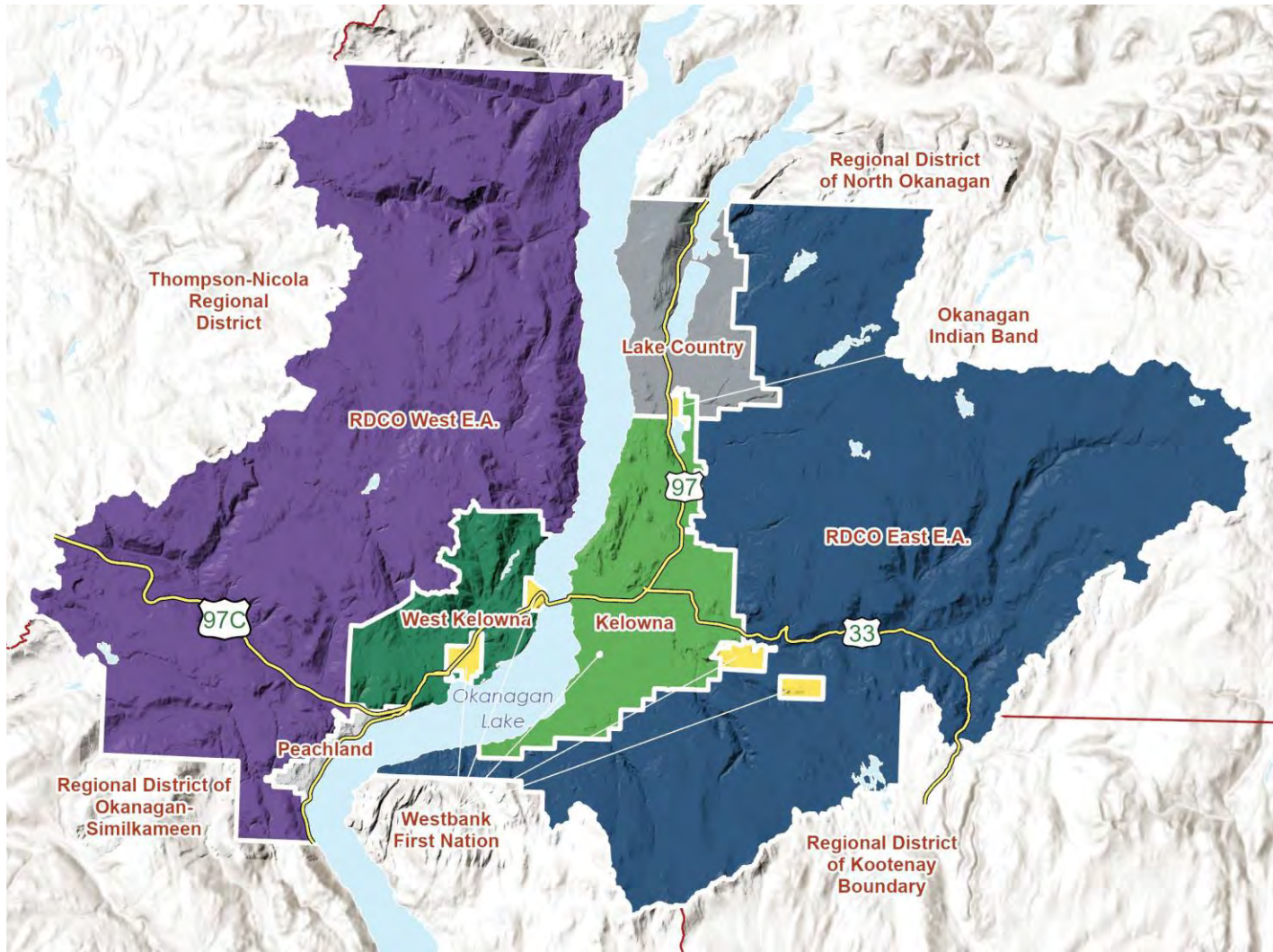
Through its administration, WFN provides a number of community programs and services including a daycare and pre-school services at the Westbank Child Development Centre and a kindergarten to grade six elementary school at the Sensisyusten House of Learning. WFN also provides social services, including 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 Canada¹⁴ 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:

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

“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 does²¹ 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

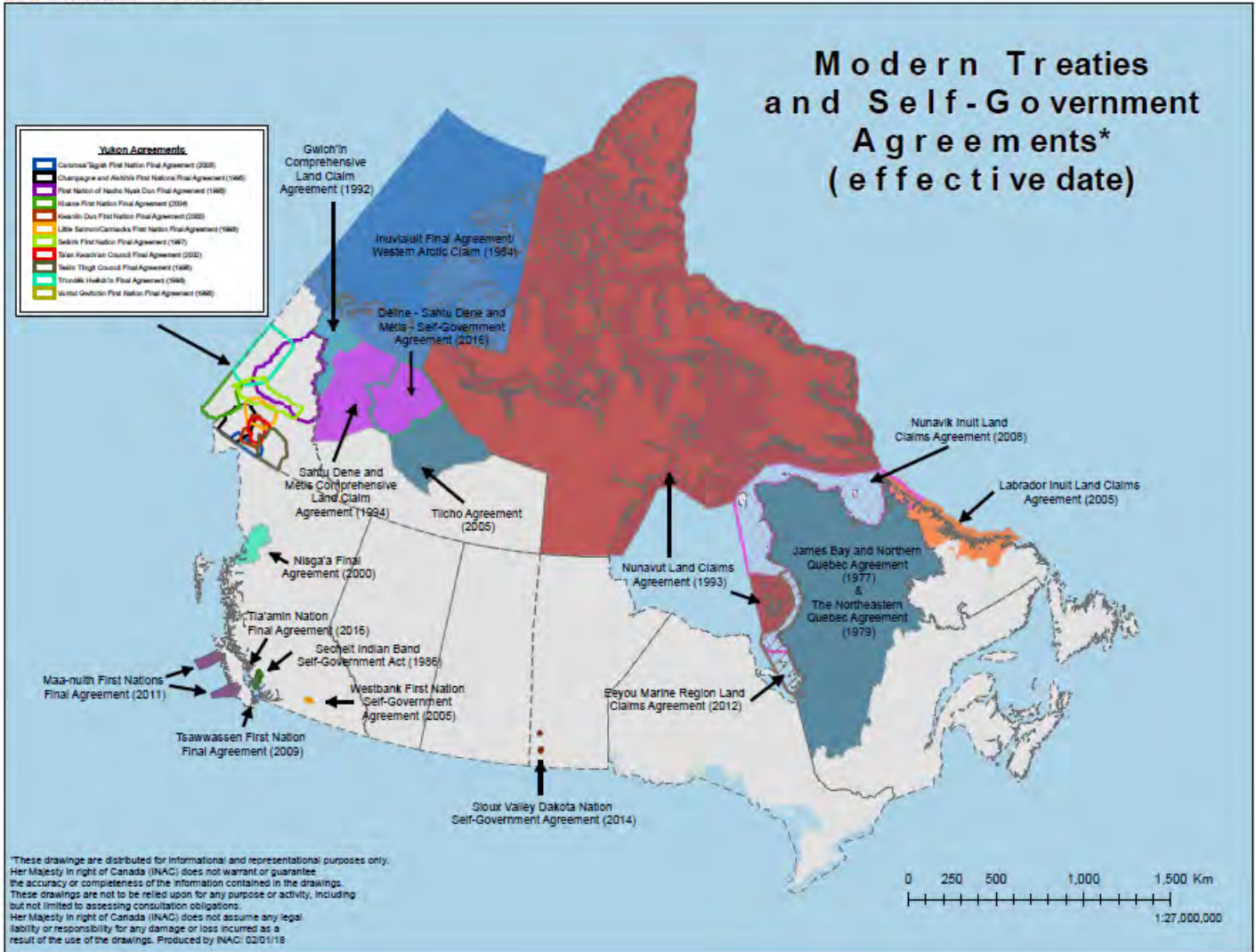
²² *Tsilhqot’in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256

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 SCRД 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 SCRД include issuing building permits on shíshálh lands.

The shíshálh federal legislation was amended in 2022²⁸ 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 unextinguished 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 Yuuʔuʔitʔath) 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.

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 is 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 shíshááh, 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.

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 ($12,500 \div 2,500 = 5$).

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 km², 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.

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.rdc0.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 CivilInfo 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.

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 Control⁶² 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.

⁶¹Memorandum 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 Agreement⁶³

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 undoubtedly 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 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 “shísháhlh” 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 shísháhlh 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 shísháhlh for 37 years and is working in practice.
- WFN and shísháhlh 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	<p>Comprehensive self-government agreement</p> <p>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</p> <p>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</p> <p>1994: entered the BC Treaty process; reached stage 4, but no longer negotiating and left process in 1999.</p> <p>2016: shíshálh – BC Reconciliation Agreement and Government to Government Agreement</p>	<p>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</p>	<p>-full member of the SCRCD - appoints a Council member to the SCRCD Board with voting rights</p> <p>-purchase services - fire protection, road maintenance, sewer collection and disposal, garbage collection and recycling services</p> <p>*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</p>

First Nation	Key Agreements and Governance elements	Location and Regional District	Regional District Interaction
	<p>2018: shíshálh - BC Foundation Agreement to support a long-term relationship and implementation of shíshálh’s Aboriginal Rights and Title in shíshálh swiya</p> <p>2022: shíshálh Nation Self Government Act significantly amended in the 44th Parliament by Bill S-10 in 2022</p> <p><i>*specific section in the SGA that created the SNGD</i></p>		
Westbank	<p>Self-Government Agreement - Inherent Right policy – Bilateral with Canada.</p> <p>2005: Westbank First Nation Self-Government Agreement comes into effect</p> <p>-enables agreements & relationships with regional & local gov’t</p> <p>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</p>	<p>South central BC; Kelowna</p> <p>Regional District: Regional District of Central Okanagan (RDCO)</p> <p>-2 unincorporated electoral areas + 2 municipalities + 2 district municipalities + Westbank FN</p>	<p>-non-voting member of the RD Board, and by invitation, attends closed / in camera settings</p>

First Nation	Key Agreements and Governance elements	Location and Regional District	Regional District Interaction
	<p>agreement.</p> <p>2023 - Recognition of Rights and Self-Determination (RIRSD) Table with Canada.</p> <p><i>*no specific reference to joining the RD; references to agreements with local and regional governments only</i></p>		
Nisga'a	<p>Modern Treaty - outside of BC Treaty process</p> <p>2000: Nisga'a Final Agreement comes into effect</p> <p>-ch. 18: specifies that the Nisga'a Lands are part of Electoral District A in the Regional District Kitimat-Stikine</p> <p>-sets out power to enter in agreements with the RD for services, planning, health services, and infrastructure</p> <p>-also provides for meetings between the Nisga'a Lisims Government and the RD at the request of either</p> <p><i>*inclusion or folding into electoral district A as opposed to having a separate seat as per BC policy</i></p>	<p>Along the Nass River, north of Terrace</p> <p>Regional District: Kitimat-Stikine</p> <p>-6 electoral areas + 5 municipalities</p> <p>-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)</p>	<p>-part of electoral district A - no separate voting even though as a treaty nation, Nisga'a could have a seat with voting.</p>

First Nation	Key Agreements and Governance elements	Location and Regional District	Regional District Interaction
Tsawwassen First Nation	<p>Post 2000 Modern Treaty - BC Treaty process</p> <p>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</p> <p><i>*specific intergovernmental section and effective date in becoming a member of the GVRD</i></p>	<p>South of Vancouver, near US border</p> <p>Regional District: Metro Vancouver Regional District (MVRD) -21 municipalities + 1 electoral area + 1 Treaty FN</p>	<p>-full member of the Metro Vancouver Regional District</p> <p>--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</p>
<p>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 -Yuutu?if?ath (Ucluelet First Nation)</p>	<p>Post 2000 Modern Treaty - BC Treaty process</p> <p>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</p>	<p>West central Vancouver Island</p> <p>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</p> <p>Strathcona Regional District - Ka:'yu:'k't'h'/Che:k'tles7et'h' First Nations</p>	<p>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</p> <p>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</p>

First Nation	Key Agreements and Governance elements	Location and Regional District	Regional District Interaction
	<p>basis during the transition period</p> <ul style="list-style-type: none"> -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 <p><i>*10 yr. time period to formally become a member of the RD</i></p>	<p>-4 electoral areas + 5 municipalities + 1 treaty FN</p>	<p>local government</p>
<p>Tla'amin Nation</p>	<p>Post 2000 Modern Treaty - BC Treaty process</p> <p>2016: Tla'amin Final Agreement comes into effect</p> <ul style="list-style-type: none"> -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 <p><i>*joining the RD is at the option of the Tla'amin and is open-ended</i></p>	<p>North of Powell River along the Sunshine Coast</p> <p>Regional District: qathet Regional District</p> <ul style="list-style-type: none"> -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 	<p>-not a member of the RD, but multiple collaborative agreements and protocols that date back to 2003 with the municipality</p>

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

Powers & Authorities	WFN	RDCO
Purpose	<p>Preamble & Part II, Westbank Self-Government Agreement (Westbank SGA)</p> <p>Recognition of WFN’s Inherent right to self-government recognized in s. 35, Constitution</p> <p>Implement aspects of WFN's inherent right through setting out arrangements in a number of jurisdictions (preamble and s.1)</p> <p>Provide good governance for all persons on Westbank Lands (preamble)</p> <p>Ability to enter agreements and relations with local governments</p>	<p>Part 5: Regional Districts: Purposes, principles and interpretation ss. 185-192, Local Government Act</p> <p>RD is an independent, responsible and accountable order government</p> <p>Purpose is to:</p> <ul style="list-style-type: none"> -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	<p>Part VI: Westbank SGA</p> <p>WFN to have a Constitution (s.42) which includes elections, internal financial management, conflict of interest, procedures for law making (s.43)</p> <p>WFN may delegate its jurisdiction (s.49)</p>	<p>Part 5: Regional Districts: Purposes, principles and interpretation</p> <p>Divisions 3-5 set out the composition of the Board and how the Board operates</p> <p>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</p>
Legal Status & Capacity	<p>Part III: Westbank SGA</p> <p>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)</p>	<p>Part 6: Governance and Procedures</p> <p>Division 1, s. 193-195, Local Government Act</p> <p>RD is a corporation</p> <p>Governing body of an RD is its Board</p> <p>Board can only exercise its powers, duties and functions only within the RD’s boundaries</p> <p>Divisions 3-5 set out the composition of the Board and how the Board operates</p> <p>Division 7: Board may delegate its powers</p>

Powers & Authorities	WFN	RDCO
		and authorities to a board member or committee, an officer or employee or another body established by the Board
Powers	<p>Part IV: Westbank SGA</p> <p>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)</p>	<p>Part 8: General powers and responsibilities Division 1 – General powers – s. 263-265</p> <p>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</p>
Law-making/bylaw making	<p>SGA sets out areas for WFN to exercise law-making the following jurisdictions:</p> <ul style="list-style-type: none"> -Membership – Part VII -Wills and Estates – Part VIII -Financial Management – Part XIX -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 	<p>RD has legislated authority to enact bylaws in enumerated areas</p> <p>Part 9: Specific Service powers, Divisions 1-7</p> <p>Areas of regulation:</p> <ul style="list-style-type: none"> -building regulation -fire, health and hazard protection -drainage and sewerage -waste management -regulation of animals -noise, nuisances and disturbances <p>Exercise of powers through Part 10, Service Structure and Establishing bylaws</p> <p>Enforce bylaws through Part 12 – fines, penalties, imprisonment</p>

Powers & Authorities	WFN	RDCO
	<p>XXI -Public order, peace and safety – Part XXII -Prohibition of intoxicants -Part XXIII</p> <p>Part XVIII – Enforcement of Westbank law – procedures are similar to federal or provincial powers</p>	
Title and Interests in Lands	<p>Part X, Westbank Lands & Land Management Title and Interests; s. 87-91</p> <p>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</p>	<p>Part 8, Division 5 Property powers and Division 6 Disposal of Land</p> <p>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</p> <p>RD can dispose of land in a public process</p>
Expropriation	<p>Part X, Westbank Lands & Land Management Expropriation; s. 105</p> <p>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</p>	<p>Part 8, Division 7</p> <p>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</p>
Land Management	<p>Part X, Westbank Lands & Land Management</p> <p>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.</p>	<p>Part 14, Planning and Land Use Management</p> <p>-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</p>

Powers & Authorities	WFN	RDCO
	<p>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.</p>	<p>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</p> <p>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</p> <p>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</p>
<p>Natural Resources</p>	<p>Part XII Resource Management</p> <p>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</p> <p>Non-renewable Resources; s. 138-139 Jurisdiction for oil, oil shales, gas, gravel, clay, sand, soil, stone, peat,</p>	

Powers & Authorities	WFN	RDCO
	<p>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</p> <p>s. 140: priority to Westbank law in the event of a conflict</p>	
Economic development	<p>Not specifically referenced in the SGA</p> <p>WFN has a comprehensive community plan in accordance with its Constitution and laws WFN has its own Economic Development Strategy</p>	<p>RD is responsible for a regional growth strategy; parameters and principles are set out in Part 13, Regional Growth Strategies</p> <ul style="list-style-type: none"> -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

APPENDIX B

RDCO/WFN Inclusive Regional
Governance Initiative – Workshop
Summary Report (March 13, 2024)

RDCO/WFN INCLUSIVE REGIONAL GOVERNANCE INITIATIVE

Inclusive Governance Working Session
March 13, 2024
Summary Report



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

Thank you to the participants of the Inclusive Regional Governance Working Session held in-camera on March 13, 2024:

Name	Organization	Title/Position
Loyal Wooldridge	RDCO Board	Chair
Kevin Kraft	RDCO Board	Co-Chair
Ron Cannan	RDCO Board	Director
Wayne Carson	RDCO Board	Director
Jordan Coble	RDCO Board/WFN Council	Director/Councillor
Charlie Hodge	RDCO Board	Director
Blair Ireland	RDCO Board	Director
Stephen Johnston	RDCO Board	Director
Gord Lovegrove	RDCO Board	Director
Gord Milsom	RDCO Board	Director
Mohini Singh	RDCO Board	Director
Keith Thom	RDCO Board	Alternate Director
Sally Ginter	RDCO Staff	CAO
Lisa Pastro	RDCO Staff	Indigenous Advisor
Karen Needham	RDCO Staff	Corporate Officer
Jodie Foster	RDCO Staff	Director Communications and IS
Robert Louie	WFN Council	Chief
Angie Derrickson	WFN Council	Councillor
Andrea Alexander	WFN Council	Councillor
Sara Tronson	WFN Council	Councillor
Julia Buck	WFN Staff	Legal Counsel / Acting Director of Operations
Jolene Esau	WFN Staff	Council Secretariat
Joe Mocilac	WFN Staff	Director of Planning and Development
Mandi Carroll	WFN Staff	Director, Communications & Economic Development
Valerie Dougens	WFN Staff	Co-Acting Director of Finance
Wendy Emery	WFN Staff	Co-Acting Director of Finance
Adrian Petraroia	WFN Staff	Intergovernmental Affairs
Jessica Libio	WFN Staff	Executive Assistant to Council
Allan Neilson	Neilson Strategies Inc	Principal
Tim Raybould	JWR Business Group	Principal
Lea Mackenzie	JWR Business Group	CEO & Principal
Diana Kwan	JWR Business Group	Associate

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Appendix B – Potential Decision-Making and Reporting Criteria

1. BACKGROUND

1.1. *Declaration on the Rights of Indigenous Peoples Act Action Plan 2022-2027*

The *Declaration on the Rights of Indigenous Peoples Act (DRIPA) Action Plan 2022-2027*¹ provides a province-wide, whole-of-government approach to achieve the objectives of the *United Nations Declaration on the Rights of Indigenous Peoples* (the “*UN Declaration*”) over time. Theme 1, which is focused on self-determination and the inherent right of self-government, foresees the following outcomes:

“A British Columbia where:

- Indigenous Peoples are fully supported in their work of freely determining and implementing their systems and institutions of government, through their internal processes of nation-rebuilding.
- Through their governments, Indigenous Peoples are recognized and engaged through formalized and predictable relationships with the Province and exercise their jurisdictions and laws.
- Indigenous Peoples exercise self-determination and self-government.
- Through their governments, Indigenous Peoples have open, respectful and productive working relationships with the Province that recognize legal pluralism and reflect cooperative federalism.
- Indigenous Peoples have the necessary legal space to strengthen the application of their Indigenous laws and legal orders in various areas not adequately addressed through the Canadian legal system.
- The overall emergency management structure and regime in B.C. is revised, in collaboration with the government of Canada and Indigenous Peoples, to enhance Indigenous Peoples’ emergency management outcomes through a strong tripartite approach.”

Accordingly, one of the actions which is to be taken by the Province of B.C. in consultation and cooperation with Indigenous Peoples, addresses the issue of inclusive regional Governance:

“Action 1.11 Support inclusive regional governance by advancing First Nations participation in regional district boards. (Ministry of Municipal Affairs).”

Canada has also passed legislation to implement the *UN Declaration* and to ensure the laws and policies of Canada are consistent with it. Further, the Supreme Court of Canada has recently found that the *UN Declaration* has significant implications for the interpretation and application of Canadian law and policy.

¹ https://www2.gov.bc.ca/assets/gov/government/ministries-organizations/ministries/indigenous-relations-reconciliation/declaration_act_action_plan.pdf

In February 2024, the Supreme Court of Canada underscored the importance of the *UN Declaration* as the framework for reconciliation in Canada between the Crown and Indigenous nations. In *Reference re An Act respecting First Nations, Inuit and Métis children, youth and families* (2024 SCC 5), which addressed recognition of the right of Indigenous peoples to govern child and family services, the Court noted that the *UN Declaration* has significant legal impact for the necessary work, as described in the decision as the “continuous transformation of relationships and a braiding together of distinct legal traditions and sources of power that exist.”

The *UN Declaration*, associated government workplans and rights recognition legislation, along with supporting decisions of the court are now beginning to lay a solid foundation for the work toward reconciliation. It further strengthens the need to review regional governance using a recognition of rights and reconciliation lens.

1.2. RDCO/WFN Inclusive Regional Governance Initiative

The RDCO and 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 Plan² and in the RDCO’s Regional Board Strategic Priorities 2023-2026.³

In recognition of the shared vision for more inclusive regional governance in the Central Okanagan, the JWR Business Group (“JWR Group”) was contracted by the RDCO to prepare a discussion paper. This work was funded through a grant provided by the Ministry of Municipal Affairs in March 2023.

The [Discussion Paper](#) was presented to the RDCO Board and WFN Chief and Council in January 2024, and provides some background on Indigenous and regional governance generally, and more specifically in respect of WFN and the RDCO.

Further, it considers some of 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 several key considerations for the RDCO and WFN and finally provides some ideas regarding potential models of inclusive governance. The models presented were intended to provide a starting point for ongoing discussions and were not meant to be exhaustive. Variations or combinations of models could be contemplated, as well as innovative ideas outside of the models presented.

The RDCO and WFN participated in a workshop to further discuss the ideas raised in the Discussion Paper. This summary should be read in the context of the Discussion Paper.

²WFN Comprehensive Community Plan (CCP), 2022. <https://www.wfn.ca/our-community/community-planning-projects/comprehensive-community-plan.htm>

³RDCO’s Regional Board Strategic Priorities 2023-2026, https://issuu.com/regionaldistrictcentralokanagan/docs/2023_strategic_priorities_final_august_4_2023

2. COMMITTEE OF THE WHOLE WORKING SESSION

In March 2024, the Ministry of Municipal Affairs again provided funding to support the RDCO/WFN Inclusive Regional Governance Initiative. Through this funding the RDCO hired JWR Group to facilitate a working session and subsequently write an outcome report following the session.

2.1. Session Details

The working session was held in-camera on March 13, 2024 at the Elders' Hall on Tsinstikeptum IR#9. At the start of the meeting, the history of the hall and its significance to the community was described.

The Elders' Hall is an important communal space for WFN. It is where the community gathers for celebrations, funerals, and important political meetings. In addition, the Hall is associated with WFN's first school and holds a special place in community, weaving a connection between those who have passed, those who are here, and those who are yet to come. For the first meeting of the inclusive governance initiative between the RDCO and WFN, meeting in the Elders' Hall appropriately marks the evolution of the relationship and the commitment to explore working through a more innovative lens and structure of governance.

The working session included the RDCO Board, WFN Chief and Council, as well as senior leaders from both governments, and consultants specializing in *DRIPA* and the *Local Government Act*. The meeting was facilitated by JWR Group, with support provided by Neilson Strategies Inc., working in collaboration with Urban Systems Ltd.. A full list of the attendees can be found on page 2 of this Report.

The objective of the meeting was to discuss the potential models and next steps, including key considerations such as decision-making criteria, communications, consultation, and approvals required. The objective of the RDCO and WFN with respect to inclusive governance is supported by the BC government's commitment to implementing the *UN Declaration* through the *DRIPA* Action Plan and specifically Action item 1.11.

With a goal of strengthening good governance, the RDCO & WFN leadership teams ("Leadership") discussed joint planning and collaboration, models of joint governance, and considerations moving forward.

