

# Inclusive Regional Governance Study Grant

## Draft Final Report

Prepared for the Ministry of Housing and Municipal Affairs  
(formerly the Ministry of Municipal Affairs)

By the Capital Regional District in collaboration with Jemma  
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# Table of Contents

- Table of Contents** ..... 2
- Executive Summary** ..... 3
- 1. Introduction** ..... 6
  - 1.1 Project Background ..... 6
  - 1.2 Scope of Work..... 8
  - 1.3 Limitations of the Work..... 8
- 2. Approach** ..... 8
- 3. Methods** ..... 10
- 4. Key themes** ..... 11
  - 4.1 Support for a More Inclusive Approach to Regional Governance ..... 11
  - 4.2 Need for a Decolonized Approach to Regional Governance ..... 11
  - 4.3 Barriers to Meaningful Participation..... 13
  - 4.4 Acknowledgement of Other Effective Ways of Shared Decision Making..... 14
  - 4.5 Need for Direct Communication with the Ministry..... 15
- 5. Observations on Possible Next Steps**..... 16
  - 5.1 Amendments to the Local Government Act are Critical to Addressing Issues of Representation & Shared Decision Making..... 16
  - 5.2 First Nation Involvement in Processes Outside of the Regional Board is Also Essential to Inclusive Governance..... 16
  - 5.3 Diverse Views of First Nations require Diverse Approaches to Inclusive Governance ..... 17
  - 5.4 Relationship with Regional Districts must Focus on Services and Operations ..... 17
- 6. Conclusion** ..... 18
- Appendix A: Inclusive Regional Governance Study Grant Terms of Reference**
- Appendix B: Inclusive Governance Initiative Backgrounder**

## Executive Summary

The Province of British Columbia (the “province”) enacted the *Declaration on the Rights of Indigenous Peoples Act* in 2019 to implement the United Nations Declaration on the Rights of Indigenous People in British Columbia. The province released a Declaration Act Action Plan in 2022 to meet the objectives of the legislation. Action 1.11 requires the province to work with First Nations to support and advance their inclusion in regional district boards. To meet Action 1.11, the province set up an inclusive governance study grant in 2023 for regional districts to engage with First Nations on the topic of inclusive governance. Through this grant, the province provided the CRD with \$60,000 to conduct engagement on inclusive governance with First Nations in the CRD.

The CRD used this funding along with additional CRD funds to engage with First Nations through government-to-government meetings and engagement sessions. In total, eight First Nations provided input regarding inclusive governance, which is summarized in this report as five key themes and four observations on potential next steps for the CRD and the province to advance inclusive governance.

### Key Themes

#### Theme 1. Support for a More Inclusive Approach to Regional Governance

- Regional decisions must include First Nations communities: “Nothing about us without us.”
- Regional decisions impact First Nations' communities and constitutional rights.
- First Nations are interested in regional collaboration and legislative changes to support inclusive governance.

#### Theme 2. Need for a Decolonized Approach to Regional Governance

- Regional governance model and structure set by legislation is colonial and prohibits participation of First Nations without a modern Treaty; a new model must recognize Indigenous self-determination.
- Inclusive governance model must consider traditional understandings of land and permit First Nations to participate in discussions and decisions as they relate to their territory.
- First Nations must be permitted to select representatives for CRD committees in line with their traditional governance models.
- The CRD must address concerns for how it may consider one First Nation’s perspective over another.

### Theme 3. Barriers to Meaningful Participation

- Challenges related to a lack of consistent and meaningful consultation by the CRD on key initiatives, and understanding and awareness of First Nations' Aboriginal and treaty rights.
- First Nations may not have capacity or interest to participate in the CRD board and committees.
- First Nations' territories may overlap with multiple municipalities and regional districts creating challenges for participating in two or more regional districts.
- Even if First Nations had a seat on the CRD board they are concerned their voices will not be heard or they will be outvoted on matters that have significant impacts to their rights.

### Theme 4. Acknowledgement of other Effective Ways of Shared Decision Making

- First Nations acknowledge there are other mechanisms for engagement.
- First Nations might not need to be on the CRD board if they could have meaningful discussions on operational issues and shared decision making.
- First Nations view MOU's and CRD's Government-to-Government Relationship Building Initiative as a positive step towards strengthening relationships and inclusion in decision making.
- Inclusion of First Nations on the CRD board must be in addition to other mechanisms for shared decisions making.