2.2. Theme 1: Joint Planning and Collaboration

The Leadership discussed the mechanisms that could be used to move the work forward. Options included establishing a working group, a protocol agreement, and a community agreement.

Establishment of the Inclusive Governance Working Group

The Leadership agreed that a working group would be initiated and would operate with a set of shared priorities in order to focus their efforts. A key advantage of a working group is its ability to generate momentum and efficiently move issues forward, supported by specialists as needed.

Concerns Related to a Working Group

The Leadership discussed the potential challenges of a working group. Without focus, the working group could be less efficient, and it was agreed that the Leadership will provide clear direction to the working group.

While not within control of the working group, the Leadership felt it should consider political timing. The term of each RDCO Board representative is four years, with the next local government elections in 2026. As well, the provincial election in 2024 and the WFN election in 2025 needed to be considered.

To fulfil its mandate, the working group will need to be appropriately resourced and supported from both the RDCO and WFN. In addition to the specific work required, skills and competencies will need to be identified, and appropriate members chosen to ensure the working group is adequately knowledgeable to carry out the duties appropriately.

Composition of the Working Group

The Leadership discussed the composition of the working group. It was agreed that a blend of political leaders and staff would be ideal. It was suggested that the working group should include the Chief of WFN and the Chair of the Board of the RDCO, however, the Chief noted that he would defer to the WFN representative on the RDCO Board. It was proposed that the maximum members of the working group should be eight (four elected officials and four staff) with the objective to achieve consensus in decision-making. (See Section 3.1 and Appendices A & B of this report with recommendations regarding the working group composition and operations).

Working Group Operation

The Leadership noted that WFN and the RDCO have a history of joint initiatives and that the best practices from past initiatives should be identified and adapted for the purposes of the working group. To be effective, the Leadership agreed that the working group needs to be empowered by the joint leadership.

The Leadership agreed that the working group would be governed by terms of reference. The terms of reference could build on past joint work, or similar terms of reference from WFN or the RDCO. As well, the working group will need to identify action items and goals, with clear

timelines. The working group will then develop plans with steps to complete the work. At a minimum, the working group will report quarterly to the elected officials, with the potential for monthly reporting.

Initial action items for the working group include developing terms of reference, goals, roles, and timelines.

2.3. Theme 2: Potential Models

In this part of the meeting, the Leadership specifically discussed potential models for inclusive governance and the necessary mechanisms to achieve it. The Discussion Paper set out five models. These are summarized below. It was noted that these models represent potential models and elements from any of the models could be combined or blended in multiple ways to suit the needs of the RDCO and WFN or new ideas incorporated. For a more fulsome description see the RDCO/WFN Inclusive Regional Governance Discussion Paper.

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.

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 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. The RDCO may need to change its bylaws as did the Capital Regional District (“CRD”). There may be a desire or need to make amendments to the *Local Government Act* as has been recommended by the CRD.

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. Self-Governing Indigenous Governments (SGIGs) 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*.

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*. This 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).

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. A separate and distinct WFN (local) Government District would be established 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.

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, etcetera. 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.

Preferred Models

The Leadership agreed that models 1, 2 and 3 did not need to be discussed in any detail. The preference is for model 4 or 5, or a new model with elements of each. Accordingly, the discussion focused on models 4 and 5.

Contextual Aspects

It was noted that models 1-4, being largely based on existing models, reflect the context and policy direction of the time and place in which they were developed. For example, model 4 was developed in order to enable a First Nation with a self-government arrangement similar to shíshálh to participate in the regional district as though it was a municipality. This model required a number of legislative tools to be used. Model 3 was designed to support modern treaty First Nations participation within regional governance for certain purposes and reflects the uniqueness of the BC treaty model. The mechanisms for participation were mostly built into the treaty.

The current context's evolution is driven by the *UN Declaration*, the reality of self-government and other constructive arrangements outside of modern treaty, as well as the need for BC to potentially consider delegating more powers to a regional district so that a district is able to exercise more autonomy over matters within its jurisdiction. At the same time, while there are different existing models and new models for inclusive governance developing, there is an acknowledgement that regional governance models should be reasonably consistent.

The Leadership agreed that because model 5 is new and more flexible it could be used as a base and modified through the ongoing work of the initiative, in order to best meet the needs of both the RDCO and WFN.

Limitations of Existing Models

It was noted that the existing examples of First Nation participation on regional boards do not fully consider what, in theory, Indigenous governance could bring to regional governance. For example, model 4 created an Indian district to be recognized as a municipal district but did not provide for the sharing of powers an Indigenous government has within the regional district structure. In this way, the existing models do not fully contemplate a mutual exchange and overall strengthening of regional governance. Additional information related to Indigenous governance is set out in the [Discussion Paper](#).

Potential Best Practices

While model 4 does not meet all the needs of the RDCO and WFN, it does offer insights into how an Indigenous government is currently working with a regional district. shíshálh has worked with the Sunshine Coast Regional District for nearly four decades as a full member of the regional board with voting rights. Some considerations that could be explored include identifying the services that the First Nation participates in and votes on, and how the voting works. Best practices from model 4 could also be identified and potentially adopted.

Opportunities with Model 5

While new, the Leadership agreed that model 5 would be more respectful of a new partnership. At the same time, model 5 could be customized to the needs of WFN and the RDCO, offering more flexibility. This approach would not require WFN to fit into or seek a particular type or agreement in order to be part of the Regional District. Instead, there is an opportunity to bring Indigenous governance into the federative model of regional governance. This will be an important conversation in the discussions of the working group.

Direct Quotes from the Working Session Regarding Models

“I don’t see us working towards getting one party or the other to fit in the system – I see us as coming together in a collaborative fashion and that means building a whole new model because it begins with a whole new understanding, collaboration, and respect.”

“If you are building a foundation for a house, the foundation has to be solid, you don’t want to put in a patch for the foundation because it will eventually collapse. Model 5 is about building it right and not a patch.”

2.3 Theme 3: Key Considerations & Related Matters

Following the discussion on models, the group focussed its attention on some of the key considerations and related matters moving forward with the initiative. The Leadership discussed several issues that will need to be examined in more depth as work to bring together the two governments moves forward.

Scope of Decision-Making

It was acknowledged that while the two governance systems have common interests, the regional district governance system and the First Nations governance system are distinct. (Please note that the comparison of RDCO and WFN powers and authorities are set out in Appendix B of the January 2024 [Discussion Paper](#)). Regional districts are a creature of the Province, with delegated authority and specific legal powers and responsibilities. First Nations governance is based on inherent authorities that are being recognized and implemented. There are geographical considerations with respect to the scope of decision-making powers for both systems. Ensuring an inclusive governance system requires both governments to understand what the differences are, and with that, the extent to which either system may need to change in order to accommodate more inclusive decision-making, and over what matters.

As a first step, it was suggested that the full range of governance decisions that the RDCO makes should be discussed at the working group and then recommendations can be made to WFN and the RDCO about which decisions could be made jointly. For example, what should be the extent of joint decision-making related to regional planning and through the regional growth strategy? Should land use planning and development be part of joint decision-making?

It was discussed that it may be helpful to develop a chart of decisions that the Regional District makes and a chart of decisions that the WFN makes in order to understand better the scope of each governments decision-making powers and where, to the extent desired, decision-making can be aligned and therefore integrated.

Service Participation

Currently, WFN purchases services from the RDCO under a local service agreement. It was noted that should WFN become a full member of the RDCO, a number of questions related to the existing service arrangements arise. Aside from a few services that are mandatory, members of regional districts can choose the regional district services in which the members wish to participate — that is, choose which regional district services to receive. Members participate in decision-making for the services they receive, participate in paying for the services, and share liability for the services. In the new model, one consideration is how will the existing services that WFN purchases be addressed. Some questions that the working group will need to consider is would the WFN become a full participant in the service, participating alongside other member jurisdictions in service governance, service funding and service liability? Would WFN, similar to all RDCO members, participate in the few mandatory services (in addition to others that WFN may choose to receive), including general government and solid waste management Planning?

In addition, members of a regional district can exit from a service, and with exiting from a service, a member can rescind the authority it lends to a regional district. Some services, like general governance and regional parks cannot be exited. Given how these terms would impact WFN, it was recognized that the initiative will need to identify the services that would be automatic for WFN and the services that would be optional and related responsibilities and liabilities.

Voting Structure and Strength

In model 5 as contemplated, the appointed WFN representative from council would represent all persons living on Westbank Lands (i.e., both WFN members and non-WFN members). It was discussed how this would impact weighted votes as every representative has a specific number of votes based on the population represented. WFN would be representing approximately 12,000 people. Based on the current formula, this means that WFN's representative at the RDCO Board would automatically have three votes at the regional board table.

Non-Member Representation on WFN lands

It was also discussed that while today IR#9 and IR#10 are a part of Electoral Area West, the 12,000 residents are not currently represented, even though they vote for the director. The new model would address this issue and would increase the responsibilities as well as the voting strength of the WFN representative for IR#9 and IR#10. However, the question of the residents not voting for their representative – the person being appointed from the WFN

Council – was also raised as a consideration. It was agreed that the working group should consider this issue.

Financial Considerations

It was noted that because services are cost-shared within the District, an area with a greater population will have increased costs. Currently, the cost for the services WFN purchases from the RDCO is calculated using assessed land values in the same manner as is done for members. It was suggested that with greater representation and participation, WFN's cost sharing for some services may change and that the financial impacts of participation will need to be examined.

Another financial consideration relates to borrowing capital funds. A regional district raises capital through 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. It is not expected that WFN would share in the financial and legal liability for all the district's debt or that the RDCO would share liability with respect to WFN's long term debt for capital purposes. It was also noted that there is a national First Nations Finance Authority that provides similar services to First Nations that the MFA provides to local government in BC. The question of liability for debt will need to be examined carefully in developing model 5.

Engaging with the Province

As the Leadership is planning to move forward with a unique model of regional governance, the group discussed how the Ministry of Municipal Affairs can be more deeply engaged. Although the Ministry is aware of the work the RDCO and WFN have undertaken and is receiving regular updates, the Leadership considered inviting a provincial official to participate on the working G-group.

The Leadership is also mindful of the likely legislative changes required to implement more inclusive regional governance, and consequently the need to work with the province at an early stage.

WFN's Powers, Authorities and Traditional Territory

It was discussed how given regional districts borrow authorities from its members, RDCO could potentially gain more authorities as WFN becomes a full member. At the same time, the Leadership agreed that any impacts on WFN will need to be understood. These will be important considerations for discussion by the working group.

It was noted that WFN has a long history of governance and decision-making. With a self-government agreement in place since 2005, its authorities include both federal and provincial powers, making WFN quite distinct from a regional district. While these recognized powers are for the most part restricted to being exercised on Westbank Lands (reserves), WFN has a broader governance role within its traditional territory. It was also noted that WFN's traditional territory extends well beyond the RDCO's boundaries. Accordingly, WFN's geographical scope of responsibility as an Indigenous government is greater than the RDCO and takes in several regional districts.

Central Okanagan Regional Hospital District

As a related matter, it was noted how hospital districts are tied to regional governance and currently ratepayers on Westbank Lands do not participate or pay into the Central Okanagan Regional Hospital District ("Hospital District"). It was noted that WFN and West Kelowna are growing rapidly and there is an opportunity through this initiative to ensure that the Hospital District is appropriately supported. With increasing pressure on health care systems and hospitals, and increasing responsibility on regional districts, ensuring that the hospital district is able to meet needs was raised as a critical consideration.

It was also noted that there is a province-wide First Nations Health Authority that has a relationship with both the Hospital District and WFN. Accordingly, at the same time as consideration may be given to possible WFN participation in the Hospital District as part of more inclusive regional governance, the role of the First Nation's Health Authority will need to be taken into consideration, including ensuring that WFN members have access to Indigenous services.

Emergency Management

As a further related matter, it was raised that BC recently passed legislation with respect to emergency and disaster management. Bill 31 was co-developed with First Nations as part of the commitment to the *UN Declaration* and *DRIPA*. The new legislation recognizes climate change, the increase in emergencies, and the need for greater inclusion of First Nations in emergency planning and management. Specifically, the new legislation envisions a leadership role for Indigenous nations.

It was suggested that given the RDCO and WFN share a large territory, emergency management that complies with the new legislation is an area that should be considered for joint decision-making and a matter to be discussed further. This will build on the RDCO and WFN's existing relationship and roles within the Regional Emergency Management Program.

“Let’s aim for excellence, not perfection. As we work through some very complex issues, I want us to learn from Westbank First Nation’s consensus-based decision-making. We should build on each other’s strengths – like climate stewardship – we can learn so much from traditional values. I see so many gifts and strengths that Westbank First Nation has that we colonial communities can learn from and benefit from.”

3. CONCLUSION

3.1. Summary & Recommendations

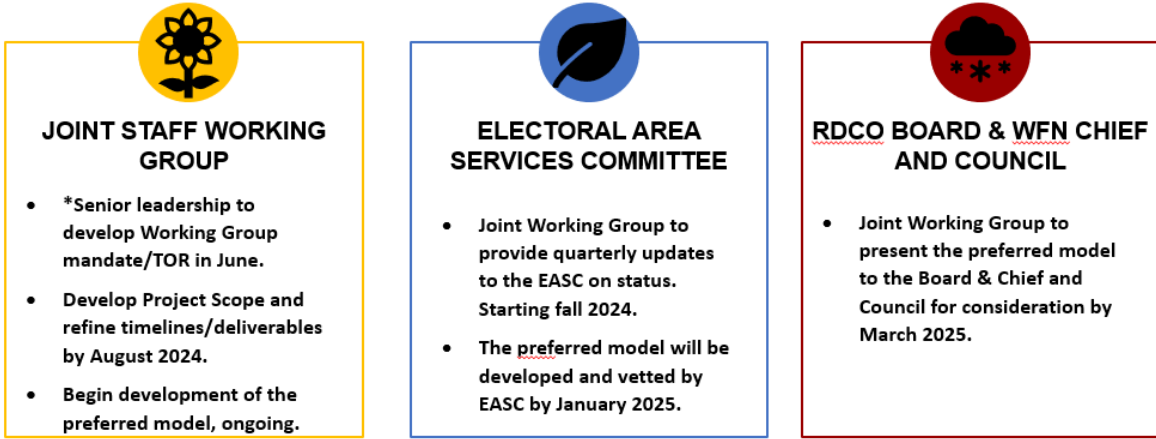
A key outcome of the session was an agreement to establish a working group to move the initiative forward. Some consideration was given to having a working group which would include a blend of political leaders and staff.

It is recommended that the Committee of the Whole meet again to discuss possible options related to the governance of the working group. Deciding on the governance of the working group is an important initial step to ensure that the project is grounded as a joint endeavour. The composition and reporting structure of the working group would need to be agreed to by Westbank Chief and Council as well as the RDCO Board.

At a minimum, the working group will need to develop its mandate, project scope, timelines and deliverables to March 31, 2025.

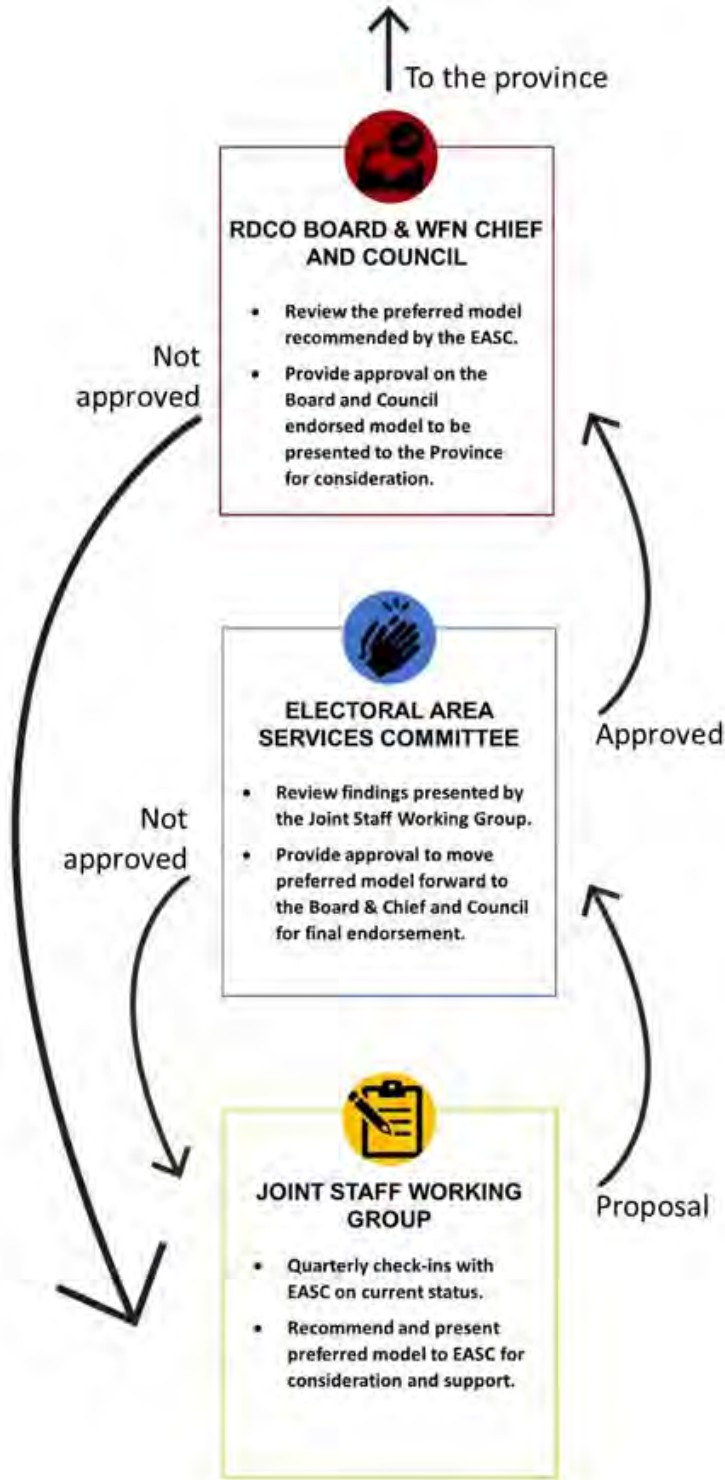
Following the working session and discussions with the consultant, RDCO and WFN staff, the attached appendices with recommended structures, scope, timelines, and deliverables were developed for consideration. It is suggested that the working group, comprised of senior staff recommended by the RDCO Chief Administrative Officer and WFN Director of Operations, be formed. This approach provides stability as the work to be completed, based on a terms of reference to be developed by the RDCO Board and WFN Council, will be highly technical in nature and will take significant time and effort to complete. The working group would report on a quarterly basis, to the RDCO Board through the Electoral Areas Services Committee. It is likely a parallel reporting line would be required to be established to WFN Chief and Council. Each party would be responsible for appointing their own representatives to the working group.

Appendix A: Potential Timelines and Deliverables



*Senior Leadership – RDCO CAO, WFN DOO, Director of Municipal Affairs, and Consultants.

Appendix B: Potential Decision-Making & Reporting Criteria





APPENDIX C

Intergovernmental Working Group Terms of Reference



Terms of Reference
Intergovernmental Working Group
Regional District of Central Okanagan and Westbank First Nation

1. Introduction

This Terms of Reference (TOR) outlines the mandate, objectives, composition, responsibilities, and procedures for the Intergovernmental Working Group (IWG) established between the Regional District of Central Okanagan (“RDCO”) and Westbank First Nation (“WFN”). The IWG’s primary goal is to collaboratively develop a functioning inclusive governance model that ensures meaningful WFN representation on the RDCO Board of Directors through a voting seat.

2. Mandate

- The mandate of the IWG is to:
- Develop a project scope, timelines, and deliverables for the creation of an inclusive governance model;
- Collaborate to create a governance model that is acceptable to both the RDCO, WFN, and the provincial Ministry of Municipal Affairs; and
- Ensure meaningful and equitable representation of WFN on the RDCO Board of Directors.

3. Objectives

The IWG aims to:

- Foster mutual understanding, respect, and cooperation between the RDCO and WFN; Develop
- a governance model that includes a voting seat for WFN on the RDCO Board; Ensure the
- governance model aligns with the principles of inclusivity, equity, and mutual benefit; and
- Present the final governance model for approval by both governments and the provincial Ministry of Municipal Affairs.

4. Composition

The IWG shall comprise equal representation from both the RDCO and WFN. Members will include:

- The WFN Director of Operations and the RDCO Chief Administrative Officer;
- Directors of Finance from WFN and RDCO;
- RDCO Corporate Services / WFN Legal Counsel;
- Communications representatives from WFN and RDCO;
- RDCO Indigenous Advisor;
- Ministry of Municipal Affairs Senior Planning Analyst, in an *ex officio* capacity, as a liaison to the Province of British Columbia;
- Any other observers or advisors deemed necessary by the IWG.

Each party will appoint their representatives and alternates. Representatives should have decision-making authority or be able to represent their respective governments' positions.

5. Responsibilities

5.1 Responsibilities of the IWG:

- Develop a detailed project scope, timelines, and deliverables;
- Engage in regular meetings to discuss and develop the governance model;
- Facilitate community consultations and stakeholder engagement sessions, as required;
- Draft and review proposals, documents, and reports related to the governance model;
- Ensure transparent communication and information sharing between the parties; and
- Provide progress updates to the respective governments and the Ministry of Municipal Affairs.

5.2 Responsibilities of Members:

- Attend and actively participate in all IWG meetings and activities;
- Represent the interests and perspectives of their respective governments;
- Communicate IWG activities and decisions back to their respective governments; and
- Collaborate in good faith and maintain a respectful and constructive dialogue.

6. Procedures

6.1 Meetings:

- The IWG will meet no less than once per month, or as needed, with meetings scheduled in advance;
- Meetings will be co-chaired by one representative from the RDCO and one representative from WFN;
- Agendas and supporting documents will be distributed at least one week before each meeting; and
- Minutes will be recorded and circulated within one week after each meeting.

6.2 Decision-Making:

- Recommendations will be made by the IWG to the appropriate governing bodies for endorsement and implementation, pursuant to the attached Appendix A.
- Decisions on recommendations made by the IWG will be made by consensus. If consensus cannot be reached, decisions will be deferred to a later meeting for further discussion; and
- In exceptional cases where consensus cannot be reached after multiple discussions, a mutually agreed-upon mediator may be engaged to facilitate a resolution.

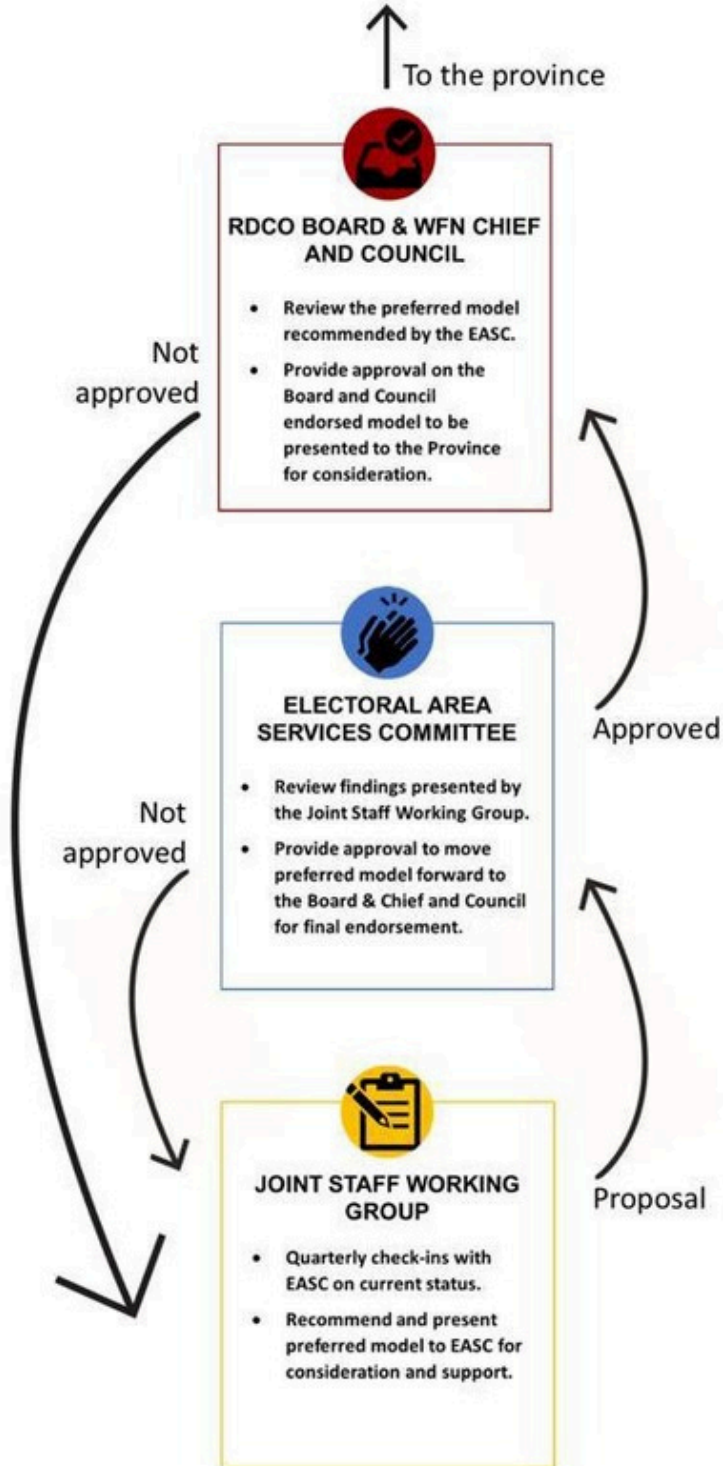
6.3 Reporting:

- The IWG will provide regular written progress reports to the RDCO, WFN, and the Ministry of Municipal Affairs; and
- A final report, including the proposed governance model, will be submitted for approval by both governments and the Ministry.



- 7. Resources and Support** The RDCO and WFN will jointly provide necessary resources and support for the IWG, including administrative support, meeting venues, and funding for external expertise or consultation if required.
- 8. Timelines** The IWG will develop a detailed timeline outlining key milestones and deadlines for the project. This timeline will be reviewed and updated as necessary to reflect progress and any adjustments needed.
- 9. Amendments** This Terms of Reference may be amended by mutual agreement of the RDCO and WFN. Any amendments will be documented in writing and signed by authorized representatives of both parties.

NOTE – the Electoral Area Services Committee endorses items for RDCO Board/WFN Chief and Council approval





APPENDIX D

List of RDCO Services Received by WFN

to Community Development
ce Educational Forum
First Nation & Regional District of Central Okanagan

all from Westbank First Nation (WFN) and the Regional District
d JWR Business Group.

ocusing on WFN's self-government and the B.C. Govern
of Indigenous Peoples Act (DRIPA) and the United Nation's
peoples (UNDRIP).

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List of RDCO Services Received by WFN

In accordance with the **2024-2027 Local Service Agreement**, the Regional District of Central Okanagan provides District Services to the Westbank First Nation Lands (IR#9 and IR#10) as outlined below.

Service	Provision Method
Geographical Information	Letters Patent and Multi-Government Agreement
Regional Rescue	Supplementary Letters Patent
911 Emergency Number	RDCO Bylaw No. 275, 290, 296
Crimestoppers	RDCO Bylaw No. 1391
Victim/Witness Assitance	RDCO Bylaw No. 661
Regional Crime Prevention	RDCO Bylaw No. 661, 888
Mosquito Control	Letters Patent and RDCO Bylaw No. 66
Dog Control	RDCO Bylaw No. 425, 733, 1017
Westside Waste Dispisal	RDCO Bylaw No. 10
Okanagan Basin Water Board	Provincial Legislation
Regional Air Quality	RDCO Bylaw No. 830
Economic Development	RDCO Bylaw No. 154
Regional Parks	Letters Patent
Westside Wastewater	RDCO Bylaw No. 320, 509 and Multi-Government Agreement

*Note - Costs for these services include administration costs.
Consideration: Regional Board Costs, Fringe Area Planning*

APPENDIX E

Mandatory Services Under Local Government Act

Guarantee of Rights & Freedoms

1. The Canadian Charter of Rights and Freedoms is the highest law in Canada. It sets out the rights and freedoms set out in it subject only to such limits prescribed by law as can be demonstrably justified in a free and democratic society.

Fundamental freedoms

2. Everyone has the following fundamental freedoms:
- (a) freedom of conscience and religion;
 - (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 - (c) freedom of peaceful assembly; and
 - (d) freedom of association.

S. 15 - Equality Rights

Equality before and under law and equal protection and benefit of the law

- (1) Every individual is equal before and under the law and has the equal protection and equal benefit of the law without discrimination and, in particular, without discrimination based on race, national or ethnic origin, colour, religion, sex, age or physical disability.

Affirmative action program

- (2) Subsection (1) does not preclude any law, program or activity that has as its object the amelioration of conditions of disadvantaged individuals or groups including those that are disadvantaged because of race, national or ethnic origin, colour, religion, sex, age or physical disability.

Mandatory Services Under Local Government Act

Regional Districts must provide the following mandatory services under the LGA deliver them in accordance with legislated requirements. For the full list and legal context, refer to [s.338, LGA](#).

Service	Legislation
General Administration	<ul style="list-style-type: none"> • s.338, LGA [bylaw not required] • s.339 (4), LGA [bylaw is established in relation to general administration] • 379(3), LGA [costs of service – legal action or other proceeding from negligence of the board] • 405(1), LGA [short-term capital borrowing in relation to general administration] • s.293(5), LGA [Board may seek RD opinion] • s.209(1), LGA [special rule: weighted voting on administration and operation of service]* except for general administration services
Finance	<ul style="list-style-type: none"> • See General Administration
Regional Rescue Service	<ul style="list-style-type: none"> • Fire Safety Act
Solid Waste Management	<ul style="list-style-type: none"> • s.25(2), Environmental Management Act
Emergency Planning	<ul style="list-style-type: none"> • Division 3 of the Emergency and Disaster Management Act (EDMA) • Requirement for emergency planning (i.e., emergency management plan, risk assessments, business continuity plans) are contained within EDMA. • s.295, LGA provides additional authority for emergencies that fall outside EDMA – however, this is circumstantial to the emergency at the time and done by bylaw to declare emergency. Special voting rule is 2/3 votes cast (s.214 (g), LGA).
Regional Hospital District	<ul style="list-style-type: none"> • Hospital District Act <p>*Note: WFN does not currently participate in this service</p>

Other Services Considered by the Intergovernmental Working Group

The following services were reviewed by the IWG as part of its analysis comparing mandatory and non-mandatory services provided to WFN. Each item in this list was given consideration during the evaluation process.

Service	Provision Method
Service Reviews	s. 356, LGA [costs for service reviews and withdrawals] Dependent upon costs incurred by the board and who initiated the service review. This would be a service cost.
Plan and Reporting Requirements Under the Local Government Act (LGA).	s.374, LGA ; Annual Financial Plan
Indemnification	s.740, LGA Not a service per se - but similar requirements to General Administration. Indemnification can be by bylaw or resolution. If by bylaw, this is generally covering all former and current board members, RD officers and employees, and persons acting on behalf of the RD in the course of their duties.
Capital Financing for Local Governments	<p>s.27, Municipal Finance Authority Act</p> <p>Part 11 - Division 6, LGA (noting s.412, LGA [General liability provisions])</p> <p>Not a service, but it is an obligation of the Regional District.</p> <p>Municipalities do not borrow long-term directly through the Municipal Finance Authority (MFA) and instead request their regional district to borrow on their behalf. Long-term borrowing can range from 5-30 years.</p> <p>The local government borrowing system in B.C. is built on the concept of joint-and-several liability. The collective liability of regional districts for their members' debt underpins the financial integrity of the local government borrowing system in BC and helps the MFA maintain its AAA credit rating. This provides access to low-cost borrowing (i.e., lower interest rates) for local governments.</p> <p>If an individual jurisdiction is unable to pay for its borrowing, the Regional District is responsible for the debt/liability.</p> <p>Our understanding is that Treaty First Nations are not subject to general liability of municipal borrowing under s.410 as per s.259 of the LGA.</p>

Service	Provision Method
Electoral Area Planning	<p data-bbox="683 285 1203 352"> Part 14 - Land Use Planning, LGA Division 4 - Official Community Plan, LGA </p> <p data-bbox="683 386 1300 420">Not explicitly required or mandatory by legislation.</p> <p data-bbox="683 453 1463 554">It appears that costs may be optional or not mandated across regional district. For service costs incurred under Part 14 of the LGA, see: s.381 of the LGA.</p>
Local Elections	<p data-bbox="683 611 1045 644">s.57, LGA [costs of elections]</p> <p data-bbox="683 678 1370 745">s.156, LGA [Legal costs incurred by application to court respecting validity of election]</p> <p data-bbox="683 779 1479 879">Regional districts are responsible for the costs of the application if the court declares an election invalid or candidate not qualified to hold office.</p>

The background of the page features a photograph of several flags on poles. The most prominent flag is the Westbank First Nation flag, which is white with a green and red design. The text 'WESTBANK FIRST NATION' is visible on the flag. The image is overlaid with a semi-transparent green filter. The title 'APPENDIX F' is centered in white, serif font, with a horizontal line underneath it.

APPENDIX F

Westbank First Nation
Self-Government Agreement

Westbank First Nation

Self-Government

Agreement

between

Her Majesty the Queen in Right of Canada

and

Westbank First Nation

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**WESTBANK FIRST NATION
SELF-GOVERNMENT AGREEMENT**

**WESTBANK FIRST NATION
SELF-GOVERNMENT AGREEMENT**

**WESTBANK FIRST NATION
SELF-GOVERNMENT AGREEMENT**

This Agreement is made the _____ day of _____, 2003,

BETWEEN:

WESTBANK FIRST NATION, as represented by the Chief and Council of Westbank First Nation, hereinafter referred to as "Westbank First Nation",

AND:

HER MAJESTY THE QUEEN in right of Canada, as represented by the Minister of Indian Affairs and Northern Development, hereinafter referred to as "Canada".

WHEREAS:

the Parties entered into an Agreement-in-Principle on July 13, 1998 which contemplated a Final Agreement to be concluded substantially in the form of the Agreement-in-Principle;

WHEREAS:

the Government of Canada recognizes that the inherent right of self-government is an existing aboriginal right within section 35 of the *Constitution Act, 1982*;

WHEREAS:

the Parties to this Agreement acknowledge that they may have different legal views as to the scope and content of an inherent right of self-government;

WHEREAS:

the Parties nevertheless intend by this Agreement to set out certain arrangements for a number of jurisdictions for implementation of the inherent right of self-government by Westbank First Nation on Westbank Lands without taking any definitive positions with respect to how an inherent right of self-government may ultimately be defined at law;

WHEREAS:

Westbank First Nation asserts that it has unextinguished aboriginal title, and jurisdictions based on aboriginal title and that its aboriginal title includes Westbank Lands;

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WHEREAS:

Westbank First Nation states that it is part of the Okanagan Nation. This Agreement is without prejudice to other First Nations within the Okanagan Nation or to their systems or institutions of self-governance;

WHEREAS:

Westbank First Nation recognizes the need to provide good government for all persons residing on Westbank Lands;

WHEREAS:

Westbank First Nation will continue to consult and may enter into agreements with neighbouring local governments to maintain good relations and coordinate activities or in respect of other such matters as Westbank First Nation desires.

NOW THEREFORE THE PARTIES AGREE TO THE FOLLOWING AS THE AGREEMENT:

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PART I

DEFINITIONS

In this Agreement:

"Agreement" means this Agreement between Westbank First Nation and Canada.

"Band" means the body of Indians declared to be a band for the purposes of the *Indian Act* by P.C. 1973-3571, referred to as "Westbank First Nation".

“Community Purpose” means a purpose which is intended to provide a facility, benefit or support for the Members or persons residing on Westbank Lands, and is limited to transportation and utility corridors and requirements related to transportation and utility corridors.

“conflict” means actual conflict in operation.

"Constitution" means the constitution of Westbank First Nation established and ratified in accordance with this Agreement.

"Council" means the governing council of Westbank First Nation.

“Effective Date” means the date the Legislation comes into force.

“expropriation” means a taking of an interest or all interests in Westbank Lands through a process established by sections 111 to 124 or by Westbank Law established in accordance with section 105.

"intellectual property" includes any intangible property right resulting from intellectual activity in the industrial, scientific, literary, or artistic fields, including, but not limited to, any right relating to patents, copyrights, trademarks, industrial designs, or plant breeders' rights.

“interest in Westbank Lands” means any estate, right or interest of any nature in Westbank Lands recognized by law, including for greater certainty any leasehold interest, but does not include title to Westbank Lands as referred to in section 87.

"jurisdiction" means law-making authority.

"Legislation" means an act of Parliament which confirms and implements and gives effect to this Agreement.

“Licence”, in relation to Westbank Lands, means any right of use or occupation of the land other

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than an interest in Westbank Lands.

“Member” means a member of Westbank First Nation as defined in the Constitution.

“Mentally Incompetent” means a person who pursuant to the laws of the Province, had been found to be mentally defective or incompetent for the purposes of any laws of the Province providing for the administration of estates of mentally defective or incompetent persons.

“Minerals” means and includes gold, silver and all naturally occurring useful minerals, but shall not include peat, coal, petroleum, natural gas, bitumen, oil shales, limestone, marble, clay, gypsum or any building stone when mined for building purposes, earth, ash, marl, gravel, sand or any element which forms part of the agricultural surface of the land.

“ordinarily resident” means the place where, in the settled routine of a person’s life, that person regularly, normally or customarily lives.

“Parties” means Westbank First Nation and Canada.

“province” means the province of British Columbia.

"Westbank First Nation" means the body of people formerly known as the Band under the *Indian Act* and for whose use and benefit in common Westbank Lands have been set apart by Her Majesty the Queen.

"Westbank Lands" are:

- a. the following existing Westbank Indian reserves:
 - i) Mission Creek Indian Reserve Number 8 in the province;
 - ii) Tsinstikeptum Indian Reserve Number 9 in the province;
 - iii) Tsinstikeptum Indian Reserve Number 10 in the province;
 - iv) Medicine Hill Indian Reserve Number 11 in the province;
 - v) Medicine Creek Indian Reserve Number 12 in the province;
- b. lands set apart by Canada in the future as lands reserved for Westbank First Nation within the meaning of subsection 91(24) of the *Constitution Act 1867*.

"Westbank Law" means laws of Westbank First Nation enacted in accordance with the jurisdictions described in this Agreement, and the Constitution.

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PART II

FUNDAMENTAL PRINCIPLES

1. (a) The purpose of this Agreement is to implement aspects of the inherent right of self-government by Westbank First Nation on Westbank Lands based on the recognition that the inherent right of self-government is an existing aboriginal right within section 35 of the *Constitution Act, 1982*.
- (b) This Agreement is not intended to constitute an expression by the Parties of any definitive legal views with respect to how an inherent right of self-government may ultimately be defined at law.
2. (a) This Agreement is not intended to restrict the capacity of Westbank First Nation to participate in any other process that may be established to implement the inherent right of self-government by First Nations on a tribal, regional or national basis.
- (b) Canada retains the discretion to set its criteria for parties with whom it negotiates self-government arrangements.
3. The arrangements set out in this Agreement reflect a government-to-government relationship between the Parties, within the framework of the Constitution of Canada and with the recognition that the inherent right of self-government is an existing aboriginal right within section 35 of the *Constitution Act, 1982*.
4. (a) This Agreement shall not constitute a treaty. This Agreement is without prejudice to treaty-making in British Columbia.
- (b) On the effective date of a treaty involving Westbank First Nation, Canada and the province, where that treaty includes governance provisions, this Agreement and any implementing legislation shall be superseded by that treaty.
5. Westbank Lands are "lands reserved for the Indians" under subsection 91(24) of the *Constitution Act, 1867*, and are reserves set apart by Her Majesty the Queen in right of Canada for the use and benefit of Westbank First Nation.
6. Nothing in this Agreement or the Legislation shall be construed as limiting or restricting either Party's position with respect to aboriginal rights, title, jurisdictions or interests.
7. Nothing in this Agreement or the Legislation shall be construed to abrogate or derogate

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from aboriginal rights recognized and affirmed by section 35 of the *Constitution Act, 1982*.

8. For greater certainty, nothing in this Agreement shall be construed as recognising or denying any aboriginal rights recognised and affirmed by section 35 of the *Constitution Act, 1982*.
9. Members who are Canadian citizens or permanent residents of Canada shall continue to be entitled to all of the rights and benefits of all other Canadian citizens or permanent residents of Canada applicable to them from time to time.
10. Westbank First Nation, or its Members, or both, shall be eligible to participate in and benefit from federal programs for aboriginal people in accordance with general criteria established from time to time, to the extent that Westbank First Nation has not assumed responsibility for provision of such benefits or programs.
11. Westbank First Nation, or its Members, or both, shall be entitled to rights under applicable federal legislation for Indians, Bands or aboriginal people in accordance with general criteria established under the legislation from time to time.
12. The implementation of this Agreement shall not affect the Okanagan Nation or other First Nations within the Okanagan Nation in their assertion of an inherent right of self-government.
13. The Parties agree that:
 - (a) notwithstanding this Agreement, the overall fiduciary relationship between the Parties shall continue; and
 - (b) as Westbank First Nation exercises jurisdiction and authority pursuant to this Agreement, fiduciary obligations owed by Canada to Westbank First Nation shall be as determined by the law respecting fiduciary relationships.
14. The implementation of this Agreement shall be conducted in good faith.
15. Following the Effective Date, and subject to this Agreement, the implementation plan and the financial transfer agreement, Council will determine when it will exercise any remaining jurisdictions set out in this Agreement.
16. To support the implementation of this Agreement, the Parties shall negotiate a financial transfer agreement and an implementation plan in accordance with the provisions of Parts XXV and XXVI.

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17. Responsibility for the delivery of federal programs and services to Westbank First Nation and its Members shall remain with Canada until such time as Westbank First Nation assumes responsibility for the delivery of programs and services in accordance with, and subject to, this Agreement, the financial transfer agreement, the implementation plan or other agreements entered into between Westbank First Nation and Canada.
18. Westbank First Nation and Canada may enter into agreements from time to time with respect to specific matters contained in this Agreement.

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PART III

LEGAL STATUS AND CAPACITY

19. In addition to Westbank First Nation's capacity to pass and enforce Westbank Law pursuant to this Agreement, Westbank First Nation is a legal entity with the rights, powers and privileges of a natural person, which includes the capacity to:
- (a) enter into agreements and contracts with any person, government or organization;
 - (b) acquire, hold or dispose of property and any interests therein;
 - (c) acquire, hold or dispose of bequests and gifts;
 - (d) sue or be sued and to act on its behalf in legal proceedings;
 - (e) hold, spend, invest or borrow money, and secure or guarantee the repayment of money borrowed;
 - (f) create, operate, contribute to, act as trustee or otherwise deal with trusts;
 - (g) be appointed and to act as an executor, administrator or trustee of an estate; and
 - (h) do other things ancillary to the exercise of its rights, powers and privileges, but does not include the capacity to be appointed and to act as a guardian.

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PART IV

POWERS OF GOVERNMENT

20. Westbank First Nation has legal capacity to govern itself in accordance with this Agreement.
21. Westbank First Nation shall act through the Council in exercising its powers and carrying out its duties and functions.
22.
 - (a) Westbank First Nation may make laws or do such other things as may be necessarily incidental to the jurisdictions set out in this Agreement or to enable Westbank First Nation to exercise its rights or to carry out its responsibilities pursuant to this Agreement.
 - (b) Westbank Law may provide for the issuance of licences and permits for a fee in relation to any matter which is the subject of Westbank Law.
23. For greater certainty, the Parties recognize that the jurisdictions set out in this Agreement are not intended to be definitive of the inherent right that may be implemented through negotiations between Westbank First Nation and Canada or definitive of how the inherent right of self-government may ultimately be defined at law.
24. For greater certainty, the government of Westbank First Nation and its institutions shall be considered public bodies for the purpose of tort claims against the government of Westbank First Nation and its institutions.
25. Westbank First Nation may enter into agreements with Canada or other governments in Canada concerning land, waters, resources, both renewable and non-renewable, or air adjacent to Westbank Lands or where an interest of Westbank First Nation is or may be affected.
26. Westbank First Nation may, in the exercise of the jurisdictions set out in this Agreement, make laws concerning the personal immunity from civil liability of employees, officers or elected officials of the government of Westbank First Nation and its institutions, subject to such provisions also providing that the government of Westbank First Nation, as employer, retains vicarious liability for the acts or omissions of employees, officers or elected officials of the government of the Westbank First Nation covered by the immunity.
27. Westbank First Nation may enter into agreements with any level of government in Canada, including any government agency or entity or any other national, regional or

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local entity, group or organization, concerning delivery of programs and services on Westbank Lands.

28. Westbank First Nation may enter into agreements to receive powers, including legislative powers, by delegation.

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PART V

APPLICATION OF LAW

29. Federal law shall continue to apply to Westbank First Nation, Council, Westbank Lands and Members. In the event of a conflict between a Westbank Law and a federal law, priority shall be determined in accordance with this Agreement.
30. A federal law shall prevail in the event of a conflict between a federal law and a Westbank Law, to the extent of the conflict, where the subject matter of the federal law is a subject matter in relation to which Westbank First Nation has no jurisdiction set out in this Agreement.
31. In the event of a conflict between a Westbank Law and a federal law that relates to the peace, order and good government of Canada, the federal law shall prevail to the extent of the conflict.
32. The government of Westbank First Nation and Council in respect of all matters under its authority are bound by the provisions of the *Canadian Charter of Rights and Freedoms* with due regard for section 25 of the *Charter* which provides that the guarantee in the *Charter* of certain rights and freedoms shall not be construed so as to abrogate or derogate from any aboriginal, treaty or other rights or freedoms that pertain to the aboriginal peoples of Canada, and the rights and freedoms guaranteed by the *Charter* are enforceable in respect of the government of Westbank First Nation and the Council.
33. In the event of a conflict between either this Agreement or the Legislation, or both, and other federal law, this Agreement or the Legislation, or both, shall prevail to the extent of the conflict.
34. (a) Subject to any other act of Parliament, all provincial laws of general application from time to time in force in British Columbia are applicable to and in respect of Members, except to the extent that those laws are in conflict with this Agreement, the Legislation or any Westbank Law, and except to the extent that those laws make provision for any matter for which provision is made by or under this Agreement or the Legislation or Westbank Law.

(b) For greater certainty, subsection 34(a) is intended to have the same effect on provincial laws of general application as section 88 of the *Indian Act* has on provincial laws of general application.
35. The operation of this Agreement shall not limit the authority of Canada or the Minister of National Defence to carry out activities related to national defence, security and public

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- safety.
36. (a) As a general principle, Westbank First Nation shall take all necessary measures to ensure compliance of its laws and actions with Canada's international legal obligations.
- (b) Notwithstanding subsection 36(a), Westbank First Nation shall remedy any Westbank Law or action found to be inconsistent with Canada's international legal obligations by an international treaty body or other competent tribunal.
37. Federal legislation relating to endangered species and fish and fish habitat shall prevail in the event of a conflict with Westbank Law to the extent of the conflict.
38. Federal legislation setting out obligations with respect to the collection of statistics and reporting on natural resources in Canada shall prevail in the event of a conflict with Westbank Law to the extent of the conflict.
39. For greater certainty, the jurisdictions to be exercised by Council set out in this Agreement do not extend to matters not specifically addressed in this Agreement including:
- (a) criminal law, including the procedure in criminal matters;
- (b) protection of the health and safety of all Canadians;
- (c) intellectual property, in respect of all matters within federal jurisdiction; and
- (d) broadcasting and telecommunications.
40. Nothing in this Agreement shall affect the applications of Crown prerogatives and Crown immunities.
41. In the event of a conflict between a provision of this Part and any other provision in the Agreement, the provision of this Part shall prevail to the extent of the conflict.

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PART VI

STRUCTURES AND PROCEDURES OF GOVERNMENT

42. There shall be a Constitution. The Constitution shall be consistent with this Agreement.
43. The Constitution shall provide for the following matters:
- (a) that the Council shall act on behalf of Westbank First Nation in exercising jurisdiction in accordance with this Agreement;
 - (b) for democratic elections of Council by Members, rules for composition of Council, tenure of Council members and provision for the removal of Council members;
 - (c) internal financial management and accountability to Members in accordance with Part IX;
 - (d) conflict of interest rules;
 - (e) procedures for the passage and amendment of laws for Westbank First Nation;
 - (f) appeal mechanisms;
 - (g) an amending procedure for the Constitution;
 - (h) provisions for public notification of Westbank Law;
 - (i) rules governing membership in the Westbank First Nation in accordance with Part VII;
 - (j) land rules in accordance with Part X;
 - (k) referendum procedures; and
 - (l) provisions in relation to other matters over which Westbank First Nation has jurisdiction as set out in this Agreement which are determined by Westbank First Nation to be of sufficient importance to be included in the Constitution.
44. (a) The provisions of the Constitution referred to in section 43 shall be ratified by Westbank First Nation at the same time and in the same manner as ratification of this Agreement.

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- (b) The Constitution ratified in accordance with Part XXXII shall come into force on the Effective Date.
- 45. (a) Except as otherwise provided in this agreement, in the event of a conflict between a provision of the Constitution in relation to a matter set out in subsection 43(a) to (k) and federal law, the Constitution prevails to the extent of the conflict.
- (b) In the event of a conflict between a provision of the Constitution provided for in accordance with subsection 43(l) and federal law, the conflict of laws provision in the Agreement in relation to that subject matter of the conflicting provision of the Constitution shall apply.
- 46. The Chief and Councillors of Westbank First Nation holding office at the time this Agreement comes into effect shall form the Council until such time as elections are held pursuant to the Constitution.
- 47. Westbank Law may establish administrative boards, tribunals, commissions or other administrative bodies for carrying out functions under Westbank Law including the determination of matters or rights under Westbank Law except with respect to matters or rights the Constitution requires determined in a specific manner.

Judicial Review

- 48. (a) The *Judicial Review Procedure Act* of British Columbia shall apply to the Westbank First Nation.
- (b) For the purpose of applying the *Judicial Review Procedure Act* of British Columbia, an “enactment” shall mean Westbank Law.
- (c) Applications for judicial review shall be brought before the Supreme Court of British Columbia in accordance with the *Judicial Review Procedure Act* of British Columbia.