### Theme 5. Need for Direct Communication with the Ministry

- First Nations need a government-to-government relationship with the Crown.
- A government-to-government relationship requires direct interaction with the Ministry rather than absorbing First Nations into the existing regional district structure.

## Observations on Possible Next Steps

### 1. Amend the *Local Government Act*

- Amend the *Local Government Act* to create greater inclusion.
- The province must commit to improving inclusive governance and find solutions for improvement without putting the onus on First Nations to find solutions.
- As a first step, the province should research regional governance models and approaches to shared decision making and outline innovations for inclusive governance in a report.

### 2. Involve First Nations in Inclusive Governance Processes Outside of Regional Government Boards

- First Nations and the CRD will continue to implement government-to-government relationship building agreements.
- The province should consider entering into agreements with Indigenous governing bodies under s. 6 and 7 of the *Declaration on the Rights of Indigenous Peoples Act* for shared decision making.
- All levels of government must continue with meaningful consultation for any project or action that has the potential to impact First Nations' rights.

### 3. Need Diverse Approaches to Inclusive Governance

- No single model for inclusive governance.
- First Nations must have the choice to join regional government boards if the province amends the *Local Government Act* to include non-treaty First Nations.
- The province and regional governments must move other mechanisms for inclusive governance forward alongside amendments to the *Local Government Act*.

### 4. Relationship with Regional Districts must Focus on Services and Operations

- First Nations emphasized the government-to-government relationship with the CRD is grounded in CRD operations and the impact operational decisions have on First Nations.
- Must develop mechanisms to address long-standing critical issues for First Nations communities in relation to regional government operations.
- Ongoing dialogue required at the leadership and staff level for operational decisions that impact First Nations.

# 1. Introduction

## 1.1 Project Description

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British Columbia is committed to supporting the advancement of First Nations participation in regional governance through the implementation of the provincial *Declaration on the Rights of Indigenous Peoples Act* Action Plan. The Action Plan is organized by four themes with theme 1 focusing on self-determination and the inherent right to self government. Action 1.11 states that the province will, in consultation and cooperation with Indigenous Peoples, “support inclusive regional governance by advancing First Nations participation in regional district boards.”

To support Action 1.11, the Ministry of Municipal Affairs (the “Ministry”) provided a \$60,000 study grant to the Capital Regional District (“CRD”) to advance discussions with First Nations on how the province and the CRD could enable non-modern treaty First Nations to join regional district boards as voting members. The Ministry intended the study grant to enable discussions between the CRD and First Nations that would provide information on key themes related to inclusive governance, possible consultative or legislative changes needed to meet the needs of regional districts and First Nations, and potential next steps for including First Nations in regional district governance.

The CRD used the \$60,000 to undertake engagement with First Nations on inclusive governance (the “Inclusive Governance Initiative”). To support this work, the CRD integrated discussions around inclusive regional governance into its ongoing Government-to-Government Relationship Building Initiative, which commenced in 2023. The CRD used the study grant to offer \$5,000, totaling \$45,000 of the funding, to the nine First Nations whose reserves and active communities are located within the CRD. The CRD used the remaining grant funding along with additional CRD resources to fund a full-day First Nations’ forum and to hire consultants to assist with the engagement.

This report summarizes the key themes and possible next steps for inclusive governance as shared with the CRD by First Nations. While this report summarizes the views expressed to the CRD by the participating First Nations, they have not had the opportunity to review this report.

## 1.2 Project Background

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Since 2015, the CRD has explored ways to improve its relationship with First Nations and to identify ways it can include First Nations in regional decision-making under the current regional district framework.

The current regional district framework set out by the *Local Government Act* provides a unique system of governance where member jurisdictions maintain their autonomy but govern as a board of directors to make regional, regulatory, and service decisions. Under the *Local Government Act* only modern treaty First Nations may be a member of a regional district boards, excluding other First Nation groups from having a voice at the decision-making table. The CRD formed the Task Force in 2015 to consider First Nations' interest in having formal representation on the CRD Board. The Task Force found that First Nation leaders viewed the provisions of the *Local Government Act* and structure of the CRD board as insufficient to fully enable inclusive governance. Although the *Local Government Act* allows non-treaty or historic treaty First Nations to participate in the regional governance model as non-voting / non-members in an observer or advisory capacity, First Nations view this form of participation as deficient and/or unequal.

To address some of the concerns brought forth by First Nations leaders to the Task Force, the CRD Board approved several bylaw changes in January 2021 to provide for the inclusion of First Nations elected representatives on CRD Standing Committees. The approved bylaw changes created a flexible model of inclusion where First Nations elected representatives can formally participate and vote on items of interest at CRD Standing Committees. To date there has been little participation from First Nations in CRD's Standing Committees.

The CRD is working towards better relationships with First Nations through the Government-to-Government Relationship Building Initiative, which seeks to identify areas of shared interest, preferred forums and frequency of meetings, priority topics, and high-level principles and processes to support ongoing relationships. The discussions arising from the Government-to-Government Relationship Building Initiative support the CRD's 2023-2026 Board Priorities, which aim to strengthen relationships with First Nations based on trust and mutual respect, partnerships, and working together on shared goals. Specifically, Priority 4b identifies the need for collaboration "with First Nations to build and strengthen new processes for respectful, reciprocal government-to-government decision-making and service delivery that uplift Indigenous self-determination." The CRD broadened its government-to-government discussions to include feedback on inclusive regional governance.

More information on the CRD's Government-to-Government Relationship Building Initiative, its process and outcomes, can be found in the April 16, 2024 Summary Report located [here](#).

### *1.3 Scope of Work*

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The Ministry provided a \$60,000 study grant to the CRD to work with local First Nations to discuss how regional district boards might operate with the addition of First Nation directors representing their community governments. The Terms of Reference provided by the Ministry can be found in Appendix A.

The Terms of Reference identified three suggested areas of discussion: “Building Understanding and the Current State of Relationships”, “Shared Interests”, and Exploring Governance Factors”. Where possible, the topic areas are referenced in the key themes below. The CRD also provided a short backgrounder to First Nations to summarize the scope of work and the questions being posed by the Ministry. The Inclusive Governance Initiative Backgrounder can be found in Appendix B.

### *1.4 Limitations of the Work*

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While this work took place over 14 months, competing interests and resource constraints continue to limit the level and depth of First Nations engagement on projects and initiatives. As such, participation from First Nations within the desired timeframe remained a challenge and the CRD was unable to connect with one First Nation on this Initiative.

During this time, the CRD was also engaging with various First Nations on the Government-to-Government Relationship Building Initiative, Regional Parks Land Acquisition Strategy, solid waste management, land acquisitions, land altering works/heritage conservation, park management plans, Regional Water Supply operations and plans, numerous regulatory referrals, Liquid Waste Management Plan updates, water and wastewater servicing agreements, and other projects.

This report has not been reviewed by the participating First Nations.

## **2. Approach**

The CRD operates on the territories of 19 First Nations whose ancestors have been taking care of the land since time immemorial. The CRD is working towards obtaining greater input and involvement from First Nations in the implementation of CRD’s core areas of business. To that effect, in 2023 and 2024, the CRD engaged with nine First Nations, who have current population settlements within the region and several service agreements with the CRD, to seek guidance on how the CRD may strengthen its government-to-government relationships.



Engagement on the Inclusive Governance Initiative took place within the CRD's Government-to-Government Relationship Building Initiative and involved the following nine First Nations:

1. X<sup>w</sup>sepsəm (Kosapsum) Nation
2. Songhees Nation
3. P'a:chi:da?ah (Pacheedaht) First Nation
4. Sc'ianew (Beecher Bay) First Nation
5. T'Sou-ke Nation
6. BOKÉCEN (Pauquachin) First Nation
7. S<sup>x</sup>ÁUTW (Tsawout) First Nation
8. WJOLÉLP (Tsartlip) First Nation represented by the W<sup>s</sup>ÁNEĆ Leadership Council
9. W<sup>s</sup>IKEM (Tseycum) First Nation represented by the W<sup>s</sup>ÁNEĆ Leadership Council

The CRD was unable to connect with BOKÉCEN (Pauquachin) First Nation.