Delegation

- 49. Any jurisdiction of Westbank First Nation may be delegated, consistent with the Constitution and Agreement, in whole or in part to a tribal, regional or national body established by First Nations subject to:
 - (a) the delegatee body acting under an implemented self-government agreement with Canada that provides for the exercise of such jurisdiction; or

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- (b) a court recognizing the right of that delegatee body to exercise such jurisdiction.
- 50. In the exercise of jurisdiction set out in this Agreement, Westbank First Nation may delegate authority, other than law-making authority, to any tribal council, regional body or national body established by First Nations or to any other legal entity in Canada.
- 51. Any delegation made by Westbank First Nation pursuant to sections 49 or 50 is not valid except by written agreement with the delegatee.
- 52. Westbank First Nation may delegate any of its authority, other than law-making authority or authority in relation to matters the Constitution requires determined in a specific manner, to a department, institution, agency or official of Westbank First Nation government.

Governance

- 53. Should Westbank First Nation enter into governance arrangements with other First Nations that would establish another level of First Nation government, Canada, Westbank First Nation and the other level of government shall address which functions of the government of Westbank First Nation should remain at the individual First Nation's level, which functions should be transferred to the other level of government and what changes may be required to the existing Agreement, financial transfer agreement and implementation plan in order to ensure the stable and efficient operation of both levels of government.

Non-Member Representation

- 54. (a) Non-Members living on Westbank Lands or having an interest in Westbank Lands shall be provided in Westbank Law with mechanisms through which they may have input into proposed Westbank Law and proposed amendments to Westbank Law that directly and significantly affect such non-Members.
- (b) Westbank Law providing the mechanisms required under subsection 54(a) shall be enacted prior to any new Westbank Law being enacted by Council after the Effective Date, or within 30 days of the Effective Date, whichever is sooner.
- (c) Westbank Law enacted to meet the obligation referred to in subsection 54(a) shall only be amended or replaced with the consent of the non-Members living on Westbank Lands or having an interest in Westbank Lands.
- (d) Westbank Law enacted to meet the obligations under subsection 54(a) shall provide for the process by which the consent of the non-Members shall be

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obtained for the purposes in subsection 54(c).

Accountability

55. Financial accountability standards of Westbank First Nation shall be at least comparable to those of other public governments providing similar public services.

Indian Act, Indian Oil and Gas Act, First Nations Land Management Act

56. Except as provided for in this Agreement, the *Indian Act* shall no longer apply to Westbank First Nation, Council, Members and Westbank Lands.
57. The *Indian Oil and Gas Act* and regulations thereunder shall no longer apply to Westbank First Nation, Council, Members and Westbank Lands.
58. (a) Upon the Effective Date, the Framework Agreement on First Nation Land Management, the *First Nations Land Management Act*, shall no longer apply to Westbank First Nation, Council, Members and Westbank Lands.
- (b) Any interest in Westbank Lands approved, created, granted or any action undertaken in accordance with the *First Nations Land Management Act* and existing as of the Effective Date shall continue to have effect in accordance with its terms and conditions.
- (c) Any law enacted by Westbank First Nation in accordance with the *First Nations Land Management Act* shall be deemed to be in force as a Westbank Law.
- (d) If the *First Nations Governance Act* (Bill C- 7) receives Royal Assent, upon the Effective Date the *First Nations Governance Act* shall no longer apply to Westbank First Nation, Council, Members and Westbank Lands.
59. Westbank First Nation bylaws enacted pursuant to the *Indian Act* shall be deemed to be in force as a Westbank Law where the subject matter of such bylaws is a subject matter in relation to which Westbank First Nation has jurisdiction pursuant to this Agreement.
60. For greater certainty, with respect to bylaws enacted by Westbank First Nation pursuant to those provisions of the *Indian Act* that continue to apply, such bylaws shall remain in force as amended from time to time.

Notification to Canada of Westbank Law

61. Following the enactment of the first Westbank Law pursuant to Parts VII to XXIII, Westbank First Nation shall notify Canada at least 60 days prior to the first Westbank Law coming into force for each of Parts VII to XXIII.

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62. Westbank First Nation shall provide Canada with copies of Westbank Law for Canada's internal information purposes.
63. No Westbank Law shall be considered void, invalid or unenforceable, nor shall any person's liability under Westbank Law be affected by reason only of a defect in the form or a failure to comply with sections 61 and 62.

Westbank Public Register

64. Westbank Law must be in writing and available to the public.
65. Westbank First Nation shall maintain a Westbank First Nation public register of all Westbank Law.
66. On the enactment of a Westbank Law, the original thereof shall be deposited in the Westbank First Nation's public register of Westbank Law.

Validity of Westbank Law

67. The *Statutory Instruments Act* shall not apply to Westbank Law.
68. A Westbank Law enacted after the Effective Date shall come into force at the beginning of the day following its enactment or such later time as is specified therein.
69. In any proceedings, a copy of a Westbank Law appearing to be certified as a true copy by an officer of the government of Westbank First Nation is, without proof of that officer's signature or official character, evidence of its enactment on the date specified in the Westbank Law.

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PART VII

WESTBANK FIRST NATION MEMBERSHIP

70. Westbank First Nation has jurisdiction in relation to membership of Westbank First Nation.
71. Membership in Westbank First Nation does not purport to confer or deny rights of entry into Canada or to grant Canadian citizenship.
72. The membership rules in the Constitution and Westbank Laws in relation to membership shall not deprive any person who had the right to have his or her name entered in the Band List, as defined in the *Indian Act*, for Westbank First Nation, immediately prior to the Effective Date, of the right to be a Member by reason only of a situation that existed or an action that was taken before the Effective Date.
73. All Members entitled to be registered as Indians under the *Indian Act* shall continue to be entitled to be registered as Indians under the *Indian Act*.
74. This Agreement shall not preclude Westbank First Nation from using its best efforts to establish a process whereby all Members who are not registered as Indians shall be entitled to be registered as Indians under the *Indian Act*.
75. No member of another band or First Nation in Canada may, at the same time, be a Member.
76. The Constitution shall include a procedure for reviewing decisions made pursuant to the Constitution.
77. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to Membership and federal law, Westbank Law shall prevail to the extent of the conflict.

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PART VIII

WILLS AND ESTATES

78. (a) Westbank First Nation has jurisdiction in relation to the wills and estates of Members ordinarily resident on Westbank Lands who are Indians as defined under the *Indian Act*.
- (b) For greater certainty, the reference to “estates” in this Part means the property of deceased persons, Mentally Incompetent persons and infants.
79. (a) Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, the definitions of “child”, “estate”, and “mentally incompetent Indian” referred to in section 2 of the *Indian Act* and sections 43 to 48, subsections 50(1) to 50(3) and sections 51 to 52.5 of the *Indian Act* continue to apply.
- (b) Until such time as the coming into force of any Westbank Law enacted pursuant to the jurisdiction described in this Part, section 42 of the *Indian Act* and regulations thereunder shall continue to apply to the extent of any conflict with Westbank Law passed under other jurisdictions set out in this Agreement.
- (c) Notwithstanding section 78 and subsection 79(a), wills and estates under administration prior to the exercise of jurisdiction by Westbank First Nation under this Part shall continue to be administered under the provisions of the *Indian Act*.
- (d) For greater certainty, wills and estates of individuals who die after the enactment of Westbank Law pursuant to subsection 78(a) shall be administered in accordance with Westbank Law.
80. The jurisdiction referred to in subsection 78(a) shall not extend to immoveable property off Westbank Lands.
81. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to wills and estates and federal law, Westbank Law shall prevail to the extent of the conflict.

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PART IX

FINANCIAL MANAGEMENT

82. Westbank First Nation has jurisdiction in relation to internal financial management of Westbank First Nation.
83. Moneys raised by taxation, fees, permits or other means by Westbank First Nation shall be administered in accordance with the Constitution and Westbank Laws in relation to internal financial management and, for financial transfer agreement funds, shall be administered in accordance with the provisions of the financial transfer agreement.
84. Without limiting the generality of the foregoing, Westbank First Nation may:
- (a) receive moneys from the federal or provincial governments and from other entities;
 - (b) expend, invest, assign or commit moneys received;
 - (c) borrow moneys, including issuing treasury bills, temporary debentures, promissory notes or similar forms of obligations; and
 - (d) perform such other functions regarding financial management and administration as may be required from time to time.
85. For greater certainty, financial obligations assumed by Westbank First Nation pursuant to this Part shall not imply or impose any liability on Canada.
86. Except as provided in this Agreement, in the event of a conflict between Westbank Law in relation to internal financial management procedures of Westbank First Nation and federal law, Westbank Law shall prevail to the extent of the conflict.

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PART X

WESTBANK LANDS AND LAND MANAGEMENT

Title and Interests in Westbank Lands

87. Title to all Westbank Lands shall continue to be held in the name of Her Majesty the Queen in Right of Canada for the use and benefit of Westbank First Nation.
88. Subject to sections 90 and 91, Licences and interests in Westbank Lands approved, created, granted or issued pursuant to the *Indian Act* and existing as of the Effective Date shall continue to have effect in accordance with their terms and conditions.
89. Subject to this Agreement, Westbank First Nation shall have the rights, powers, responsibilities and privileges of an owner in relation to Westbank Lands and may grant Licences and interests in Westbank Lands.
90. As of the Effective Date, the rights and obligations of Canada as grantor in respect of Licences and interests in Westbank Lands are transferred to Westbank First Nation.
91. Interests in Westbank Lands held on the Effective Date by Members pursuant to allotments under subsection 20(1) of the *Indian Act* are subject to the provisions of Westbank Law governing interests in Westbank Lands and sharing in natural resource revenues.

Exchange of Lands

92. Subject to sections 111 to 131, Westbank Lands shall not be alienated except for exchange of land in circumstances where:
 - (a) Westbank First Nation shall receive lands of greater or equivalent size or value in consideration for the exchange taking into account all of its interests involved;
 - (b) Canada is willing to set apart the lands received in exchange as a reserve defined under the *Indian Act* and as subsection 91(24) lands as set out in the *Constitution Act, 1867*;
 - (c) Council has made full disclosure to its Members of all the circumstances surrounding the exchange. At least three community meetings shall be held where the proposed transactions are disclosed; and
 - (d) the Members have approved the exchange in accordance with an approval process

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to be established in the Constitution for this purpose.

93. (a) Where the criteria in section 92 have been satisfied, Westbank First Nation can execute an authorization and direction to Canada to exchange title to the land.
- (b) Upon Canada receiving authorization and direction to exchange Westbank Land, Canada shall take the necessary steps to transfer and acquire the relevant titles to the lands in accordance with:
- (i) the authorization;
 - (ii) the terms and conditions of the exchange; and
 - (iii) procedural requirements applicable to acquisitions and dispositions of federal Crown lands.
94. Westbank First Nation shall be responsible for determining whether the criteria referred to in section 92 have been fulfilled. Westbank First Nation's determination shall be definitive and can be relied upon as such by Canada.
95. For greater certainty, the land alienated in accordance with sections 92 and 93 shall no longer be "Lands reserved for the Indians" under subsection 91(24) of the *Constitution Act, 1867*.

Register

96. (a) Westbank First Nation has jurisdiction to establish a lands register for Westbank Lands. Any register for Westbank Lands established by Westbank First Nation shall be at least equivalent to the register referred to in subsection 96(b)(i) existing prior to the exercise of this jurisdiction.
- (b) Until such time as Westbank First Nation exercises its jurisdiction to establish a lands register, interests in Westbank Lands are to be registered in:
- (i) a register to be known as the Westbank Lands Register established by Canada for the registration of interests in Westbank Lands, to be administered, subject to subsection 96(b)(ii), in the same manner as the Reserve Land Register established under the *Indian Act*; or
 - (ii) in an alternative register system established for the registration of interests in Westbank Lands pursuant to an agreement between Westbank First Nation and Canada.

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- (c) In the event that an alternative register system has been established pursuant to subsection 96(b)(ii), the Westbank Lands Register referred to in subsection 96(b)(i) shall no longer register interests in Westbank Lands.
97. Either Westbank Lands register referred to in subsection 96(b) shall accommodate the registration of interests not accommodated specifically in the *Indian Act*, in accordance with criteria or procedures to be agreed upon by Canada and Westbank First Nation.
98. Document processing shall take place at a Westbank First Nation land registry office. Original documents concerning transactions affecting interests in Westbank Lands, once processed, shall be forwarded to the Westbank Lands Register or its successor referred to in subsection 96(b)(ii) for registration until Westbank First Nation exercises jurisdiction under subsection 96(a) to establish a lands register.
99. Interests in Westbank Lands existing as of the Effective Date shall be recognized and recorded in the Westbank Lands Register or its successor referred to in subsection 96(b)(ii).
100. Until such time as the coming into force of the Westbank Law enacted pursuant to jurisdiction described in subsection 96(a), section 21 of the *Indian Act* continues to apply.
101. Until the coming into force of the first Westbank Law enacted pursuant to subsection 96(a), any improvements to the Reserve Land Register administered under the *Indian Act* shall be applied to the Westbank Lands Register.

Additional Reserve Lands

102. Subject to Canada's policy for additions to reserve, as amended from time to time, lands acquired by Westbank First Nation may be transferred to Canada for the purpose of being set apart as lands reserved for Indians under subsection 91(24) of the *Constitution Act, 1867* and as reserves for the use and benefit of Westbank First Nation within the meaning of that term under the *Indian Act*.

Governance of Westbank Lands

103. Westbank First Nation has jurisdiction in relation to the management, administration, government, control, regulation, use and protection of Westbank Lands. This jurisdiction includes jurisdiction over foreshore and waterbeds where these areas form part of Westbank Lands, but does not include Minerals which are addressed in Part XII.

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This jurisdiction includes:

- (a) the creation of interests in Westbank Lands;
 - (b) procedures for the transfer or disposition of interests in Westbank Lands;
 - (c) procedures in accordance with the Constitution for encumbering interests in Westbank Lands, including rules affecting the exemption referred to in section 89 of the *Indian Act*;
 - (d) expropriation of interests in Westbank Lands for community purposes in accordance with section 105;
 - (e) treatment of interests in Westbank Lands on marriage breakdown in accordance with section 108;
 - (f) zoning and land use planning;
 - (g) use, construction, maintenance, repair and demolition of buildings and other structures;
 - (h) access to Westbank Lands subject to sections 106 and 107;
 - (i) trespass on Westbank Lands; and
 - (j) residency on Westbank Lands.
104. Westbank First Nation may cause surveys to be made of Westbank Lands in accordance with the *Canada Lands Surveys Act* and the *Canada Lands Surveyors Act*.

Expropriation for Community Purposes

105. Westbank First Nation has jurisdiction in relation to expropriation of interests in Westbank Lands for a Community Purpose subject to the following principles:
- (a) Westbank First Nation shall provide fair compensation to the interest holder and a mechanism to resolve disputes in relation to compensation it pays; and
 - (b) the following interests in Westbank Lands are not subject to Westbank expropriations:
 - (i) interests obtained pursuant to section 35 of the *Indian Act*; and

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- (ii) interests in Westbank Lands held by Canada.

Access

- 106. The exercise of jurisdiction by Westbank First Nation in relation to access to Westbank Lands shall not prevent those persons with rights or interests in Westbank Lands from being able to access those lands associated with those rights or interests.
- 107. (a) Persons acting in an official capacity pursuant to lawful authority shall have access to Westbank Lands. Such access shall be without charge except as provided for under the lawful authority for access. Such persons shall comply with Westbank Law enacted pursuant to subsection 103(h) where such compliance does not unduly interfere with the carrying out of their duties. Subject to subsection 107(b), Canada shall give prior notice of the exercise of such access to Council when it is reasonable to do so.
- (b) Peace officers, federal investigators and law enforcement officers carrying out duties under the law of Canada are not required to provide notice as referred to in subsection 107(a).

Treatment of Interests in Westbank Lands on Marriage Breakdown

- 108. (a) Westbank First Nation has jurisdiction in relation to treatment of interests in Westbank Lands on marriage breakdown involving at least one Member and shall enact a law within twelve months of the Effective Date setting out rules and procedures applicable on the breakdown of a marriage to use, occupancy and possession of Westbank Lands and the division of interests in these lands.
- (b) For greater certainty, the laws referred to in subsection 108(a) shall not discriminate on the basis of sex but may distinguish as between Members and non-Members for the purpose of determining what type of interest in Westbank Lands may be held by an individual.
- (c) Any dispute between Canada and Westbank First Nation in respect of this section shall be subject to arbitration following the rules provided in section 271.

Procedures to Transfer by Testamentary Disposition or Succession

- 109. (a) The Constitution shall include procedures that apply to the transfer, by testamentary disposition or succession, of any interest in Westbank Lands.
- (b) For greater certainty, the procedures in the Constitution referred to in subsection 109(a) shall not be considered an exercise of jurisdiction under Part VIII.

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Priority of Land and Land Management Law

110. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to Westbank Lands and land management and federal law, Westbank Law shall prevail to the extent of the conflict.

Federal Expropriation

111. The Parties declare that it is of fundamental importance to maintain the amount and integrity of Westbank Lands, and they therefore agree, as a general principle, that Westbank Lands will not be expropriated.
112. Notwithstanding the general principle against expropriation, interests in Westbank Lands may be expropriated in accordance with federal legislation:
- (a) only with the consent of the Governor-in-Council; and
 - (b) only for the use of a federal department, agency or other entity as described in the legislation.
113. The Governor-in-Council shall only consent to an expropriation of interests in Westbank Lands if the expropriation is justifiable in accordance with section 114 and necessary for a federal public purpose that serves the national interest.
114. The Governor in Council shall not consent to an expropriation unless satisfied that:
- (a) alternatives to expropriation have been considered and such alternatives are not reasonably feasible;
 - (b) there are no non-Westbank Lands reasonably available;
 - (c) reasonable efforts have been made to acquire the interest in land through agreement with Westbank First Nation;
 - (d) the interest being taken is the smallest reasonably necessary and the term for which it is taken is the shortest reasonably required; and
 - (e) Westbank First Nation has been provided with information relevant to the expropriation.
115. Prior to the Governor-in-Council issuing an order consenting to the expropriation of Westbank Lands, Canada shall make public a report on the reasons justifying the expropriation and the steps taken in satisfaction of this expropriation procedure and shall

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provide a copy of the report to Westbank First Nation.

116. Where Westbank First Nation objects to a proposed expropriation, it may refer the issue to a mediator under Part XXX within 60 days of receiving a copy of the report referred to in section 115.
117. An order of the Governor-in-Council consenting to the expropriation shall not be issued earlier than:
- (a) the end of the 60 day period referred to in section 116; and
 - (b) the day the opinion or recommendation of the mediator is released, where Westbank First Nation referred the proposed expropriation to a mediator under section 116.

Compensation by Canada

118. Where an interest in Westbank Lands is expropriated under sections 111 to 117, compensation shall be provided to Westbank First Nation consisting of:
- (a) land; and
 - (b) any additional compensation required to achieve the total compensation determined under section 120.
119. Land provided to Westbank First Nation as compensation may be of an area that is less than the area of the land in which an interest has been expropriated only if the total area of the land comprised in Westbank Lands is not less following the expropriation than at the Effective Date.
120. The total compensation shall be determined taking into account the following factors:
- (a) the market value of the expropriated interest or of the land in which an interest has been expropriated;
 - (b) the replacement value of any improvement to the land;
 - (c) any expenses or losses resulting from a disturbance attributable to the expropriation;
 - (d) any reduction in the value of any interest in Westbank Lands that is not expropriated;

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- (e) any adverse effect on any cultural or other special value of the land to the Westbank First Nation; and
 - (f) the value of any special economic advantage arising out of or incidental to the occupation or use of the land to the extent that value is not otherwise compensated.
121. If the value and nature of the compensation cannot be agreed upon by Canada or the entity described in subsection 112(b) and Westbank First Nation, either party may refer a dispute on compensation to binding arbitration under Part XXX, other than for expropriation under the *National Energy Board Act*.
122. For expropriation under the *National Energy Board Act*:
- (a) disputes over compensation shall be referred to a board, committee, panel or other body authorized by the *National Energy Board Act* to settle disputes in respect of expropriation;
 - (b) the board, committee, panel or other body referred to under subsection 122(a) shall include at least one nominee of Westbank First Nation; and
 - (c) the board, committee, panel or other body referred to under subsection 122(a) shall be comprised of persons who have knowledge of, and experience related to the criteria set out in section 120.
123. Any claim or encumbrance in respect of the interest expropriated may only be claimed against the amount of compensation that is otherwise payable to the person or entity whose interest is being expropriated.
124. Interest on the compensation is payable from the date the expropriation takes effect, at the same rate as for prejudgment interest in the Supreme Court of British Columbia.

Status of Westbank Lands

125. Where less than the full interest of the Westbank First Nation in Westbank Lands is expropriated:
- (a) the land retains its status as Westbank Lands;
 - (b) the land remains subject to Westbank Law that is otherwise applicable, except to the extent that such Westbank Law is inconsistent with the expropriation; and,
 - (c) Westbank First Nation may continue to use and occupy the land, except to

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the extent the use or occupation is inconsistent with the expropriation.

126. Alternate lands accepted by Westbank First Nation from Canada as part of the compensation shall become Westbank Lands and shall be set apart by Canada as a reserve within the meaning of that term defined in the *Indian Act*, and as subsection 91(24) lands as set out in the *Constitution Act, 1867*.

Reversion of Interest in Westbank Lands

127. Where an expropriated interest in Westbank Lands, which is less than the full interest of Westbank First Nation in Westbank Lands, is no longer required by Canada or the entity described in section 112(b) for the purpose for which it was expropriated, the interest in land shall revert to Westbank First Nation.
128. The Minister responsible for the expropriating department or agency may, without the consent of the Governor-in-Council, decide that the land is no longer required and determine the disposition of any improvements.

Return of Full Interest in Westbank Lands

129. Where an interest in Westbank Lands was expropriated but is no longer required by Canada or the entity described in the legislation for the purpose for which it was expropriated, the land shall be returned to Westbank First Nation on terms negotiated by Westbank First Nation and Canada, and where appropriate, the entity described in the legislation.
130. Where the terms and conditions of the return cannot be agreed upon by Westbank First Nation and Canada and, where appropriate, the entity described in the legislation, either party may refer the dispute to arbitration under Part XXX.
131. The Minister responsible for the expropriating department or agency may, without the consent of the Governor-in-Council, decide that the land is no longer required and determine the disposition of any improvements.

Application of *Expropriation Act*

132. Any provisions of the *Expropriation Act* that are applicable to an expropriation of Westbank Lands by Canada continue to apply unless inconsistent with this Agreement.

PART XI

LANDLORD AND TENANT

133. Westbank First Nation has jurisdiction in relation to landlord and tenant matters with respect to Westbank Lands and premises on Westbank Lands. This shall include jurisdiction in relation to residential premises, commercial premises, manufactured home parks and agricultural land for matters including:
- (a) remedies for breach of agreements;
 - (b) procedures for rent increases;
 - (c) notice provisions;
 - (d) termination and regaining of possession;
 - (e) procedures for manufactured home installation;
 - (f) compliance with health and safety codes;
 - (g) dispute resolution and appeal mechanisms;
 - (h) procedures for amendment of agreements; and
 - (i) requirements for creation of agreements.
134. Subject to the provisions of this Agreement, in the event of a conflict between Westbank Law in relation to landlord and tenant matters and federal law, Westbank Law shall prevail to the extent of the conflict.

PART XII

RESOURCE MANAGEMENT

Renewable Resources

135. Westbank First Nation has jurisdiction in relation to renewable resources situated on, under or above Westbank Lands including protection, conservation, management, development and disposition of renewable resources, except water which is addressed in section 136; this jurisdiction includes:

- (a) preservation and management of wildlife, including game, birds, fur bearing animals, and their natural habitat;
- (b) hunting and trapping of wildlife; and
- (c) preservation and management of the forest resource, including forest enhancement and pest control;

but does not include fish and fish habitat.

136. To the extent that Westbank First Nation has rights over water as recognized by federal or provincial legislation or by operation of law, Council has jurisdiction to manage and regulate water use.

137. Where there are conservation concerns of either Party relating to migratory birds, Westbank First Nation and Canada shall cooperate to establish appropriate co-management arrangements where necessary to address conservation concerns.

Non-Renewable Resources

138. Westbank First Nation has jurisdiction on Westbank Lands in relation to non-renewable resources, including but not limited to:

- (a) oil, oil shales and gas; and
- (b) gravel, clay, sand, soil, stone, peat, 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;

but not including Minerals and uranium mining, refining and handling.

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139. Without limiting the generality of section 138, the jurisdiction referred to in section 138 includes the authority to make laws in relation to the non-renewable resources listed therein respecting:
- (a) management, exploration, exploitation, development and disposition of those resources;
 - (b) issuance of permits and leases for development and disposition of those resources and regulation of conditions, including suspension and revocation of those permits or leases; and
 - (c) control of administrative functions including revenue collection in relation to permits or leases for exploration, development and disposition of resources.

Priority of Law in Relation to Resource Management

140. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to resource management and federal law, Westbank Law shall prevail to the extent of the conflict.