To implement this Inclusive Governance Initiative, the CRD undertook the following steps to gather information and seek feedback from First Nations:

1. Review of Past Meetings and Letters: The CRD has been engaging with First Nations on the topic of regional governance since the Task Force was established in 2015. A comprehensive review of documentation collected to date has been incorporated into the key themes and observations for next steps.
2. Engagement on Government-to-Government Relationship Building Initiative: The CRD is actively engaging with First Nations at the government-to-government level, seeking to identify areas of shared mutual interest, preferred forums and frequency of meetings, priority topics, and high-level principles and processes to support the ongoing relationship. Inclusive governance was discussed as one topic among many, with the feedback incorporated into the key themes and observations for next steps.
3. South Island Nations Forum on Inclusive Regional Governance: The CRD funded a forum hosted by the W<sup>s</sup>ÁNEĆ Leadership Council ("WLC") to gather feedback on inclusive governance from participating First Nations. Ten First Nations, the nine First Nations participating in the CRD's Government-to-Government Relationship Building Initiative along with Malahat First Nation, were invited to attend. Eight First Nations planned to attend, including Songhees Nation, X<sup>w</sup>sepsəm (Kosapsum) Nation, T'Sou-ke Nation, P'a:chi:da?ah (Pacheedaht) First Nation, WJOLÉLP (Tsartlip) First Nation, W<sup>s</sup>IKEM (Tseycum) First Nation, S<sup>x</sup>ÁUTW (Tsawout) First Nation, and Malahat Nation. Due to last minute conflicts, 14 representatives from 5 First Nations attended the Forum: X<sup>w</sup>sepsəm (Kosapsum) Nation, WJOLÉLP (Tsartlip) First Nation,

W̱SIḴEM (Tseycum) First Nation, S̱ÁUTW̱ (Tsawout) First Nation, and Malahat Nation. Brent Mueller, Director, Governance Relations, BC Ministry of Municipal Affairs, presented on Inclusive Governance. The forum was facilitated by the JWR Group and coordinated by WLC. Input from the forum has been incorporated into the key themes and observations for next steps of this report.

4. Inclusive Governance Sessions: Throughout this project, the CRD has offered to meet individually with each Nation in the format requested by the Nation (e.g. presentation, workshop, meeting) to further discuss the topic. Most of the input has been received through G2G meetings and the South Island Nations Forum, however P'a:chi:da?aẖt First Nation has requested a session with Chief and Council, which is currently being scheduled for December 2024. As well, X̱w̱seps̱əm Nation has requested a presentation to Chief and Council on the CRD more broadly, including the topic of inclusive governance, to be scheduled for 2025.

To support the Inclusive Governance Initiative, the CRD contracted Jemma Scoble Consulting to compile the various inputs outlined above and draft this report. The CRD attended all the meetings with staff from its First Nations Relations division.

### **3. Methods**

The CRD used various methods for engagement in support of the Inclusive Governance Initiative, these include:

- Introductory Letters
  - First Nations were sent a letter from the CRD Board Chair in October 2023, regarding the broader Government-to-Government Relationship Building Initiative and the Ministry's inclusive governance study grant.
  - The following information was included:
    - Inclusive Governance Initiative Backgrounder
    - Offer of funding
    - A request to meet
- Emails and Phone Calls
  - All First Nations were contacted by both phone and email with follow-up information, meeting requests, and other details as requested.
- Meetings and Follow-ups
  - Meetings took place with First Nations, in-person or virtually, as requested.
  - Meetings were held for the Government-to-Government Relationship Building Initiative and included the topic of inclusive governance, where appropriate.

- Follow up after meetings occurred to ensure feedback shared was properly captured and additional thoughts could be shared, as appropriate.
- A South Island First Nations Forum on Inclusive Regional Governance was hosted by the W̱SÁNEĆ Leadership Council in September 2024, facilitated by a third-party Indigenous firm and funded by the CRD.

Quotes provided throughout the report were shared during the CRD's meetings with First Nations on inclusive governance. Names have been removed for anonymity.

## 4. Key themes

### 4.1 Support for a More Inclusive Approach to Regional Governance

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*"The inclusive governance initiative shows commitment from the province. These discussions were started in the 1960s and we are thankful to see it move forward."*

First Nations expressed overwhelming support for a more inclusive approach to regional governance, noting that the absence of their voices at decision-making tables impact their right to self-determination. They emphasized that decisions made at the regional level have direct impacts on their communities and constitutionally protected rights. Some First Nations stressed that being in partnership with decision makers who are active in their territory is part of the work of healing and reconciliation and their involvement in decision-making will demonstrate a new path forward with the CRD.