PART XIII

AGRICULTURE

141. Westbank First Nation has jurisdiction in relation to agriculture on Westbank Lands.
142. (a) In the event of a conflict between either provincial laws of general application in relation to agriculture or federal laws in relation to agriculture and Westbank Law enacted in accordance with any of the provisions of this Agreement, the provincial law of general application and the federal law shall prevail to the extent of the conflict.
- (b) For greater certainty, subsection 142(a) is not intended to expand or increase the application of provincial laws on or to Westbank Lands, or to impose provincial processes, structures or standards on Westbank Lands where they would not otherwise be applicable.
143. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, paragraph 73(1)(b) and any regulation made thereunder, and subsections 58(1) and (2) of the *Indian Act* shall continue to apply.
144. For greater certainty, the jurisdiction referred to in section 141 does not include jurisdiction in relation to interprovincial and international trade and commerce in agricultural goods.

PART XIV

ENVIRONMENT

145. For environmental protection and conservation provisions of this Agreement, the definitions of “analyst”, “environment” and “inspector” shall be as set out in the *Canadian Environmental Protection Act*.
146. “Environmental Emergency” means an uncontrolled, unplanned or accidental release, or a release in contravention of laws or regulations, of a substance into the environment, or the reasonable likelihood of such a release into the environment, that:
- (a) has or may have an immediate or long-term harmful effect on the environment;
 - (b) constitutes, or may constitute, a danger to the environment on which humans depend; or
 - (c) constitutes, or may constitute, a danger in Canada to human life or health.
147. “Pollution prevention” means the use of processes, practices, materials, products or energy that avoid or minimize the creation of pollutants and wastes and reduce the overall risk to the environment or human health.

Environmental Protection

148. Westbank First Nation has jurisdiction in relation to the protection and conservation of the environment on Westbank Lands.
149. (a) The laws and regulations created pursuant to section 148 shall be designed to be at least equivalent in standard to those set out under federal law and provincial laws of general application, including provisions for emergency measures, which could be enforced on Westbank Lands.
- (b) For greater certainty, subsection 149(a) is not intended to expand or increase the application of provincial laws on Westbank Lands or to impose provincial processes, structures or standards on Westbank Lands, where they would not be otherwise applicable.
150. In the event of a conflict between federal law in relation to the protection and conservation of the environment and Westbank Law enacted in accordance with any provisions of this Agreement, the federal law shall prevail to the extent of the conflict.

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151. The Parties to this Agreement recognize that Canada and Westbank First Nation retain their respective authority and discretion to prosecute violations and otherwise enforce their respective environmental laws on Westbank Lands.
152. Until such time as the coming into force of any Westbank Law enacted pursuant to the jurisdiction referred to in section 148, paragraph 73(1)(k) of the *Indian Act* and any regulations made thereunder continue to apply.
153. Westbank First Nation may enter into agreements with Canada or other governments to enhance cooperation and coordination in the development and implementation of their respective environment functions on Westbank Lands.
154. (a) If the Party who has primary responsibility to respond to an Environmental Emergency does not respond or is unable to respond to an Environmental Emergency in a timely manner, the other Party may respond to the Environmental Emergency.
- (b) The responding Party will notify the Party with primary responsibility as soon as practicable of the Environmental Emergency, and of the measures taken by the responding Party to prevent, correct or respond to the Environmental Emergency.

Enforcement of Westbank Environment Laws

155. Westbank First Nation has jurisdiction to enforce Westbank Law enacted under this Part on Westbank Lands and the jurisdiction to create laws with powers and mechanisms comparable to but not greater than those available under federal environmental legislation. Government of Westbank First Nation enforcement officers shall have powers and authority at least comparable to but not greater than similar officers under federal environmental legislation.
156. Westbank First Nation environmental legislation and regulations may provide for enforcement measures and capacities including:
- (a) appointment of inspectors or other enforcement officers;
- (b) assignment of powers to inspectors including the following:
- (i) require that information be provided to them;
- (ii) copy information and recover information electronically stored on computer systems or otherwise; and
- (iii) such other powers as necessary to effectively enforce Westbank Law;

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- (c) appointment of analysts;
- (d) assignment of powers to analysts when they are accompanied by an inspector including:
 - (i) enter a place;
 - (ii) open receptacles and containers;
 - (iii) take samples and measurements; and
 - (iv) conduct tests;
- (e) for the purpose of inspection, the obligation of those who are subject to Westbank First Nation environmental laws to provide all reasonable assistance to enforcement officers and analysts who may accompany them;
- (f) subject to subsection 197(b), the setting of penalties and orders which a court of competent jurisdiction can impose for violations of Westbank First Nation environmental laws and regulations including:
 - (i) monetary fines;
 - (ii) imprisonment;
 - (iii) payments to funds created to restore damaged environment or take other corrective measures, including clean-up or disposal of toxic or other substances;
 - (iv) orders to publish the facts of a violation or to notify, at the offender's cost, any person, company or government adversely affected by a violation of Westbank Law;
 - (v) orders directing:
 - (A) correction of the environmental damage;
 - (B) community service;

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- (C) payment of a performance bond;
 - (D) prohibition of any activity that may result in continuation or repetition of the violation;
 - (E) suspension of work on the project;
 - (vi) orders imposing negotiated settlements and other appropriate orders in situations of violation;
 - (g) the establishment of capacities for the effective enforcement of such laws and regulations enacted under any of the authorities related to environmental protection and environmental assessment identified in this Agreement.
157. Westbank First Nation may set up mechanisms for it to apply to a court of competent jurisdiction for injunction orders consistent with those under federal legislation in relation to environment.

Environmental Assessment

158. For the environmental assessment provisions of this Agreement, the definitions of :
- (a) “environment”, “environmental effect”, “mediation” and “proponent” shall be as set out in the *Canadian Environmental Assessment Act*;
 - (b) the definition of “project” shall be:
 - (i) as set out in part (a) of the definition of “project” as set out in *Canadian Environmental Assessment Act*; or
 - (ii) any proposed physical activity not relating to a physical work that is prescribed or is within a class of physical activities that is prescribed pursuant to Westbank Law; and
 - (c) “review panel” means a body established to hold public hearings in a manner that offers the public an opportunity to participate in the environmental assessment of the project.
159. Westbank First Nation has jurisdiction in relation to environmental assessment for projects on Westbank Lands.
160. Westbank Law in relation to environmental assessment shall provide for a determination

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of projects on Westbank Lands that are subject to an environmental assessment.

161. The Westbank First Nation environmental assessment process shall provide that projects subject to an environmental assessment, as determined under the laws and regulations created pursuant to section 159, cannot be authorized until such an environmental assessment has been conducted and the proper authorization has been obtained by the proponent.
162. Any laws and regulations created pursuant to section 159 establishing an environmental assessment process shall maintain or exceed the requirements of the *Canadian Environmental Assessment Act*.
163. For greater certainty, where the following requirements are contained in the *Canadian Environmental Assessment Act*, the Westbank First Nation environmental assessment process established pursuant to section 159 shall provide:
- (a) that the following factors are taken into consideration in the environmental assessment process:
 - (i) the environmental effects of the project, including the environmental effects of malfunctions or accidents that may occur in connection with the project and any cumulative environmental effects that are likely to result from the project in combination with other projects or activities that have been or will be carried out;
 - (ii) the significance of the environmental effects;
 - (iii) comments from the public received in accordance with Westbank First Nation environmental assessment laws;
 - (iv) measures that are technically and economically feasible and would mitigate any significant adverse environmental effects of the project; and
 - (v) where projects are likely to have significant adverse environmental effects, provide for the consideration of the following additional factors:
 - (A) the purpose of the project;
 - (B) alternative means of carrying out the project that are technically feasible and the environmental effects of any such alternative means;
 - (C) the need for, and the requirements of, any follow-up program in

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respect of the project; and

- (D) the capacity of renewable resources that are likely to be significantly affected by the project to meet the needs of the present and those of the future;
 - (b) where appropriate, for public participation and public access to the environmental assessment information in the assessment of the project;
 - (c) the opportunity for mediation or establishment of a review panel where a project is likely to have significant adverse environmental effects;
 - (d) for a requirement that decision makers take the environmental assessment report, and, where applicable, the implementation of the mitigation measures into consideration prior to taking any action or making any decision that would enable the project to be carried out in whole or in part;
 - (e) for any decision-making authority in relation to the project to ensure that the mitigation measures are implemented; and
 - (f) for any other activities or principles that facilitate an effective and efficient assessment.
164. The Westbank First Nation environmental assessment process shall be structured to promote the implementation of the “proponent pays principle” which establishes that proponents are responsible for costs associated with the environmental assessment process including the preparation of the environmental assessment report, mitigation measures, follow-up programs and public consultation.
165. For greater certainty, any laws created under section 159 shall not diminish the federal government’s ability to set and implement national standards, voluntary and regulatory, for environmental assessments.
166. In the event of a conflict between federal law in relation to environmental assessment and Westbank Law enacted in accordance with any provisions of this Agreement, the federal law shall prevail to the extent of the conflict.
167. Any person, body, commission or entity established by and accountable to Council to carry out the environmental assessment process may delegate any responsibility or authority, other than decision-making authority that would determine whether a project would be carried out or referred to a review panel, to another person, body, commission or entity.

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168. Where there is an environmental assessment subject to a review panel pursuant to Westbank First Nation environmental assessment law, the review panel shall:
- (a) have the power to summon witnesses and compel them to give evidence and produce documents the review panel considers necessary for conducting its assessment of the project;
 - (b) have the same power to enforce the attendance of witnesses and to compel them to give evidence and produce documents and other things as is vested in a court of record;
 - (c) hold the review in public in whole, or to the extent necessary to protect the witness, in part, where a review panel is satisfied after representations made by a witness that specific, direct and substantial harm would be caused to the witness by the disclosure of the evidence, documents or other things that the witness is ordered to give or produce;
 - (d) have any summons issued by the review panel pursuant to the power set out in subsection 168(a), for the purpose of enforcement, be made a summons of a court of competent jurisdiction by following the usual practice and procedure of that court;
 - (e) not be subject to any legal action or other proceeding against it or a person on it for or in respect of anything done or omitted to be done, during the course of, and for the purposes of, the assessment by the review panel; and
 - (f) have other powers and authority comparable to but not greater than similar bodies or panels under federal environmental assessment legislation.
169. Where a project is subject to the Westbank First Nation environmental assessment process, Council may, by order, prohibit the proponent from undertaking any work in advance of the completion of the environmental assessment pursuant to Westbank Law.
170. Canada and Westbank First Nation agree to negotiate and attempt to reach agreement on harmonizing their respective environmental assessment regimes and processes, with the involvement of the province where the province agrees to participate, to promote effective and consistent environmental assessment regimes and processes and to avoid uncertainty and duplication.
171. Where a project is subject to the Westbank First Nation environmental assessment process and that of the *Canadian Environmental Assessment Act*, Canada and Westbank First Nation shall, where possible, pursuant to any harmonization agreement resulting from section 170, implement the principle that the Westbank First Nation environmental

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assessment procedures and time periods relating to environmental assessment shall be used.

172. (a) Where Canada undertakes a public review pursuant to the *Canadian Environmental Assessment Act* for a project which is likely to have significant adverse environmental effects on Westbank Lands, Westbank First Nation shall be entitled to nominate a person to the panel.
- (b) Where a project is subject to the *Canadian Environmental Assessment Act* and is likely to have significant adverse environmental effects on Westbank Lands, Canada shall ensure that Westbank First Nation:
- (i) receives timely notice of, and relevant information in Canada's possession on, the project and the potential environmental effects, subject to relevant privacy legislation; and
 - (ii) is consulted and provided with an opportunity to participate in the environmental assessment applicable to the project.
- (c) Where Westbank First Nation undertakes a public review pursuant to its environmental assessment process for a project that is likely to have significant adverse environmental effects on other federal Crown land, Canada shall be entitled to nominate a person to the panel.
- (d) Where a project subject to the Westbank First Nation environmental assessment process is likely to have significant adverse environmental effects on other federal Crown lands, Westbank First Nation shall ensure that Canada:
- (i) receives timely notice of, and relevant information in Westbank First Nation's possession on, the project and the potential environmental effects, subject to relevant privacy legislation; and
 - (ii) is consulted and provided with an opportunity to participate in the environmental assessment applicable to the project.
173. In addition to section 170, for legislative bodies other than Canada and the province that have environmental assessment processes, Westbank First Nation shall consider harmonization of environmental assessment processes with the other legislative bodies.
174. Westbank First Nation shall enact laws establishing a Westbank First Nation environmental assessment process in accordance with this Part. These laws shall come into force within 12 months of the Effective Date.

PART XV

CULTURE AND LANGUAGE

175. Westbank First Nation has jurisdiction in relation to preservation, promotion and development of Okanagan culture and language on Westbank Lands including:
- (a) the management, preservation and protection of archaeological sites on Westbank Lands including the issuance of permits and licences for excavation of archaeological sites;
 - (b) the management, disposal and development of, and access to burial sites and heritage sites which are located on Westbank Lands and which are of spiritual or religious significance to Members;
 - (c) the conservation, management and disposal of objects on Westbank Lands which are of religious or cultural significance to Members;
 - (d) use, preservation and promotion of Okanagan language; and
 - (e) authorization or accreditation for the use, reproduction and representation of Okanagan cultural symbols and practices and the teaching of Okanagan language on Westbank Lands.
176. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to Okanagan language and culture on Westbank Lands and federal law, Westbank Law shall prevail to the extent of the conflict.
177. Canada and Westbank First Nation recognize the integral role of Okanagan artifacts in the continuation of Okanagan culture, values and spiritual practices for Westbank First Nation.
178. Canada and Westbank First Nation recognize Westbank First Nation's traditional and sacred connection with Okanagan artifacts regardless of whether such artifacts are held by Westbank First Nation or the Canadian Museum of Civilization.
179. (a) Canada has no human remains as documented as having come from Westbank Lands. In the event that human remains having come from Westbank Lands are discovered in Canada's possession, Canada shall treat those remains in accordance with existing federal legislation, policies and procedures.
- (b) Canada and Westbank First Nation shall negotiate and attempt to reach agreement

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regarding the possible return of Okanagan artifacts reasonably attributable to Westbank First Nation held by the Canadian Museum of Civilization to Westbank First Nation.

- (c) The Canadian Museum of Civilization and Westbank First Nation shall negotiate and attempt to reach agreements to establish the custodial arrangements in respect of Okanagan artifacts reasonably attributable to Westbank First Nation still remaining with the Canadian Museum of Civilization.
 - (d) The agreements negotiated pursuant to subsection 179(c) shall respect the special relationship of the Westbank First Nation and the Okanagan cultural material reasonably attributable to Westbank First Nation and shall comply with federal law and the statutory mandate of the Canadian Museum of Civilization, and may include:
 - (i) identification of the Okanagan artifacts reasonably attributable to Westbank First Nation to be in the possession of Westbank First Nation or the Canadian Museum of Civilization at the commencement of any particular agreement;
 - (ii) conditions of maintenance, storage and handling of the Okanagan artifacts reasonably attributable to Westbank First Nation;
 - (iii) conditions of access to and use, including study, display and reproduction, of the Okanagan artifacts reasonably attributable to Westbank First Nation and associated records by the public, researchers and scholars;
 - (iv) provision for incorporating new information into catalogue records and displays of the Okanagan artifacts reasonably attributable to Westbank First Nation; and
 - (v) provision for enhancing public knowledge of the Westbank First Nation through the participation of the Westbank First Nation in public programs and activities at the Canadian Museum of Civilization.
180. Canada shall use reasonable efforts to facilitate Westbank First Nation's access to Okanagan artifacts held in other public and private collections.
181. Westbank First Nation shall be treated as a public authority designated pursuant to subsection 32(2) of the *Cultural Property Export and Import Act* subject to:
- (a) availability of a Westbank First Nation facility which meets accepted Canadian museological standards for long term storage and display of donated cultural

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artifacts; or

- (b) availability, through long term agreement between Westbank First Nation and an institution or public authority designated pursuant to subsection 32(2) of the *Cultural Property Export and Import Act*, of facilities for long term storage and display of donated cultural artifacts.
182. The official language of Westbank First Nation is Okanagan. Westbank Law and other business of Westbank First Nation government shall be written and conducted, as the case may be, in the English language. At the discretion of Westbank First Nation, the Constitution may also be written in the Okanagan language.
183. Services provided by a federal institution, as defined in the *Official Languages Act*, shall be provided in accordance with that Act and that Act shall prevail over Westbank Law to the extent of any conflict.
184. For greater certainty, a federal institution, as defined by the *Official Languages Act*, does not include Westbank First Nation, Council or other body established to perform a governmental function in relation to Westbank First Nation.
185. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, section 91 of the *Indian Act* shall continue to apply.

PART XVI

EDUCATION

186. (a) Westbank First Nation has jurisdiction in relation to kindergarten, elementary and secondary education on Westbank Lands for Members.
- (b) The Westbank First Nation education systems shall be designed to permit transfers between education systems without academic penalty to the same extent as transfers are effected between other education jurisdictions in Canada.
187. Without limiting the generality of section 186, Westbank First Nation has the authority to:
- (a) enter into tuition, post-secondary support, capital, curricular, recreational, special needs and other arrangements;
- (b) create administrative bodies to administer any education program;
- (c) enter into agreements regarding children of Members who attend school off Westbank Lands;
- (d) enter into agreements with the province concerning the delivery of provincial services or the application of provincial standards including:
- (i) curriculum development;
- (ii) education level equivalencies;
- (iii) teaching methodologies;
- (iv) programs and standards;
- (v) teacher certification;
- (vi) teacher training and development; and
- (vii) evaluation of the education systems;
- (e) administer post-secondary student support funding for Members living on or off Westbank Lands.

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188. Westbank First Nation's exercise of jurisdiction in education shall recognize the importance of compatibility with other education authorities while maintaining Westbank First Nation's right to protect its culture, identity, language and traditions.
189. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, sections 114 to 122 of the *Indian Act* shall continue to apply.
190. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to education and federal law, Westbank Law shall prevail to the extent of the conflict.

PART XVII

HEALTH SERVICES

191. Westbank First Nation has jurisdiction in relation to:
- (a) the regulation of the practice of traditional Okanagan medicine on Westbank Lands; and
 - (b) the regulation of practitioners of traditional Okanagan medicine on Westbank Lands.
192. For greater certainty, the jurisdiction referred to in section 191 shall not:
- (a) include jurisdiction to regulate products or substances that are regulated under provincial laws of general application or federal law; or
 - (b) affect the regulation of medical or health practitioners that require licensing or certification under provincial laws of general application.
193. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law made pursuant to the jurisdiction referred to in section 191 and federal law, Westbank Law shall prevail to the extent of the conflict.
194. Westbank First Nation may enter into agreements with any level of government, including any government agency or entity or any other national, regional or local entity, group or organization, concerning delivery of health services or the application of provincial or other health standards.

PART XVIII

ENFORCEMENT OF WESTBANK LAW

Enforcement Officials

195. Westbank First Nation has jurisdiction to:
- (a) appoint and assign duties to Westbank First Nation government officials for the enforcement of Westbank Law on Westbank Lands; and
 - (b) appoint officials as Commissioners for taking of oaths in relation to matters under the jurisdiction, as referred to in this Agreement, of Westbank First Nation.
196. (a) Subject to any assignment of duties by Westbank First Nation pursuant to subsection 195(a):
- (i) the Royal Canadian Mounted Police shall render such services as are necessary for enforcement of offences established by Westbank Law when such services are appropriate to the effective and efficient delivery of policing services in the province; and
 - (ii) such services shall be rendered in accordance with either:
 - (A) the Memorandum of Agreement dated April 1, 1992 between the government of Canada and the government of British Columbia (Provincial Policing Services Agreement) or its successors; or
 - (B) the Memorandum of Agreement Providing a Framework for Community Tripartite Agreements for the Royal Canadian Mounted Police - First Nations Community Police Service dated April 1, 1993 or its successors;whichever is applicable.
- (b) Nothing in this Agreement alters the arrangement for the enforcement of federal or provincial law on Westbank Lands by duly empowered federal or provincial officers as set out in the applicable Memorandum referred to in subsection 196(a)(ii).

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Offences

197. (a) Subject to subsection 197(b), Council may make laws to provide for the imposition of penalties on persons convicted of violations of Westbank Law, including laws to provide for the imposition of a term of imprisonment or a fine, or both.
- (b) Terms of imprisonment or fines for a violation of Westbank Law may be no greater than those that may be imposed under section 787(1) of the *Criminal Code of Canada*, except that:
- (i) a Westbank Law may provide for a fine of up to \$10,000.00 or the amount applicable to summary conviction offences under section 787(1) of the *Criminal Code of Canada*, whichever is greater; and
 - (ii) a Westbank Law in relation to environmental protection may provide for a fine that is no greater than the fine that may be imposed for offences punishable upon summary conviction under federal environmental legislation.
- (c) Where there is a conviction for violation of Westbank Law, in addition to any other remedy or penalty, the Provincial Court of British Columbia in which the conviction is entered or the superior court of criminal jurisdiction having jurisdiction in any appeal, may make an order:
- (i) prohibiting the continuation or repetition of the offence by the convicted person;
 - (ii) revoking or suspending any permit or other document issued under Westbank Law in respect of which the contravention was committed;
 - (iii) requiring the demolition of any structure erected in contravention of Westbank Law;
 - (iv) requiring the quarantine or destruction of any animal in respect of which the contravention was committed;
 - (v) for the forfeiture of and/or disposition of goods or chattels by means of which or in relation to which the offence was committed.

Enforcement Procedures for Westbank Law

198. (a) Westbank First Nation has jurisdiction to establish under Westbank Law

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comprehensive enforcement procedures comparable to, but not greater than, those set out in similar federal or provincial legislation on similar subject matters, including inspections, searches, seizures and compulsory sample testing and production of information.

- (b) Council may, by law, adopt the laws of the Province relating to proceedings in respect of offences that are created by a law of the Province, with such modifications as may be required.
199. (a) Westbank First Nation has jurisdiction to designate Westbank Law in respect of which enforcement officials have powers to issue a notice of violation as set out in subsection 199(b), and to fix the amount of fines with respect to that Westbank Law.
- (b) An enforcement official appointed by Westbank First Nation who believes on reasonable grounds that an offence has been committed under a Westbank Law designated under subsection 199(a), may issue to the accused a notice of violation requiring that he or she pay at the offices of Westbank First Nation an amount set out in the notice of violation.
 - (c) A notice of violation issued under subsection 199(b) shall include:
 - (i) the charge against the accused;
 - (ii) the period within which and the manner in which payment may be made;
 - (iii) the address of the offices of Westbank First Nation to which payment may be made; and
 - (iv) an explanation of the consequences of payment and of not making payment, including the issuance of a summons or other process.
 - (d) On payment of a fine within the period and in the manner set out in the notice of violation, no further action may be taken against the accused in respect of the offence.

Prosecutions

200. For the purpose of prosecuting offences, Westbank First Nation shall follow one or more of these options:
- (a) retain its own prosecutor;

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- (b) enter into an agreement with Canada to arrange for a federal agent to prosecute these offences; and
 - (c) enter into an agreement with Canada and the province to arrange for a provincial prosecutor.
- 201. (a) Prosecutions involving Westbank Law shall be heard before the Provincial Court of British Columbia.
- (b) The summary conviction procedures of Part XXVII of the *Criminal Code* shall apply to prosecution of offences of Westbank Law.
- 202. Subject to any agreement with the province or a competent authority of the province containing provisions to the contrary, every fine, penalty or forfeiture imposed as a result of contravention of Westbank Law belongs to Westbank First Nation.
- 203. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to the jurisdictions referred to in this Part and federal law, Westbank Law shall prevail to the extent of the conflict.

PART XIX

LICENSING, REGULATION AND OPERATION OF BUSINESSES

204. Subject to section 205, Westbank First Nation has jurisdiction in relation to:

- (a) licensing of businesses;
- (b) regulation of the operation of businesses; and
- (c) prohibition of the operation of businesses

on Westbank Lands.

205. For greater certainty:

- (a) the jurisdiction referred to in section 204 does not include jurisdiction in relation to banking, bankruptcy and insolvency, interprovincial and international trade and incorporation; and
- (b) the jurisdiction referred to in section 204 includes the raising of revenues by non-tax means.

206. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, paragraph 73(1)(e), and any regulations made thereunder, of the *Indian Act* shall continue to apply.

207. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to the jurisdiction referred to in section 204 and federal law, Westbank Law shall prevail to the extent of the conflict.

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PART XX

TRAFFIC AND TRANSPORTATION

208. (a) Westbank First Nation has jurisdiction in relation to the regulation and control of ground traffic and transportation, and the design, construction, management and maintenance of the ground transportation infrastructure on Westbank Lands.
- (b) For greater certainty, the exercise of the jurisdiction referred to in subsection 208(a) shall be designed to be at least equivalent in effect to federal and provincial regulations, safety standards and technical codes for the same subject matter.
209. For greater certainty, the jurisdiction referred to in section 208 does not include jurisdiction in relation to navigation and shipping.
210. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, paragraph 73(1)(c), and any regulations made thereunder, of the *Indian Act* shall continue to apply.
211. In the event of a conflict between federal law in relation to traffic and transportation and Westbank Law enacted in accordance with any of the provisions of this Agreement, the federal law shall prevail to the extent of the conflict.