Many First Nations expressed an interest in regional collaboration and implementing legislative changes to support inclusive governance. The First Nations have a clear understanding of the limitations of the *Local Government Act* and they expressed a willingness to work with the CRD and the Ministry to find a solution for the governance gap that exists in the current regional district structure.

First Nations have continuously shared their perspective of "nothing about us without us," highlighting the frustration of seeing governments continually make decisions that deeply impact them without their involvement. Some First Nations stressed that the current model is exclusionary, discriminatory, and ultimately fails to recognize Indigenous self-determination.

### 4.2 Need for a Decolonized Approach to Regional Governance

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*"The CRD should seek to incorporate Indigenous processes and Indigenous learning into its processes, and ultimately be guided by an overarching mandate to reconciliation."*

First Nations expressed the need for governments to consider restructuring the current regional governance model and to amend the *Local Government Act* in ways that meaningfully recognize Indigenous self-determination and decolonize the approach to regional governance. Many First Nations felt that the current regional governance model and processes are colonial as they exclude First Nation participation and undermine self-determination. Examples of this are found in the structure set out for regional governments in the *Local Government Act*, restrictions on participation in regional board, and the lack of alignment with traditional understandings of land use and First Nation decision making processes. First Nations expressed the need to find and develop mechanisms to decolonize these structures.

The *Local Government Act* prohibits First Nations who do not have a modern Treaty from participating on regional government boards. Some First Nations felt that this exclusion was discriminatory to First Nations that have historical treaties with the government, resulting in a lack of fairness and that it creates a hierarchy of importance. Another challenge stressed by some First Nation was that the current regional governance model structured by the *Local Government Act* is based on population, which limits First Nations involvement in decision making. The model provides weighted votes to CRD Board members based on the population of their communities. Many First Nation communities in the Capital Regional District are small due to real impacts from colonization. A population-based approach serves to marginalize an already marginalized population.

The CRD changed its bylaws in 2021 to permit elected representatives of First Nations to join CRD Standing Committees. However, as yet there has been little uptake on this initiative. First Nations have questioned the requirement that only elected officials can participate in Standing Committees or join the Board. The requirement to appoint elected officials may not respect the traditional governance model of the First Nation, the capacity of the Nation, or the cultural significance given to appointing someone to represent the First Nation. One First Nation stated that it should be up to the Nation to decide who their representative is – whether that representative was an elected council member or staff member.

Another challenge expressed was the desire for First Nations to only vote and participate in discussions or decisions related to their traditional territory, and not make decisions over the territory of other First Nations. A mechanism to allow First Nations to participate in only matters that pertain to the individual First Nation is essential for inclusive governance that respects Indigenous self-determination and moves away from colonial ways of structuring decision making. The current governance model looks at land in the context of regional

boundaries, which are not aligned with the traditional understandings of land and ways of being of Indigenous peoples. Some First Nations expressed that an inclusive governance model needs to consider traditional territories and recognize that First Nation governance systems go beyond reserve lands.

In addition, some First Nations expressed concern regarding how the CRD would consider one First Nation's perspective over another. One First Nation noted that traditional territories are also colonial constructs, and that before the arrival of settlers, First Nations had laws and protocols related to their shared territory that the CRD would not know.

First Nations expressed that there could be other mechanisms to achieve inclusive governance that the Ministry has not yet considered. Some First Nations stressed the importance of advancing research on existing governance models and learning from other First Nations' experiences in other jurisdictions. The First Nations also stressed the importance of approaching alternative models and processes for inclusive governance with creativity and innovation.

### 4.3 *Barriers to Meaningful Participation*

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*"We don't need to look far to see what it may be like to be outvoted in the current structure of the CRD... What will this mean for a First Nation on the Board?"*

First Nations expressed several barriers that impede their meaningful participation in regional governance. Firstly, some First Nations felt that the current relationship with the CRD remained a challenge, despite recent efforts that have garnered positive feedback. These challenges include a lack of consistent meaningful consultation on key CRD initiatives and a perceived lack of understanding and awareness of First Nations' rights by CRD staff.