PART XXI

PUBLIC WORKS, COMMUNITY INFRASTRUCTURE AND LOCAL SERVICES

212. Westbank First Nation has jurisdiction in relation to Westbank public works, community infrastructure and local services on Westbank Lands including works and services in relation to:
- (a) the collection, conveyance and treatment and disposal of sewage;
 - (b) the supply, treatment, conveyance, storage and distribution of water;
 - (c) the collection, removal and disposal of waste and noxious, offensive or unwholesome substances;
 - (d) the regulation, storage and management of solid waste and recyclable material, including the regulation of facilities and commercial vehicles used in relation to these matters;
 - (e) community parks and buildings;
 - (f) services for pleasure, recreation and other community use, including art galleries, museums, historic sites, arenas, theatres, sports complexes and other public buildings or facilities for exhibition;
 - (g) fire prevention and suppression and the provision of assistance in response to other classes of circumstances specified by Westbank Law that may cause harm to persons or property;
 - (h) street lighting systems;
 - (i) transit, including transit for persons with special needs;
 - (j) the inspection, for health and safety purposes, of private residences and any other buildings or structures on Westbank Lands;
 - (k) animal control;
 - (l) control of pollution, nuisances, pests, noxious weeds, noise and unsightly premises;
 - (m) regulation of fire alarm systems and other security alarm systems; and

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- (n) programs in preparation for emergencies.
213. For greater certainty, the jurisdiction referred to in section 212 does not include jurisdiction in relation to postal services and aeronautics.
214. Westbank First Nation has jurisdiction in relation to the levying and collection of development cost charges, user fees and development permit fees to provide for public works, community infrastructure and local services on Westbank Lands.
215. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, paragraphs 73(1)(i) and (l), and any regulations made thereunder, of the *Indian Act* shall continue to apply.
216. Except as otherwise provided in this Agreement, Westbank Law with respect to public works, community infrastructure and local services shall prevail over federal law to the extent of any conflict, so long as Westbank First Nation health and safety standards and technical codes regarding public works, community infrastructure and local services are at least equivalent to federal health and safety standards and technical codes.

PART XXII

PUBLIC ORDER, PEACE AND SAFETY

217. (a) Westbank First Nation has jurisdiction in relation to public order, peace, safety, or a danger to public health on Westbank Lands.
- (b) In the event of a conflict between a federal law or provincial laws of general application in relation to public order, peace, safety or a danger to public health, and a Westbank Law enacted in accordance with any of the provisions of this Agreement, the federal law or the provincial laws of general application shall prevail to the extent of the conflict.
- (c) Notwithstanding subsection 217(b), in the event of a conflict between provincial laws of general application in relation to public order, peace, safety or a danger to public health and a Westbank Law enacted pursuant to Part XXIII, the Westbank Law shall prevail to the extent of the conflict.
218. Current procedures and responsibilities in relation to emergency preparedness and emergency response shall continue to apply until a subsequent agreement is completed with Westbank First Nation, Canada and the province.
219. Until such time as the coming into force of the first Westbank Law enacted pursuant to the jurisdiction described in this Part, paragraphs 73(1)(d) and (j), and any regulations made thereunder, of the *Indian Act* shall continue to apply.

PART XXIII

PROHIBITION OF INTOXICANTS

220. (a) Westbank First Nation has jurisdiction to prohibit the:
- (i) sale;
 - (ii) barter;
 - (iii) supply;
 - (iv) manufacture; or
 - (v) possession
- of intoxicants on Westbank Lands.
- (b) Westbank First Nation has jurisdiction for exemptions in relation to possession of intoxicants on Westbank Lands.
221. Except as otherwise provided in this Agreement, in the event of a conflict between Westbank Law in relation to prohibition of intoxicants and federal law, the Westbank Law shall prevail to the extent of the conflict.

PART XXIV

FUTURE NEGOTIATIONS

222. It is the intention of Westbank First Nation to seek further negotiations with the province and Canada to set out jurisdictional arrangements with respect to the following subject areas:
- (a) health, in addition to what is provided for with respect to traditional aboriginal medicine in this Agreement;
 - (b) regulation of intoxicants in addition to what is provided for in this Agreement;
 - (c) labour relations on Westbank Lands;
 - (d) social services, family and child welfare law as it relates to Members;
 - (e) education of Members off Westbank Lands;
 - (f) gaming;
 - (g) minerals;
 - (h) water in addition to what is provided for in this Agreement; and
 - (i) the establishment of a Westbank First Nation court.

PART XXV

FINANCIAL ARRANGEMENTS

Principles of Financing

223. The fiscal relationship between Canada and Westbank First Nation shall be based on a government-to-government fiscal transfer.
224. The Parties are committed to the principle that the financing of self-government under this Agreement is a shared responsibility of Westbank First Nation and Canada.
225. (a) The Parties shall, prior to the ratification of this Agreement, and thereafter at five year intervals, or at such other intervals as the Parties may agree, negotiate a financial transfer agreement by which funding shall be provided to Westbank First Nation in order to enable the provision of agreed-upon public services.
- (b) Financial transfer agreements shall reflect the principle of reasonably comparable levels of public services to Westbank First Nation in comparison to other communities in southern British Columbia taking into account Westbank First Nation own source revenue capacity.
226. Westbank First Nation's delivery of public services to levels comparable to those provided to other communities in southern British Columbia, where program delivery efficiencies related to size, capacity and economies of scale are evident, may require Westbank First Nation to enter into cooperative jurisdictional or program delivery arrangements with other First Nation governments or other governments. For greater certainty, nothing in this section prevents Westbank First Nation from enhancing the delivery of public services to its Members using its own source revenues.
227. The level of funding provided by Canada and required to fulfill commitments set out in section 225 is set out in the financial transfer agreement.
228. During the term of a financial transfer agreement, Westbank First Nation and Canada agree to examine jointly the need to amend the financial transfer agreement in light of decisions of courts or administrative tribunals which significantly impact upon the number of eligible recipients of programs and services funded under the terms of the financial transfer agreement.

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The Financial Transfer Agreement

229. In negotiating financial transfer agreements, the Parties shall take into account the following:
- (a) one time implementation costs, in the first financial transfer agreement;
 - (b) costs to operate Westbank First Nation government;
 - (c) the desirability of reasonably stable, predictable and flexible funding arrangements;
 - (d) levels of support provided by governments to Westbank First Nation;
 - (e) the jurisdictions of, and authorities, obligations, programs and services assumed, or to be assumed, by Westbank First Nation during the duration of the particular funding agreement;
 - (f) Westbank First Nation's own source revenue capacity;
 - (g) the efficiency and cost-effectiveness of the proposed arrangements, including issues related to the size, location and accessibility of Westbank First Nation; and
 - (h) levels of support provided to other First Nations by government.
230. The exercise of Westbank First Nation's legislative authority pursuant to this Agreement shall not create or imply any funding or financial obligation for Canada.
231. The financial transfer agreements entered into pursuant to this Agreement may consolidate federal program funding for Westbank First Nation.
232. For greater certainty, funding provided in a financial transfer agreement entered into pursuant to this Agreement is money given to Westbank First Nation pursuant to an agreement between Westbank First Nation and Canada.
233. Any financial transfer agreements entered into pursuant to this Agreement shall be subject to the terms and conditions negotiated between Canada and Westbank First Nation.

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Westbank First Nation Cost-Sharing of Self-Government

234. (a) In negotiating the initial financial transfer agreement, Westbank First Nation's own source revenue capacity shall not be considered.
- (b) In negotiating subsequent financial transfer agreements, and not more than seven years after the Effective Date, the consideration of Westbank First Nation's own source revenue capacity shall be taken into account in a manner that does not create disincentives for Westbank First Nation to raise revenues and it may be phased in on an incremental and staged basis over an agreed upon period of time.
235. Unless specific sources of own source revenue capacity are determined by the Parties to be exempt from calculation, all sources of Westbank First Nation government revenue shall be included in the calculation of Westbank First Nation own source revenue capacity.
236. For greater certainty, Westbank First Nation's own source revenue capacity refers solely to the revenue capacity of Westbank First Nation government.
237. When taking into account Westbank First Nation's own source revenue capacity in the negotiation of the second and subsequent financial transfer agreements, the Parties will give due regard to Westbank First Nation's contribution to the cost of Westbank First Nation government.
238. (a) Westbank First Nation's own source revenue capacity shall be taken into account in the determination of funding set out in the financial transfer agreement for programs and services which Westbank First Nation provides pursuant to jurisdictions set out in the Agreement.
- (b) Programs and services which Westbank First Nation delivers on behalf of Canada, in areas where Westbank First Nation has no jurisdiction in this Agreement, shall be delivered in accordance with the terms and conditions of the agreements negotiated for the delivery of those programs and services.
239. During the term of the first financial transfer agreement, the Parties shall determine and mutually agree upon a system of data collection and information exchange for the measurement of own source revenue capacity.
240. Any own source revenue agreement reached between Canada and Westbank First Nation shall be negotiated without prejudice to any future financing arrangements that may arise out of treaty negotiations in the province or flow from a potential treaty.

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Provisions Respecting Financial Transfer Agreements

241. Financial transfer agreements shall be in the form of a contract which shall be attached to, but not form part of, this Agreement, and shall be subject to the appropriation of funds by the Parliament of Canada.
242. The initial and subsequent financial transfer agreements may reflect a progressive implementation of Westbank First Nation jurisdiction set out in this Agreement.
243. Financial transfer agreements shall set out the manner in which funding levels may be adjusted during the period of the financial transfer agreement.
244. The financial transfer agreements shall include provisions which enable federal Ministers to fulfill accountability requirements to the Parliament of Canada with respect to federal transfers under the financial transfer agreements.

Review and Renewal of Financial Transfer Agreements

245. Every five years, or at such other period as the Parties may agree, the Parties shall negotiate a renewal of the financial transfer agreements by which funding may be provided to Westbank First Nation.
246. Such negotiations may begin at any time prior to the end of the fourth fiscal year of the then current financial transfer agreement, but in any event shall begin no later than April 1st of the final fiscal year covered by the financial transfer agreement.
247. In the event that a renewal of the financial transfer agreement is not executed by the day of the expiry of the period covered by the financial transfer agreement which is being renewed, Canada shall provide to Westbank First Nation a financial transfer in the amount and subject to the terms and conditions set out in the financial transfer agreement then in existence, thereby extending the funding period under the financial transfer agreement for not more than one additional year.
248. The renewed agreement shall come into force on the first day after the expiration of the previous financial transfer agreement and shall expire on March 31st five years later or such other date as the Parties may agree.
249. Despite sections 245 to 248, and by mutual consent, Canada and Westbank First Nation may enter into new financial agreements based on new mechanisms that may be developed and which shall consider the elements set out in section 229.

PART XXVI

PRINCIPLES OF IMPLEMENTATION

Implementation Plan

250. Prior to ratification of this Agreement, the Parties shall prepare an implementation plan.
251. The implementation plan shall take effect on the Effective Date of the Agreement and have a term of 10 years, or such other term as the Parties may agree.
252. The implementation plan shall:
- (a) include a description of the implementation activities arising from the obligations set out in this Agreement, the activities anticipated to fulfill those obligations, and the responsible Parties and the anticipated time lines for completion;
 - (b) include a communications strategy in respect of the implementation and content of the Agreement;
 - (c) specify how the implementation plan will be amended, renewed or extended; and
 - (d) include any other matters agreed to by the Parties.
253. The implementation plan shall not create any legal obligations and, for greater certainty, shall not form a contract between Canada and Westbank First Nation.
254. The implementation plan shall be appended to, but shall not be part of, this Agreement. For greater certainty, the implementation plan shall not be used to interpret the Agreement.

Intergovernmental Implementation Committee

255. On the Effective Date, or as soon as practicable thereafter, the Parties agree to establish an intergovernmental implementation committee to provide a forum for the Parties to discuss the implementation of the Agreement. The intergovernmental implementation committee shall be for the same term as the implementation plan.
256. The intergovernmental implementation committee shall consist of one individual designated by Canada and one individual designated by Westbank First Nation.

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257. The intergovernmental implementation committee shall have the following duties and responsibilities:
- (a) oversee and provide direction on implementation of the Agreement and the implementation plan;
 - (b) monitor implementation of the Agreement and the implementation plan;
 - (c) provide an initial forum to resolve disputes related to implementation of the Agreement without in any way limiting access to the dispute resolution processes set out in Part XXX;
 - (d) conduct periodic reviews and make recommendations to the Parties on the renewal of the implementation plan beyond the initial period;
 - (e) provide an annual report on implementation of the Agreement to the Parties; and
 - (f) establish its own internal procedures.

PART XXVII

TAXATION TREATMENT

Tax Treatment of Government and Government Subsidiaries

258. (a) For the purposes of paragraph 149(1)(c) of the *Income Tax Act*, Westbank First Nation is deemed to be a public body performing a function of government in Canada.
- (b) For the purposes of paragraphs 149(1)(d) to 149(1)(d.6) and subsections 149(1.1) to 149(1.3) of the *Income Tax Act*, Westbank First Nation is deemed to be a municipality in Canada.

Tax Treatment of Gifts to Westbank First Nation

259. (a) A person who makes a gift to Westbank First Nation has the same tax treatment in respect of the gift as the person would have if the gift had been made to a charity registered under the *Income Tax Act*.
- (b) For greater certainty, subsection 259(a) does not require Westbank First Nation to comply with the requirements of the *Income Tax Act* relating to charities registered under that *Act*.

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PART XXVIII

TAX AGREEMENTS

260. From time to time, Canada and Westbank First Nation may negotiate and attempt to reach agreements on:
- (a) the extent, if any, that Westbank First Nation shall exercise direct taxation over persons on Westbank Lands;
 - (b) the manner in which Westbank First Nation's taxation shall be coordinated with existing federal taxation systems; and
 - (c) other such matters as may be agreed upon by Canada and Westbank First Nation relating to taxation matters.

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PART XXIX

TRANSFER OF CAPITAL AND REVENUE MONEYS

261. All moneys held by Canada pursuant to the *Indian Act* for the use and benefit of Westbank First Nation, being commonly referred to as capital and revenue moneys of the Band, shall be transferred by Canada to the Council following the ratification of this Agreement.
262. Upon transfer of the moneys referred to in section 261, Canada shall no longer thereafter be responsible for the collection of moneys payable:
- (a) to or for the benefit of Westbank First Nation; or
 - (b) except as provided in section 263, to or for the benefit of a Member.
263. Until Westbank First Nation exercises the jurisdiction for estates referred to in Part VIII, Canada shall collect any moneys payable to or for the benefit of deceased Members, Mentally Incompetent Members and infant Members.
264. For greater certainty, Canada shall not be liable for any errors or omissions in the administration of all moneys held by Westbank First Nation for the use and benefit of Westbank First Nation that occur subsequent to the transfer of capital and revenue moneys of the Band from Canada to the Council.
265. Canada shall be liable for any errors or omissions of Canada that occurred while the capital and revenue moneys were under Canada's administration.
266. Upon the transfer of moneys in accordance with section 261, Canada shall provide to Westbank First Nation a history report which details all receipts and expenditures from both the capital and revenue accounts of the Band for the ten year period prior to the date of transfer.

PART XXX

DISPUTE RESOLUTION

267. In the event of a dispute between the Parties arising out of or relating to this Agreement, the Parties agree to meet, negotiate in good faith and attempt to resolve the dispute amicably without litigation. The Parties agree to use the procedure set out in this Part.
268. (a) If a dispute arises under this Agreement which cannot be resolved by the persons directly involved within 30 days, either Party may invoke this dispute resolution procedure by giving written notice to the other designating a senior official with appropriate authority to be its representative in negotiations relating to the dispute.
- (b) Upon receipt of the notice referred to in subsection 268(a), the other Party shall, within five business days, designate a senior official with similar authority to be its representative.
- (c) Within 10 business days of the designation of both officials, the designated officials shall enter into direct, good faith negotiations concerning the dispute.
- (d) If within 30 business days after the first meeting between the senior officials, the Parties have failed to resolve the dispute or agreed to extend the time for senior officials to resolve the dispute, then the Parties agree to use a mediator, in accordance with this Part, to assist in resolving the dispute.
269. Where a mediator is required to assist in resolving the dispute, the following rules shall apply:
- (a) the Parties shall jointly select a mediator. If the Parties are unable to agree upon the choice of a mediator, then a mediator shall be chosen, upon application by the Parties, by the British Columbia Arbitration and Mediation Institute;
- (b) the Parties agree to participate in good faith in the mediation process and to meet with the mediator as soon as possible; and
- (c) each Party shall bear its own costs of the mediation.
270. If the Parties are unable to resolve the dispute within 60 business days of the first meeting with the mediator, or within such time as the Parties may agree in writing, the Parties may agree to submit the dispute to arbitration, pursuant to this Agreement.

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271. Where the Parties agree to submit the dispute to arbitration, the following rules shall apply:
- (a) the dispute shall be resolved by a single arbitrator if the Parties agree on one and, otherwise, by three arbitrators, one to be appointed by each Party and a third to be chosen by the first two named;
 - (b) the Parties may agree on the procedure to be followed in the arbitration. If they cannot agree on this procedure within 15 business days of the appointment of an arbitrator or arbitrators, the procedure shall be determined by the arbitrator or arbitrators;
 - (c) the arbitrator or arbitrators shall issue a written decision within 30 business days of the completion of the arbitration hearing and shall provide copies of the written decision to each Party; and
 - (d) unless otherwise agreed or otherwise ordered by the arbitration decision, the costs of the arbitration shall be shared equally by the Parties.
272. (a) The Parties agree that neither shall commence litigation until completion of the mediation process. In the event that the Parties have agreed to arbitration, neither Party may commence litigation until receipt of the arbitration decision.
- (b) Where litigation is to be commenced by a Party, it may only be done upon 20 business days written notice to the other Party.

PART XXXI

INDIAN ACT PROVISIONS

Health

273. Paragraph 81(1)(a) of the *Indian Act* shall continue to apply.

Fisheries

274. Paragraph 81(1)(o) of the *Indian Act* R.S.C. 1985 in relation to fish shall continue to apply.

Westbank First Nation Property Taxation

275. (a) Paragraphs 83(1)(a), (e), (e.1), (f), (g) and subsections 83(3), (4), (5), (6) of the *Indian Act*, shall continue to apply.
- (b) For greater certainty, the Westbank First Nation by-laws in relation to property taxation, enacted pursuant to section 83 of the *Indian Act* which are in force at the time of ratification of this Agreement, shall continue in force in accordance with the provisions of the *Indian Act*.
- (c) For greater certainty, interests in Westbank Lands are interests in lands as referred to in paragraph 83(1)(a) of the *Indian Act*.

General *Indian Act* Provisions

276. In addition to other provisions of this Agreement with respect to the application of the *Indian Act*, the following provisions of the *Indian Act* shall continue to apply:
- (a) definition of “band”, for the purpose of application to other sections of the *Indian Act* shall continue to apply;
- (b) definition of “reserve”, as set out in paragraph (a) only of the definition for “reserve”;
- (c) section 3, sections 5 to 7 and the definition of “Indian” and “Indian Register”;
- (d) section 29;
- (e) section 70, paragraphs 73(1)(f), (g) and (h), subsections 73(2) and 73(3);

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- (f) sections 86 and 87 and subsection 90(1); and
 - (g) sections 101 to 108.
277. Unless otherwise provided by this Agreement or Westbank Law, section 89 of the *Indian Act* shall continue to apply.
278. For those provisions of the *Indian Act* which continue to apply in accordance with this Agreement, section 88 of the *Indian Act* shall also continue to apply.
279. Where by-law provisions under section 81 of the *Indian Act* continue to apply, paragraphs 81(1)(q) and (r), section 82 and section 86 of the *Indian Act* also continue to apply.
280. Where pursuant to this Agreement the *Indian Act* continues to apply:
- (a) reference to “Band” in the *Indian Act* shall mean Westbank First Nation; and
 - (b) reference to “council of the band” in the *Indian Act* shall mean Council.

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PART XXXII

RATIFICATION

281. Initialling of this Agreement by the negotiators for Westbank First Nation and Canada signifies that they shall seek ratification.
282. Ratification of this Agreement by Westbank First Nation requires that at least 50 percent plus one (50% + 1) of all Eligible Voters, as that term is defined in Schedule A to this Agreement, participate in the ratification by casting a vote and that at least fifty percent plus one (50% + 1) of those voting approve the Agreement.
283. Ratification of this Agreement by the Parties in accordance with this Part and Schedule A is a condition precedent to the validity of this Agreement and, unless so ratified, this Agreement has no force or effect.
284. Westbank First Nation shall seek ratification of this Agreement by the process set out in Schedule A.
285. Ratification of this Agreement by Canada requires:
- (a) that this Agreement be signed by a Minister of the Crown authorized by the Governor-in-Council; and
 - (b) the enactment of federal legislation giving effect to this Agreement.

PART XXXIII

GENERAL

Review

286. Unless the Parties otherwise agree, the Parties shall review this Agreement within five years of the ratification by Westbank First Nation to consider the following:
- (a) whether this Agreement has been implemented in accordance with the implementation plan;
 - (b) whether any transfer of programs, responsibilities and resources pursuant to this Agreement has been successfully implemented;
 - (c) the effectiveness of this Agreement to implement the inherent right of self-government compared to other self-government agreements in British Columbia;
 - (d) the effectiveness of this Agreement to incorporate implementation of the financial transfer agreements compared to other self-government agreements in British Columbia;
 - (e) in consultation with the province, progress made in treaty-making and its relationship with this Agreement; and
 - (f) whether this Agreement should be amended to reflect mutually agreed upon conclusions.
287. The Parties agree to address issues arising out of section 286 with a view to resolution.

Westbank Internal Transfer of Rights and Interests

288. For greater certainty, upon the Effective Date, all the rights, titles, interests, assets, obligations and liabilities of the Band, thereafter known as the Westbank First Nation, shall continue to be vested in Westbank First Nation.

Professions and Trades

289. (a) Subject to sections 175 and 191, federal and provincial laws apply in respect of the accreditation and certification of professions and trades, including education professionals.

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- (b) In the event of a conflict between federal and provincial laws in relation to accreditation, certification or professional conduct of professions and trades and Westbank Law enacted in accordance with any of the provisions of the Agreement, the federal or provincial law shall prevail to the extent of the conflict.

Reference to Legislation

290. Citation of legislation refers to legislation as amended from time to time:

- (a) except where a specific date is indicated; and
- (b) for greater certainty, reference to the *Constitution Act, 1982* includes the 1983 amendments and any further amendments.

Canadian Human Rights Act

291. Nothing in this Agreement limits the operation of the *Canadian Human Rights Act* in respect of the Westbank First Nation and Westbank Lands and Members. The interpretation and application of the *Canadian Human Rights Act* in respect of Westbank First Nation and Westbank Lands and Members shall take into account:

- (a) the nature and purpose of this Agreement; and
- (b) the entitlement of Westbank First Nation to provide programs and services either exclusively or on a preferential basis to Members, where justifiable; and
- (c) the entitlement of Westbank First Nation to give preference to its Members in hiring employees and contractors for Westbank First Nation operations, where justifiable.

Freedom of Information and Privacy

292. Canada will present, in the Legislation, amendments to the *Access to Information Act* and the *Privacy Act* to protect from disclosure information provided in confidence by the Westbank First Nation as if it were information provided to Canada by another government in Canada.

293. Canada will present, in the Legislation, amendments to the *Privacy Act* to allow Westbank First Nation access to information necessary for Westbank First Nation to exercise its jurisdictions under this Agreement.

294. The Parties may enter into agreements in respect of any one or more of the collection, protection, retention, use, disclosure and confidentiality of personal, general or other

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information.

295. Canada may provide information to Westbank First Nation in confidence if Westbank First Nation has made a law or has entered into an agreement with Canada under which the confidentiality of the information will be protected.
296. Notwithstanding any other provision of this Agreement:
- (a) Canada is not required to disclose any information that it is required to withhold under any federal law;
 - (b) if federal legislation allows the disclosure of certain information only if specified conditions for disclosure are satisfied, Canada is not required to disclose that information unless those conditions are satisfied; and
 - (c) the Parties are not required to disclose any information that may be withheld under a privilege at law or under sections 37 to 39 of the *Canada Evidence Act*.

Liability

297. (a) Westbank First Nation is not liable in respect of anything done or omitted to be done by Her Majesty in Right of Canada or any person or body authorized by Her Majesty in the exercise of any federal rights, powers or responsibilities arising from applicable federal law which:
- (i) are in relation to the same subject matters set out in this Agreement and for which there has been no corresponding exercise of jurisdiction by Westbank First Nation at the time of the act or omission; or
 - (ii) occurred prior to the Effective Date
- (b) Her Majesty in Right of Canada is not liable in respect of anything done or omitted to be done by Westbank First Nation or any person or body authorized by Westbank First Nation:
- i) in relation to Westbank Lands that occurred after the Effective Date; or
 - ii) in the exercise of any rights, powers or responsibilities arising from Westbank Law.
298. The terms of this Agreement do not constitute nor shall they be interpreted as constituting a waiver by Westbank First Nation in regard to any liabilities, acts or omissions of Canada.

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Amendment

299. This Agreement may be amended where consent of each Party is obtained. Westbank First Nation's consent to any amendment shall be obtained in accordance with any referendum procedures of the Westbank First Nation and any procedures for ratification referred to in section 284. Canada's consent to any amendment shall be by way of Order-in-Council.

Entire Agreement

300. This Agreement is the entire agreement between the Parties in respect of the subject matter of this Agreement and, except as set out in this Agreement, there is no representation, warranty, collateral agreement, condition, right, or obligation affecting this Agreement.

301. The preamble and schedule to the Agreement form part of the Agreement.

302. The preamble, the several Parts and the schedule of the Agreement shall be read together and interpreted as one agreement.

Interpretation

303. There is no presumption that doubtful expressions, terms or provisions in this Agreement are to be resolved in favour of any particular Party.

304. In this Agreement:

- (a) unless it is otherwise clear from the context, the use of the word "including" means "including, but not limited to", and the use of the word "includes" means "includes, but is not limited to";
- (b) unless it is otherwise clear from the context, a reference to a "Part", "section", "subsection", "Schedule", or "Appendix" means a Part, section, subsection, schedule, or appendix, respectively, of this Agreement;
- (c) headings and subheadings are for convenience only, do not form a part of this Agreement and in no way define, limit, alter or enlarge the scope or meaning of any provision of this Agreement; and
- (d) unless it is otherwise clear from the context, the use of the singular includes the plural and the use of the plural includes the singular.

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Notice

305. In sections 306 to 311 “communication” includes a notice, document, request, approval, authorization or consent.
306. Unless otherwise set out in this Agreement, a communication between the Parties under this Agreement must be:
- (a) delivered personally or by courier;
 - (b) transmitted by fax; or
 - (c) mailed by prepaid registered post in Canada.
307. A communication shall be considered to have been given, made or delivered, and received:
- (a) if delivered personally or by a courier, at the start of business on the next business day after the business day on which it was received by the addressee or a responsible representative of the addressee;
 - (b) if transmitted by fax and the sender receives confirmation of the transmission, at the start of business on the business day following the day on which it was transmitted; or
 - (c) if mailed by prepaid registered post in Canada, when the postal receipt is acknowledged by the addressee.
308. The Parties may agree to give, make or deliver a communication by means other than those provided in section 306.
309. The Parties will provide to each other addresses for delivery of communications under this Agreement and, subject to section 311, will deliver a communication to the address provided by each other Party.
310. A Party may change its address or fax number by giving notice of the change to the other Party.

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311. If no other address for delivery of a particular communication has been provided by a Party, a communication will be delivered, mailed to the address or transmitted to the fax number of the intended recipient as set out below:

For: Canada
Attention: Minister of Indian Affairs and Northern Development
10 Wellington Street
Gatineau, Quebec
K1A 0H4
Fax Number: (819)953-4941

For: Westbank First Nation
Attention: Chief and Council
301-515 Highway 97 South
Kelowna, British Columbia
V1Z 3J2
Fax Number: (250)769-4377

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Signed in Westbank, British Columbia this _____ Day of _____, 2003.

Chief Robert Louie

Witness

Councillor Clarence Clough

Witness

Councillor Michael Werstuik

Witness

Councillor Rafael DeGuevara

Witness

Councillor Larry Derrickson

Witness

The Honourable Robert D. Nault
Minister of Indian Affairs
and Northern Development

The Honourable Senator
D. Ross Fitzpatrick
Senator for the Okanagan-
Similkameen, British Columbia

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SCHEDULE A

RATIFICATION OF THE WESTBANK FIRST NATION SELF-GOVERNMENT AGREEMENT

1.0 Definitions

1.1 In this schedule the following definitions will apply in addition to the definitions for the Agreement:

“Band Member” means a person whose name appears on the Band Membership List or who is entitled to have his or her name appear on the Band Membership List;

“Band Membership List” means the band membership list for Westbank First Nation as maintained by Canada;

“Eligible Voter” means a person whose name appears on the Official Voters List of the Westbank First Nation;

“Official Voters List” means the official voters list prepared by the Ratification Committee pursuant to section 4.0;

“Ratification Committee” means the Ratification Committee established pursuant to section 3.0;

“Ratification Vote” means a referendum by Eligible Voters to formally approve or disapprove the Agreement;

2.0 General

2.1 Ratification of the Agreement by Westbank First Nation in accordance with this Schedule shall be considered ratification by all persons eligible to be Band Members of Westbank First Nation.

2.2 The Agreement shall be ratified by Westbank First Nation before being considered for ratification by Canada.

2.3 Where there is a reference in this Schedule to a period of time after or before a specified day the period does not include the specified day.

2.4 Canada shall pay the approved costs of the Westbank First Nation ratification process.

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2.5 After ratification of the Agreement by Westbank First Nation but prior to submission of this Agreement for ratification by Canada, the negotiator, on behalf of Canada, and the Council, on behalf of Westbank First Nation, may agree to minor amendments to the specific provisions of this Agreement.

3.0 Ratification Committee

3.1 A Ratification Committee shall be established with responsibility to prepare the Official Voters List and to conduct the Ratification Vote in accordance with the provisions of this Schedule.

3.2 The Ratification Committee shall consist of one representative of Westbank First Nation as designated by Council, one representative of Canada as designated by the Minister of Indian Affairs and Northern Development and a third person designated jointly by Council and the Minister of Indian Affairs and Northern Development.

3.3 Following discussions with Westbank First Nation, the Ratification Committee shall prepare a budget for the Westbank First Nation ratification process subject to review and approval by Canada.

3.4 One of the designated representatives of the Ratification Committee shall explain the mode of voting to an Eligible Voter when requested to do so by the Eligible Voter.

3.5 In instances where an Eligible Voter requests assistance because he or she is unable to responsibly fill out the ballot, one of the designated representatives of the Ratification Committee shall assist the Eligible Voter by marking his or her ballot in the manner directed by the Eligible Voter and shall place such ballot in the ballot box.

4.0 Official Voters List

4.1 At least 30 days prior to the first date set for voting, the Ratification Committee shall prepare and post a list which shall be comprised of all persons whose names appear on the Band Membership List, and who will be, as of the last date of the vote, at least 18 years of age.

4.2 The voters list prepared pursuant to this section shall constitute the Official Voters List for purposes of the Ratification Vote.

4.3 The Ratification Committee shall post the Official Voters List in the administration office of Westbank First Nation, the Regional Office of the Department of Indian Affairs and Northern Development and, as determined by the Ratification Committee, in other prominent places.

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- 4.4 Any Band Member may apply to the Ratification Committee within 10 days of the posting of the Official Voters List to have the list revised on the grounds that:
- (a) the name of a Band Member has been omitted;
 - (b) the name of a Band Member is incorrectly set out; or
 - (c) the name of a person not entitled to vote is included.
- 4.5 Where the Ratification Committee is satisfied that a revision to the Official Voters List is necessary, the Ratification Committee shall make the revision and the revision shall be final and shall be added to the posted Official Voters List.
- 4.6 The Ratification Committee will immediately advise the Parties of the name and reason for the Band Member being deleted or not being added to the Official Voter List.
- 4.7 Only persons who are on the Official Voters List shall be entitled to vote at the Ratification Vote.

5.0 Information Campaign

- 5.1 The Ratification Committee shall take all reasonable steps necessary to ensure that Eligible Voters have a reasonable opportunity to learn about the ratification process and the substance of the Agreement.
- 5.2 Only material submitted by the Ratification Committee to, and approved by, the Parties shall be made available or distributed to Eligible Voters by the Ratification Committee pursuant to subsection 5.1. Material submitted by the Ratification Committee to a Party shall be considered approved by that Party unless the Ratification Committee receives written notice otherwise within 15 calendar days of the material being received by that Party.
- 5.3 The Ratification Committee shall hold at least one information meeting at Westbank First Nation no earlier than 10 days and no later than 21 days after posting the notice of the Ratification Vote. The Ratification Committee may hold further information meetings as, when, and where it may determine.

6.0 Notification of Ratification Vote

- 6.1 The date or dates for the Ratification Vote shall be set by resolution of Council of Westbank First Nation and they shall advise the Ratification Committee in writing of the date or dates at least 35 days before the first date of the vote.

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6.2 The Ratification Committee shall post a notice of the Ratification Vote in the locations where the Official Voters List was posted pursuant to subsection 4.3.

6.3 The notice of the Ratification Vote shall include the following information:

- (a) the date(s), time(s) and location(s) of the Ratification Vote;
- (b) the date(s), time(s) and location(s) of any advance vote held in accordance with subsection 7.2; and
- (c) the proposed wording of the Ratification Vote question.

7.0 Voting Process

7.1 The Ratification Vote shall be held at such locations as the Ratification Committee considers necessary.

7.2 The Ratification Committee may hold an advance vote, which may include a mail-in vote, in a manner it determines, for Eligible Voters who anticipate being unavailable to vote on the date(s) set for the Ratification Vote.

7.3 The Ratification Vote shall be by secret ballot.

7.4 The appearance, format, and contents of the ballot shall be approved by the Parties to this Agreement prior to the posting of the notice of the Ratification Vote.

7.5 The Ratification Committee shall receive and tabulate all ballots.

8.0 Ratification of this Agreement by Westbank First Nation

8.1 Westbank First Nation shall be considered to have ratified this Agreement if at least 50 percent plus one (50% + 1) of all Eligible Voters, as that term is defined in Schedule A to this Agreement, participate in the ratification by casting a vote and that at least fifty percent plus one (50% + 1) of those voting approve the Agreement.

8.2 The Ratification Committee shall, as soon as practical and in any event no later than seven days after the last date of the vote, tabulate the results of the vote showing the total number of ballots:

- (a) cast;
- (b) approving this Agreement;

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- (c) not approving this Agreement;
- (d) spoiled; and
- (e) rejected.

8.3 The Ratification Committee shall thereafter publish the tabulated results in the locations where the Official Voters List was posted pursuant to subsection 4.3 and may publish the tabulated results in such other locations as the Ratification Committee determines.

8.4 The Ratification Committee shall, within fourteen days after publication of the tabulated results pursuant to subsection 8.3, prepare and submit to the Parties a report setting out the tabulated results and the details of the carrying out of its responsibilities in the Westbank First Nation ratification process.

9.0 Ratification by Canada

9.1 After the Agreement has been ratified pursuant to section 8.1, the Agreement shall be presented to Canada for approval by the Governor-in-Council.

9.2 Canada will have ratified the Agreement when federal ratification legislation is in effect.

9.3 The ratification legislation shall be prepared in consultation with Westbank First Nation.



APPENDIX G

Planning Frameworks and Mandatory Requirements

Planning Frameworks

Planning Frameworks

In BC, First Nation and non-First Nation communities use different planning frameworks to guide long-term development. First Nations, such as WFN, develop CCPs, while municipalities and regional districts adopt RGSs and OCPs under provincial legislation.

Regional Growth Strategy

An RGS is a long-term planning document created by a regional district to manage growth and development across multiple municipalities. It addresses housing, transportation, economic development, and environmental protection. RGSs are established under Part 13 of the LGA. When a regional district adopts an RGS, each member municipality must include a Regional Context Statement (RCS) in its OCP to demonstrate alignment with regional objectives. The RDCO has no legislative authority over WFN, which is a self-governing First Nation.

Official Community Planning

An OCP is a statutory document adopted by municipalities and regional districts to guide land use, housing, transportation, infrastructure, and environmental management within its jurisdiction. OCPs are required under the LGA, and Section 473 specifies mandatory content such as land use designations, housing policies, and infrastructure planning. When a regional district has an RGS, each municipal OCP must include an RCS under Section 446 to show alignment with regional goals. OCPs provide a standardized framework for growth and development, ensuring consistency across municipalities and supporting coordinated regional planning.

Regional Context Statement

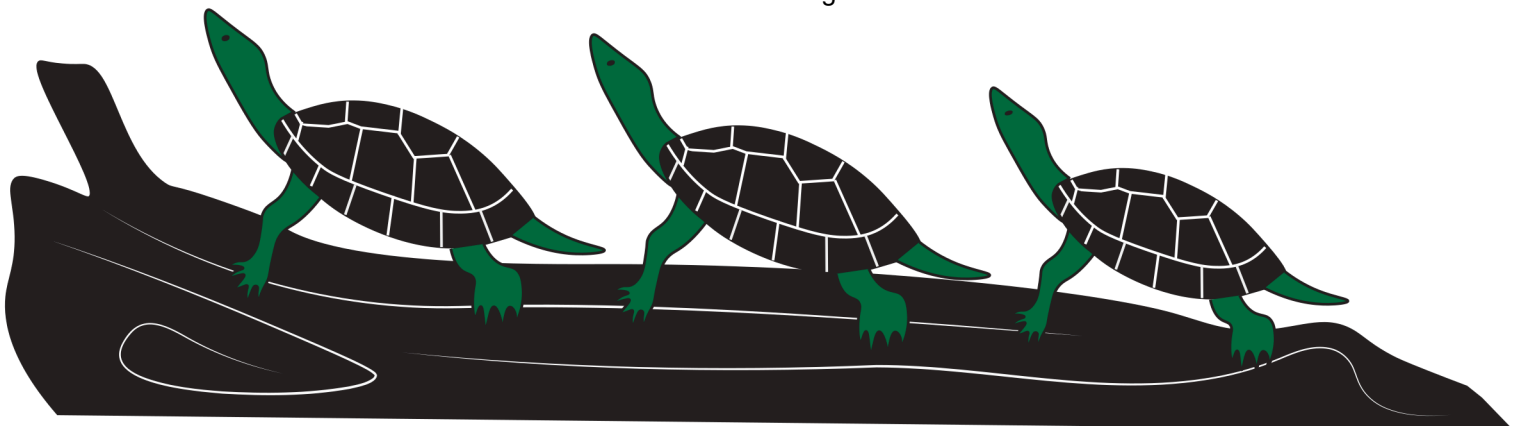
An RCS is a required component of an OCP under Section 446 of the LGA. It explains how the municipality's OCP aligns with the RGS and ensures coordinated planning across jurisdictions. This requirement applies only to municipalities within a regional district that has adopted an RGS. WFN is not currently required to include an RCS in its CCP; however, if WFN becomes a voting member of the RDCO Board through future amendments to the LGA, this requirement may need to be reconsidered.

Comprehensive Community Plan

A CCP is a community-led, culturally grounded process developed by Indigenous communities to guide decisions across social, cultural, economic, and land-use areas. CCPs are supported by Indigenous Services Canada and are not subject to the LGA. WFN's CCP, last updated in 2022, is described as a "living document" that integrates traditional knowledge and community vision. WFN's planning authority is established through its Self-Government Agreement (SGA) (ratified in 2003, implemented in 2005), which enables independent governance over land, resources, culture, and infrastructure.

Governance Implications

The IWG has identified the potential need for an RCS in WFN's CCP if legislative changes allow WFN to join the RDCO Board as a voting member. This requirement is currently undetermined, but if RDCO membership occurs, the inclusion of an RCS within the CCP will need to be considered to ensure alignment with the RGS. At present, WFN develops and implements its CCP independently of provincial legislation.



Mandatory Requirements Under Local Government Act

Under the LGA, municipalities are required to adopt an OCP, while regional districts may choose to adopt one. When an OCP is adopted, it must include specific statements and map designations to address key planning areas:

- Residential development to meet anticipated housing needs over at least five years.
- Present and proposed land uses: commercial, industrial, institutional, agricultural, recreational, and public utility.
- Public facilities: schools, parks, and waste treatment and disposal sites.
- Sand and gravel deposits suitable for future extraction.
- Phasing of major roads, sewer, and water systems.
- Land use restrictions for hazardous or environmentally sensitive areas.

Housing Planning Policies

OCPs must include policies for affordable housing, rental housing, and special needs housing. They are also required to set GHG reduction targets and outline actions to achieve these reductions. When developing or amending housing-related sections of the OCP, local governments must consider Housing Needs Reports.

Major Sections Typically Included in an OCP

Beyond mandatory requirements, most OCPs include broader strategic sections such as:

- Community Vision and Goals
- Land Use Designations and Maps
- Housing Strategy
- Transportation and Mobility
- Infrastructure and Servicing
- Environmental Protection and Climate Action
- Economic Development
- Social Planning and Community Well-being
- Agricultural and Rural Lands
- Development Permit Areas

- Heritage and Cultural Resources
- Implementation and Monitoring Framework
- RCS (if applicable)
- Public Engagement Summary

Provincial Requirements and Guidelines

The Province of BC has introduced additional planning expectations for OCPs:

- Five-Year Review Cycle: OCPs must be reviewed and updated at least every five years.
- Transit-Oriented Development and Small-Scale Multi-Unit Housing: Plans must align with recent legislation promoting density and housing diversity.
- Amenity Cost Charges and Inclusionary Zoning: Frameworks must be incorporated to secure affordable housing and community amenities.
- Pre-Zoning for Housing Needs: OCPs must reflect and pre-zone for the 20-year housing unit targets identified in HNRs.

Federal Requirements and Guidelines for CCPs

CCPs follow federal guidelines rather than provincial legislation. ISC supports CCPs as holistic, community-driven plans that integrate cultural values, governance priorities, and long-term development goals. CCPs typically include:

- Community Vision and Values
- Governance and Leadership
- Land Use and Infrastructure
- Housing and Community Facilities
- Economic Development
- Health and Social Well-being
- Culture and Language
- Environmental Stewardship
- Implementation and Monitoring Framework
- Community Engagement Summary

Planning Frameworks

Planning Area	LGA Requirement	OCP Provincial Requirements	WFN CCP Alignment	Notes	WFN Constitution Reference	WFN Self-Government Agreement Reference
Residential Development	Required for 5-year housing needs.	Must reflect 20-year housing supply targets via Housing Needs Report.	3.2.4 Housing, 6.2.4 Leadership and Staff.	Planning alignment opportunity for formal housing projects.	Part IV, Sec. 15-17; Part VIII, Sec. 60.	Part X – Westbank Lands and Land Management, Sec. 21-29.
Land Use Designations	Required for various land uses.	Must pre-zone land to meet housing targets and support TOD.	3.3.2 Reserve Lands, 3.5.1 Economic Drivers.	Planning alignment opportunity for regional coordination.	Part I – Principles; Part VIII, Sec. 60.	Part X, Sec. 21-29 Grants WFN Authority over land use planning, zoning, expropriation, and land registry.
Public Facilities	Required for schools, parks, waste sites.	Must integrate with infrastructure and servicing plans.	3.2.5 Health & Wellness, 3.2.7 Education.	Strong alignment.	Part IV, Sec. 15-17.	Parts XVI & XVII.
Sand and Gravel Deposits	Required if suitable extraction.	Not emphasized in provincial updates.	Not explicitly mentioned.	Opportunity to expand planning scope.	Not addressed.	Part XII – Resource Mgmt., Sec. 31-32 Provides jurisdiction over renewable and non-renewable resources, including land-based planning.

Planning Frameworks

Planning Area	LGA Requirement	OCP Provincial Requirements	WFN CCP Alignment	Notes	WFN Constitution Reference	WFN Self-Government Agreement Reference
Infrastructure Phasing	Required for roads, sewer, water.	Must include lifecycle costing and servicing strategies.	3.3.2 Reserve Lands, 6.2.4 Leadership & Staff.	Alignment could be enhanced through regional collaboration.	Part IV, Sec. 15-17.	Part XX – Transportation.
Hazardous / Environmental Lands	Required land use restrictions.	Must address climate resilience and hazard mitigation.	4.2 Chief Bitterroot, 4.7 Sustainability.	Planning opportunity to include hazard mapping.	Part I – Principles.	Part XIV – Environment Enables WFN to enact and enforce environmental law and conduct assessments.
Housing Policies	Required for affordable, rental, special needs.	Must include inclusionary zoning and amenity charges.	3.2.4 Housing.	Opportunity to incorporate affordability metrics.	Part IV, Sec. 15-17.	Part XX, Sec. 21-29.
GHG Reduction Targets	Required targets and policies.	Must include climate action plans and adaption strategies.	4.7 Sustainability.	Strong alignment.	Part I – Principles.	Part XIV – Environment.
Housing Needs Report	Must inform OCP updates.	Must be reviewed every 5-years and guide zoning bylaws.	3.2.4 Housing, 6.2.4 Leadership & Staff.	Partial alignment; is missing a formal housing needs report.	Part IV, Sec. 15-17.	Part X, Sec. 21-29.
First Nations Engagement	Consideration required.	Recommended for reconciliation and collaboration.	Member-led planning, cultural protocols.	Strong alignment, not statutory.	Part VII – Council Meetings; Part I – Principles.	Part VI – Governance; Part XVIII Enforcement.

Planning Frameworks

Planning Area	LGA Requirement	OCP Provincial Requirements	WFN CCP Alignment	Notes	WFN Constitution Reference	WFN Self-Government Agreement Reference
Cultural Heritage	Optional policy area.	Encouraged to support reconciliation and heritage protection.	Food Chiefs, captikwł, Language Law.	Strong Alignment.	Part I – Principles.	Part XV – Culture and Language Supports cultural governance and protection of language and culture.
Economic Development	Optional policy area.	Encouraged to support local economic resilience.	Economic Strategic Plan, Tourism.	Strong Alignment.	Part IV, Sec. 15-17.	Part XIX – Business Regulation Support economic development through local regulation and planning.
Community Engagement	Consultation required.	Must include public hearings and engagement documentation.	Annual Member Survey, App, Youth / Elder input, Monthly Advisory Council Meetings; CCP vetted in 2023.	Strong alignment; reflects WFN involvement of Advisory Council.	Part VII – Council Meetings.	Part VI – Governance.
Monitoring and Evaluation	Not mandated.	Best practice for implementation and accountability.	Annual & 5-year reviews, success measures.	Strong alignment.	Part IV, Sec. 15-17.	Part VI – Governance.



APPENDIX H

Inclusive Governance Roadmap Timeline and Task Overview

Inclusive Governance Roadmap

Recognizing the complexity of the topics, the group identified the need for additional research to enable a deeper dive, which has included engagement with the Ministry and will likely require further provincial review.








Symbol Meaning:  Action Complete |  Action in Progress or Pending |  Requires Provincial Review

Date	Action Items and Outcomes	Government Responsible	Governance Context and Considerations	Status
May 2022	WFN Comprehensive Community Plan includes a goal to explore formalizing a relationship with RDCO and becoming a voting member.	WFN	Scope of Decision Making, Planning Frameworks	
Jun 2023	JWR Business Group contracted to develop Inclusive Regional Governance initiative for RDCO/WFN.	WFN, RDCO	Governance Model Options	
Aug 2023	RDCO Strategic Priorities (2023-2026) include Truth and Reconciliation and exploring full representation for WFN.	RDCO	Scope of Decision Making, Voting Structure, WFN Powers, Authorities and Traditional Territories	
Sep 14, 2023	Community-to-Community Forum to support informal dialogue between RDCO Board and WFN Chief and Council (focus DRIPA legislation).	WFN, RDCO	Engagement	
Jan 25, 2024	RDCO Board Meeting: Presentation of the Inclusive Governance Discussion Paper Completed by JWR Business Group.	RDCO	Engagement	
Mar 19, 2024	Summary Report: RDCO/WFN Inclusive Regional Governance completed by JWR Business Group.	WFN, RDCO	Governance Model Options	
Jun 13, 2024	Received the Inclusive Regional Governance Working Session Summary and Recommendations from JWR Business Group.	WFN, RDCO	Governance Model Options	
Jun 13, 2024	RDCO Board formally endorsed the decision-making framework and composition of the Intergovernmental Working Group (IWG), authorizing staff to seek WFN's endorsement.	WFN, RDCO	Governance Model Options	
Jul 2, 2024	WFN Chief and Council approved the IWG proposal (including Model Five) authorized proceeding.	WFN	Governance Model Options	
Sep 11, 2024	Joint Presentation on Inclusive Regional Governance by RDCO/WFN at Union of BC Municipalities Convention.	WFN, RDCO	Communications & Transparency, Provincial Engagement	
Oct 29, 2024	Summarize list of services provided to other municipalities and identify which are through bylaws vs. agreements; identify services WFN receives.	RDCO	Service Participation	

Inclusive Governance Roadmap

Recognizing the complexity of the topics, the group identified the need for additional research to enable a deeper dive, which has included engagement with the Ministry and will likely require further legal review.












Symbol Meaning:  Action Complete |  Action in Progress or Pending |  Requires Provincial Review

Date	Action Items and Outcomes	Government Responsible	Governance Context and Considerations	Status
Oct 29, 2024	WFN/RDCO staff confirm mandatory services prior to November meeting; refer to Local Government Act (LGA) sec. 338; legal counsel recommended.	WFN, RDCO	Service Participation	
Oct 29, 2024	WFN contributes to RDCO's governance review of the Emergency Management Association aimed at enhancing emergency management and aligning with inclusive governance principles.	WFN, RDCO	Emergency Management, Service Participation	
Oct 29, 2024	Discussion on amending the LGA to include Self-Governing First Nations; DRIPA-LGA conflicts noted; legislative change identified as a key pathway (simple addition to read Self-Governing and Treaty First Nations in the LGA).	WFN, RDCO, BC	Local Government Act Amendments, Provincial Engagement, Voting Structure, Legislative & Policy Review	
Nov 22, 2024	Mandatory services confirmed (emergency planning, solid waste, admin, cost apportionment); funding mechanisms for WFN participation (whether through requisitions, service agreements, or service establishment bylaws) requires further analysis by the provincial policy team. Provincial policy team is reviewing applicability to self-governing First Nations, including requisition practices used by treaty nations. Mandate letters are pending; discussion deferred to January 2025.	WFN, RDCO, BC	Service Participation, Financial Considerations	
Nov 22, 2024	RDCO / WFN reviewed and approved revised Intergovernmental Working Group (IWG) Terms of Reference.	WFN, RDCO, BC	Terms of Reference, Intergovernmental Working Group	
Nov 22, 2024	Current legislation requires a regional context statement for Regional Growth Strategy (RGS); provincial input is required to determine if a Regional Context Statement (RCS) is required within a Comprehensive Community Plan (CCP) ; WFN CCP is membership driven; shared values around climate, GHG reduction, and ecological concerns.	WFN, RDCO	Legislative & Policy Review, Local Government Act Amendments	
Nov 22, 2024	Review whether RDCO authority supersedes municipalities in any areas and assess if those models could apply under <i>WFN's Constitution</i> . No examples identified; individual services will require ongoing review.	WFN, RDCO	Scope of Decision Making, Service Participation	

Inclusive Governance Roadmap

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Date	Action Items and Outcomes	Government Responsible	Governance Context and Considerations	Status
Nov 22, 2024	IWG to create a tracking mechanism to document and summarize approaches for addressing key governance considerations.	WFN, RDCO, BC	Scope of Decision Making	
Nov 22, 2024	WFN holds federal powers in archaeology, environment, and land stewardship with untapped jurisdictional potential; municipal laws don't apply on reserves; prioritize WFN's federal authorities and acknowledge traditional territory in regional planning.	WFN	WFN Powers, Authorities and Traditional Territory, Planning Frameworks	
Dec 17, 2024	Prepare draft framework outlining goals, methodology, legislative context, and key questions on voting, taxation, services, and governance; explore explore opportunities and implications of WFN aligning with municipal-level service models.	WFN, RDCO	Engagement Outcomes, Scope of Decision Making, Governance Model Options	
Dec 17, 2024	RDCO to modify service agreement and service establishment bylaw to clearly indicate mandatory services for WFN.	RDCO	Service Participation	
Jan 17, 2025	Review WFN Constitution for amendment to enable WFN Council member to sit at RDCO Board via delegated authority.	WFN	Voting Structure, WFN Powers, Authorities and Traditional Territory	
Jan 17, 2025	Joint Presentation: Electoral Area Services Committee update on Inclusive Regional Governance.	WFN, RDCO	Engagement Outcomes	
Jan 17, 2025	Update spreadsheet to clarify services that WFN participates in indirectly.	WFN, RDCO	Service Participation	
Jan 17, 2025	RDCO and WFN Chief Financial Officers (CFOs) to compare converted and non-converted values, pending WFN's breakdown of property classes.	WFN, RDCO	Financial Considerations, WFN Powers, Authorities and Traditional Territory	
Jan 17, 2025	Alignment between OCP and WFN's CCP.	RDCO	Scope of Decision Making, Planning Frameworks	
Jan 17, 2025	WFN tax notices to provide breakdown of taxes to other communities.	WFN	Financial Considerations	
Jan 17, 2025	CFOs to address RDCO and WFN requisitions and implications on taxes.	WFN, RDCO	Financial Considerations	

Inclusive Governance Roadmap

Recognizing the complexity of the topics, the group identified the need for additional research to enable a deeper dive, which has included engagement with the Ministry and will likely require further legal review.











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Date	Action Items and Outcomes	Government Responsible	Governance Context and Considerations	Status
Jan 17, 2025	Province to explore language changes in LGA to include Self-Governing First Nations.	WFN, RDCO	Legislative & Policy Review	
Jan 17, 2025	Contact MFA regarding WFN eligibility for lower borrowing rates under MFA program.	WFN, RDCO	Financial Considerations	
Jan 17, 2025	WFN to review Constitution on liability limits and MFA borrowing regulations; reference LGA s. 289.	WFN	WFN Powers, Authorities and Traditional Territory, Financial Considerations, Legislative & Policy Review	
Jan 17, 2025	Assess implications of voting rights for non-Members on WFN Lands; review Electoral Area West Director vote distribution and potential WFN voting unit strength if WFN formally joins the RDCO Board; requires further review by provincial policy team.	WFN, RDCO, BC	Non-Member Representation on WFN Lands, Voting Structure, Legislative & Policy Review	
Jan 17, 2025	Provincial staff to update IWG on voting processes for Treaty First Nations (e.g. Tsawwassen).	BC	Voting Structure, Legislative & Policy Review	
Feb 12, 2025	Ministry may support temporarily stepping aside from a "one size fits all" policy approach; provincial representatives to meet with IWG for a policy session.	BC	Legislative & Policy Review	
Feb 12, 2025	Provincial staff to clarify if electoral assent is required to change boundaries of electoral area (removing IR#9 and IR#10); including implications on voting structure and representation for non-members.	BC	Voting Structure, Legislative & Policy Review	
Feb 12, 2025	Assess feasibility of WFN disclosing financial position to maintain current structure; review LGA implications; engage MFA as needed.	WFN, RDCO	Financial Considerations, Legislative & Policy Review	
Feb 12, 2025	WFN/RDCO staff to discuss constitutional and financial limitations regarding WFN representation and long-term debt.	WFN, RDCO	Financial Considerations, Legislative & Policy Review, WFN Powers, Authorities and Traditional Territory	
Feb 12, 2025	Coordinate RDCO/WFN Directors of Finance to discuss financial implications related to the Central Okanagan Regional Hospital District.	WFN, RDCO	Financial Considerations, Service Participation	

Inclusive Governance Roadmap

Recognizing the complexity of the topics, the group identified the need for additional research to enable a deeper dive, which has included engagement with the Ministry and will likely require further legal review.












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Date	Action Items and Outcomes	Government Responsible	Governance Context and Considerations	Status
Mar 19, 2025	Review Letters Patent and service agreement appendix against mandatory regional services; assess alignment with WFN autonomy and liability; update WFN Constitution as needed. Mandatory services not included in the current master agreement would need to be included in <i>WFN's Constitution</i> .	WFN, RDCO	Service Participation, WFN Powers, Authorities and Traditional Territory	
Mar 19, 2025	WFN to send the Ministry a letter to inquire about voting structure and strength.	WFN	Provincial Engagement, Voting Structure	
Mar 19, 2025	Letter to Ministry regarding disclosure requirements: WFN seeks clarity on whether to disclose fully consolidated financial statements or local government services financials.	WFN, BC	Provincial Engagement, Financial Considerations, Service Participation	
Mar 19, 2025	Undetermined whether a boundary adjustment will be required for Electoral Area West; need provincial input.	WFN, RDCO, BC	Voting Structure, Letters Patent & Disclosure Requirements	
Apr 16, 2025	Until LGA changes are implemented, it will govern how WFN can participate in MFA's process; MFA/LGA implications must be reviewed and considered by the Ministry.	WFN, RDCO, BC	Provincial Engagement, Financial Considerations, Legislative & Policy Review	
Apr 16, 2025	Determine if OKIB IR#7 - Duck Lake IR is part of Electoral Area East voting.	RDCO	Scope of Decision Making	
May 1, 2025	Ministry is continuing policy work and information gathering, using Inclusive Regional Governance grants to explore shared interests and potential models for WFN participation on regional district boards. The Ministry is collaborating with JWR Group and will use grant reports and summary findings to determine next steps and future engagement.	BC	Provincial Engagement, Legislative & Policy Review, Engagement	
May 1, 2025	Ministry considers WFN Advisory Council broadly consistent with treaty requirements for non-Member engagement but recommends further analysis and consultation. The IWG should define impacts, gather Advisory Council input, develop communication strategies, and review appeal procedures if WFN joins the RDCO Board.	BC	Provincial Engagement, Legislative & Policy Review, Engagement	 
May 1, 2025	The Ministry confirmed that current legislation does not address removing Westbank reserve lands from Electoral Area West. Such a change would likely require amending the regional district's Letters Patent, but the process and implications (representation, engagement, and governance models) need further policy work and consultation.	BC	Provincial Engagement, Legislative & Policy Review, Engagement	

Inclusive Governance Roadmap

Recognizing the complexity of the topics, the group identified the need for additional research to enable a deeper dive, which has included engagement with the Ministry and will likely require further legal review.









Symbol Meaning:  Action Complete |  Action in Progress or Pending |  Requires Provincial Review

Date	Action Items and Outcomes	Government Responsible	Governance Context and Considerations	Status
May 1, 2025	The Ministry confirmed that WFN is not expected to report financial data through the Provincial portal unless its financial information is consolidated into a local government's audited statements, which is unlikely given the nature of its relationships.	BC	Provincial Engagement, Legislative & Policy Review, Engagement, Financial Consideration	
May 16, 2025	Confirmed MFA legislation does not permit Self-Governing First Nations; additionally, the question of liability for debt will need to be examined carefully in developing Model Five.	WFN, RDCO	Financial Considerations, Legislative & Policy Review	
May 16, 2025	Confirmed OKIB IR#7 - Duck Lake IR residents participate in City of Kelowna elections.	RDCO	Voting Structure	
May 16, 2025	WFN/RDCO to submit a report to the Province outlining goals, limitations, roles, and the current relationship; Province to assess legislative changes ; WFN must enact regional representation law aligned with part 7 of the LGA.	WFN, RDCO, BC	Legislative & Policy Review	
May 16, 2025	Recommend layered approach for inclusive governance: add self-governing nations to LGA or remove treaty requirement for regional board participation.	WFN, RDCO, BC	Legislative & Policy Review	
May 16, 2025	Determine if the province could consider a signed agreement between RDCO, WFN, and the Province to advance Model Five.	WFN, RDCO	Provincial Engagement	
May 16, 2025	Invite WFN/RDCO Planning staff to discuss land use planning alignment between CCPs/RGSs and OCPs.	WFN, RDCO	Scope of Decision Making, Planning Frameworks	
May 16, 2025	Province to confirm if CORHD is a mandatory service.	BC	Service Participation, Provincial Engagement	
May 16, 2025	RDCO to contact Interior Health Board regarding funding and clarify any alignment with First Nations Health Authority.	RDCO	Service Participation	
Jul 15, 2025	Schedule IWG update to WFN Advisory Council on Inclusive Regional Governance initiative.	WFN	Engagement	
Jul 15, 2025	RDCO staff to complete Final Report Communications Plan.	WFN, RDCO	Communications & Transparency	

Inclusive Governance Roadmap




The IWG emphasized the importance of aligning strategic considerations with emerging priorities, ensuring flexibility to address evolving governance needs while maintaining a clear path toward inclusive decision-making.









Symbol Meaning:  Action Complete |  Action in Progress or Pending |  Requires Provincial Review

Date	Strategic Considerations	Government Responsible	Governance Context and Considerations	Status
Oct 29, 2024	Emergency Management: WFN hiring risk management staff; contributing to Emergency Management Organization (EMO) governance review for sustainability and coordination with RDCO and municipalities.	WFN	Service Participation	
Oct 29, 2024	Province to provide key points for LGA changes to support inclusive governance and resolve DRIPA conflicts.	BC	Legislative & Policy Review, Provincial Engagement	
Dec 17, 2024	LGA amendments to grant WFN equal voting rights like Treaty Nations raises questions about impacts on liabilities, services, taxation, and alignment with WFN's Self-Government Agreement and Constitution, which prohibits assuming external liabilities, service withdrawal is more complex than municipalities, and legal review is needed (LGA s. 410 and s. 259).	BC	WFN Powers, Authorities and Traditional Territory, Legislative & Policy Review	
Dec 17, 2024	WFN/RDCO seek provincial direction on policy work and process to update the LGA; Province still gathering information.	WFN, BC	Legislative & Policy Review, Provincial Engagement	
Dec 17, 2024	Discussion on taxation and voting clarity for Electoral Area West and WFN.	WFN, RDCO, BC	Voting Structure, WFN Powers, Authorities and Traditional Territory	
Jan 17, 2025	WFN's taxation and voting structure may mirror Electoral Areas if not taxing directly (LGA s. 257-259). Participation as a voting member requires contributions to board costs. Provincial finance input is necessary because municipalities are invoiced annually based on BC Assessment values. When WFN becomes a voting member, WFN would be required to contribute to board costs in addition to maintaining service agreements. Comparison with Treaty Nations will require provincial finance input.	BC	Voting Structure, Service Participation, Legislative & Policy Review	
Jan 17, 2025	IWG received provincial mandate letters.	BC	Provincial Engagement, Legislative & Policy Review	
Jan 17, 2025	Provincial legislation requires voting members to participate in RGS planning; consider Regional Context Statement to align CCP with RGS. Provincial input is required and this needs to be considered when WFN becomes a voting member.	BC	Scope of Decision Making, Legislative & Policy Review, Planning Frameworks	

Inclusive Governance Roadmap

The IWG emphasized the importance of aligning strategic considerations with emerging priorities, ensuring flexibility to address evolving governance needs while maintaining a clear path toward inclusive decision-making.







Symbol Meaning:  Action Complete |  Action in Progress or Pending for RDCO/WFN |  Requires Provincial Review

Date	Strategic Considerations	Government Responsible	Governance Context and Considerations	Status
Jan 17, 2025	RDCO to calculate converted values after WFN provides property class breakdown; may require establishment bylaw amendment.	WFN, RDCO, BC	Financial Considerations, Service Participation	
Jan 17, 2025	WFN to confirm if tax notices provide a breakdown of taxes going to other communities.	WFN	Service Participation	
Jan 17, 2025	Province advises legislative proposal process will take about year (currently in year 3 of the 5-year DRIPA Action Plan); IWG inquired about the steps taken to go from identifying issues to making a proposal. The proposal is an internal process at the Ministry.	BC	Legislative & Policy Review	
Jan 17, 2025	Discussion around WFN's participation in services could reduce costs for other municipalities if existing service capacity allows.	WFN, RDCO	Service Participation, Financial Considerations	
Jan 17, 2025	If WFN gains a voting seat at the RDCO Board, how does voting unit apply for non-WFN electors on WFN Lands (currently voting for Electoral Area West Director but ineligible to vote for WFN C&C). Need to clarify whether WFN Advisory Council sufficient representation for non-Members, and how many directors WFN would have on the regional board based on the current RDCO voting entitlement (1 per 5,500); 2026 census data will confirm eligibility for voting entitlement. Provincial input is required.	WFN, RDCO, BC	Voting Structure, Engagement	
Mar 19, 2025	If WFN maintains current governance structure and seeks RDCO Board representation, feasibility depends on meeting financial disclosure requirements under the LGA. Province to clarify whether WFN is to disclose fully consolidated or local government service financials.	BC	Financial Considerations, Legislative & Policy Review	
Mar 19, 2025	The Province has no set referendum guidelines on WFN joining the RDCO Board as a voting member; WFN must seek Member approval and update Constitution accordingly; RDCO elector consent not required; consideration of non-Member residents are representation (beyond WFN Advisory Council); potential endorsement from both Member and non-Member reps.	WFN	Provincial Engagement, Voting Structure, Letters Patent & Disclosure Requirements	
Apr 16, 2025	Boundary changes and Letters Patent updates may be required; include IR#8, IR#11, and IR#12; financial reporting only if borrowing through MFA; inform residents about representation and voting at the WFN Advisory Council AGM.	WFN, RDCO	Letters Patent & Disclosure Requirements, Financial Considerations, Legislative & Policy Review	

Inclusive Governance Roadmap

The IWG emphasized the importance of aligning strategic considerations with emerging priorities, ensuring flexibility to address evolving governance needs while maintaining a clear path toward inclusive decision-making.






Symbol Meaning:  Complete |  Action in Progress or Pending |  Requires Provincial Review

Date	Strategic Considerations	Government Responsible	Governance Context and Considerations	Status
Apr 16, 2025	WFN and RDCO's collaboration could be a model; requires LGA amendment and WFN law to enable representation ; Province awaiting JWR's Summary Report on the five regional districts, that participated in Inclusive Regional Governance initiative, to guide consultation with Self-Governing and Treaty Nations; Letters Patent review needed.	WFN, RDCO, BC	Letters Patent & Disclosure Requirements, Legislative & Policy Review, Governance Model Options	
May 16, 2025	Province developing inclusive governance policy but lacks a clear approach for self-governing nations; layered policy suggested for self-governing First Nations (empower parties, amend LGA, or remove treaty requirement).	BC	Review of Comparative Models, Overview of Proposed Models, Legislative & Policy Review	
Jul 15, 2025	RDCO Board sent letter to Minister Boyle to advance Inclusive Regional Governance with WFN; RDCO leadership met with multiple Ministers on inclusive governance, emergency management, and fire mitigation; WFN leadership to attend UBCM with RDCO.	WFN, RDCO	Communications & Transparency, Engagement, Provincial Engagement	
Sep 10, 2025	Uncertainty if WFN CCP can replace OCP; need to reconcile planning requirements across jurisdictions and ensure equal participation in provincially structured RGS processes.	WFN, RDCO, BC	Legislative & Policy Review, Planning Frameworks	
Sep 10, 2025	RDCO initiating RGS renewal (last updated in 2014) which must meet LGA requirements; WFN has historically participated in RGS planning groups, but further integration is needed; planning gaps identified between CCP and OCP; analysis to be prepared for provincial review and consideration.	WFN, RDCO, BC	Legislative & Policy Review, Planning Frameworks	
Sep 10, 2025	Alignment between RDCO's RGS and WFN's CCP is key; distinguish municipal vs. Indigenous planning frameworks; LGA s.432 flagged as relevant to RGS updates.	WFN, RDCO, BC	Legislative & Policy Review, Planning Frameworks	

Inclusive Governance Roadmap

The IWG emphasized the importance of aligning strategic considerations with emerging priorities, ensuring flexibility to address evolving governance needs while maintaining a clear path toward inclusive decision-making.

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Date	Strategic Considerations	Government Responsible	Governance Context and Considerations	Status
Sep 10, 2025	Planning and reporting elements are dependent on provincial input; including CCP/OCP alignment; planning alignment with Indigenous governance structures. Heritage Conservation Transformation Project was flagged as a potential influence on OCP content, with timing and legislative implications yet to be confirmed.	WFN, RDCO, BC	Legislative & Policy Review, Planning Frameworks	
Sep 10, 2025	Broader legislative considerations discussed; possible LGA amendments; legislative flexibility and interpretation of LGA s. 432 remain key for RGS updates and intergovernmental planning alignment.	BC	Legislative & Policy Review, Provincial Engagement	
Sep 10, 2025	Minister to determine voting units (currently 1.98 votes for IR#9 and IR#10) based on census data.	BC	Voting Structure, Legislative & Policy Review, Provincial Engagement	
Sep 10, 2025	Ministry direction required for withdrawal process for optional services outside current legislative framework.	BC	Legislative & Policy Review, Provincial Engagement	
Sep 10, 2025	Letters Patent(s) will need to be amended.	BC	Legislative & Policy Review, Provincial Engagement	



APPENDIX I

Provincial Considerations and Legislative Pathways

Provincial Considerations and Legislative Pathways

The following chart summarizes outstanding key provincial considerations and actions identified by the IWG. These items reflect priority areas requiring provincial leadership, legislative review, and policy development to enable Inclusive Regional Governance. They address critical intersections between the Local Government Act (LGA), DRIPA obligations, and emerging governance models for Self-Governing Indigenous Nations.

Category	Strategic Considerations for Inclusive Governance and Legislative Pathways
Governance Structure (Legislative and Policy)	<ul style="list-style-type: none"> Province developing inclusive governance policy; a layered policy approach is suggested to amend the LGA to include Self-Governing Indigenous Nations (empower parties, amend LGA, or remove treaty requirement for regional board participation); DRIPA–LGA conflicts noted; with legislative changes identified as a key pathway. Ministry may support temporarily stepping aside from a "one size fits all" policy approach; provincial representatives to meet with IWG for a policy session. Province advises legislative proposal process will take a year; IWG inquired about the steps taken to go from identifying issues to making a proposal. The proposal is an internal process at the Ministry. Ministry considers WFN Advisory Council broadly consistent with treaty requirements for non-Member engagement but recommends further analysis and consultation. The IWG should define impacts, gather Advisory Council input, develop communication strategies, and review appeal procedures if WFN joins the RDCO Board. The Province has no set referendum guidelines on WFN joining the RDCO Board as a voting member; WFN must seek Member approval and update Constitution accordingly; RDCO elector consent not required; consideration of non-Member residents are representation (beyond WFN Advisory Council); potential endorsement from both member and non-member reps. WFN and RDCO's collaboration could be a model; requires LGA amendment and WFN law to enable representation; Province awaiting JWR report to guide consultation with self-governing and treaty nations; Letters Patent review needed.
Voting Structure and Representation	<ul style="list-style-type: none"> Provincial staff to clarify referendum requirements for WFN joining RDCO, including implications on voting structure and representation for non-Members. the Province currently has no set referendum guidelines and must consider representation for non-Member residents (beyond WFN Advisory Council) and potential endorsement from both Member and non-Member reps. LGA amendments to grant WFN equal voting rights as Treaty Nations raises questions about impacts on liabilities, services, taxation, and alignment with <i>WFN's Self-Government Agreement</i> and <i>Constitution</i>, which prohibits assuming external liabilities, service withdrawal is more complex than municipalities, and legal review is need (LGA s. 410 and s. 259). Assess implications of voting rights for non-members on WFN Lands; review Electoral Area West Director vote distribution and potential for one, likely two WFN votes when WFN formally joins the RDCO Board; requires further review by provincial policy team. Provincial staff to clarify if electoral assent is required to change boundaries of electoral area (removing IR#9 and IR#10); including implications on voting structure and representation for non-Members. Minister to determine voting units (currently 1.98 votes for IR#9 and IR#10) based on census data. WFN's taxation and voting structure may mirror Electoral Areas if not taxing directly (LGA s. 257-259). Participation as a voting member requires contributions to board costs. Provincial finance input is necessary because municipalities are invoiced annually based on BC Assessment values. When WFN becomes a voting member, WFN would be required to contribute to board costs in addition to maintaining service agreements. Comparison with Treaty Nations will require provincial finance input.

Provincial Considerations and Legislative Pathways

The following chart summarizes outstanding key provincial considerations and actions identified by the IWG. These items reflect priority areas requiring provincial leadership, legislative review, and policy development to enable Inclusive Regional Governance. They address critical intersections between the Local Government Act (LGA), DRIPA obligations, and emerging governance models for Self-Governing Indigenous Nations.

Category	Strategic Considerations for Inclusive Governance and Legislative Pathways
Voting Structure and Representation	<ul style="list-style-type: none"> • If WFN gains a voting seat at the RDCO Board, how does voting unit apply for non-WFN electors on WFN Lands (currently voting for EA West Director but ineligible to vote for WFN Chief and Council). Need to clarify whether WFN Advisory Council sufficient representation for non-Members, and how many Directors WFN would have on the regional board based on the current RDCO voting entitlement (1 per 5,500); 2026 census data will confirm eligibility. Provincial input is required.
Service Participation	<ul style="list-style-type: none"> • Mandatory services confirmed (emergency planning, solid waste, admin, cost apportionment); funding mechanisms for WFN participation (whether through requisitions, service agreements, or service establishment bylaws) requires further analysis by the provincial policy team. Provincial policy team is reviewing applicability to self-governing First Nations, including requisition practices used by Treaty Nations. Mandate letters are pending; discussion deferred to January 2025. • Province to confirm if CORHD is a mandatory service.
Financial Considerations	<ul style="list-style-type: none"> • MFA implications must be reviewed and considered by the Ministry. • MFA legislation does not permit Self-Governing First Nations to participate; additionally, the question of liability for debt will need to be examined carefully in developing Model Five. • MFA/LGA implications require review and consideration by the Ministry.
Planning Frameworks	<ul style="list-style-type: none"> • Current legislation requires a Regional Context Statement (RCS) for Regional Growth Strategy (RGS); provincial input is required to determine if an RCS is required in a CCP; WFN CCP is membership driven; shared values around climate, GHG reduction, and ecological concerns. • Address planning and reporting alignment between CCP, OCP, and RGS processes, ensuring equal participation in provincially structured frameworks. Broader legislative considerations discussed; possible LGA amendments; legislative flexibility and interpretation of s. 432, LGA remain key for RGS updates and intergovernmental planning alignment. • Support integration of Indigenous planning frameworks with provincial growth strategies and legislative requirements. • Planning and reporting elements are dependent on provincial input; including CCP/OCP alignment; planning alignment with Indigenous governance structures. Heritage Conservation Transformation Project was flagged as a potential influence on OCP content, with timing and legislative implications yet to be confirmed.
Letters Patent	<ul style="list-style-type: none"> • Boundary changes and Letters Patent updates required; include IR#8, IR#11, and IR#12 Undetermined whether a boundary adjustment will be required for Electoral Area West. Provincial input is required. The Ministry confirmed that current legislation does not address removing Westbank reserve lands from Electoral Area West. Such a change would likely require amending the regional district's Letters Patent, but the process and implications (representation, engagement, and governance models) need further policy work and consultation. • Letters Patent(s) will need to be amended (confirmed as part of legislative review).