Secondly, the current structure of regional governance includes the board and numerous committees. Many First Nations expressed concerns around their ability to participate in various committees without adequate staffing and financial resources. The lack of First Nations joining CRD Standing Committees may be due to capacity constraints within First Nations, a lack of awareness of the opportunity, limited interest, the fact that CRD Committees are not the final decision-making body, or a preference to develop new forms of government-to-government decision-making rather than joining existing colonial structures. One First Nation noted that, given their focus on land and development opportunities, and their resource constraints, joining the CRD board is not a key priority for them.

Thirdly, issues arise when a First Nation's territory overlaps with multiple municipalities and regional districts. Amendments to the *Local Government Act* that allowed First Nations to participate in regional boards could mean that a First Nation is participating in two or more boards given the size of some of their territories.

Lastly, some First Nations stressed that even if they had a seat at the board table, they were concerned that their voice would not be heard, and they would be out-voted on issues that have significant impacts on their rights.

#### 4.4 Acknowledgement of Other Effective Ways of Shared Decision Making

*"Raising Nations' voices and creating a more comprehensive way to discuss must be explored to ensure meaningful communication."*

First Nations acknowledged that there are currently other mechanisms of engagement with the CRD where their input is being sought. These areas of input, in addition to an inclusive governance model, create multiple avenues where First Nations can influence change.

First Nations have responded positively to the CRD's Government-to-Government Relationship Building Initiative which set out to hear from First Nations as to what mechanisms for regular engagement would best support and strengthen the relationship. In many cases, the First Nations are choosing to pursue the development of an agreement, such as a memorandum of understanding ("MOU"), to set out the engagement mechanisms and formalize the relationship.

Some First Nations expressed that through the development of agreements First Nations and the CRD can shape their government-to-government relationship to ensure meaningful involvement in advance of decision-making by the CRD Board and staff members through regular dialogue and ongoing communication between staff and leadership. Some First Nations felt that if their staff could have more productive and meaningful discussions on operational issues with CRD staff, that First Nations may not need to be on the Board since their input would already be incorporated into planning and service delivery.

One First Nation stressed that rather than putting First Nations into a structure where they are one voice of many, there may be alternative approaches where First Nations are engaged in joint decision making with the Board.

In another example, a First Nation had initially expressed interest in having a seat on the Land Use Committee for a CRD Electoral Area, as they felt their interests and concerns related to land use planning were not being adequately considered in decision-making.

After exploring and discussing options, including establishing a First Nations Land Use Review Committee that would make recommendations to the Electoral Area Land Use Committee, the alternative process negotiated with the First Nation has been to meet with CRD land use planning staff to review land use applications, collaborate with staff to address any concerns and include the feedback from the First Nation when the matter is brought to the Land Use Committee. Where there are outstanding issues the First Nation will send a formal letter to the CRD Board that is to be considered in parallel with the recommendation from the Land Use Committee.

Some First Nations expressed concern that a seat on the CRD Board would mean that the CRD would no longer seek to consult with them directly on CRD decisions that impacts their lands. These First Nations stressed that discussions around board representation should be additive to, rather than replacing, other discussions on shared decision making.

#### *4.5 Need for Direct Communication with the Ministry*

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*“Government-to-Government discussions should be with the Crown and not their agents. We are concerned with the province downloading their responsibilities.”*

First Nations have continually expressed the need for a government-to-government relationship with the Crown. Some First Nations felt that the Crown-Indigenous relationship requires direct interactions with the province rather than absorbing First Nations into the existing regional district structure. The First Nations flagged several concerns with First Nations’ participation in regional districts, including:

- the distinct governance systems of the southern island First Nations do not fit within the current regional governance system;
- challenges with the regional district structure based on First Nations’ experiences in southern Vancouver Island;
- a potential risk of removing First Nations’ direct access to the provincial government;
- the interests of a First Nation being greater than the level of representation within the regional district board; and
- First Nations being outnumbered by other municipalities at the CRD Board table.

## 5. Observations on Possible Next Steps

### 5.1 *Amendments to the Local Government Act are Critical to Addressing Issues of Representation & Shared Decision Making*

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First Nations are interested in seeing changes to the *Local Government Act* that would create greater inclusion in regional governance. One First Nation felt that the first step to make this change was to research other regional government models and approaches to shared decision making. This could lead to the development of a paper that could be shared with First Nations outlining possible ways forward, lessons learned based on experience, and new innovative possibilities for inclusive governance.

Some First Nations commented that the questions posed by the Ministry during the Inclusive Governance Initiative engagement process put much of the onus on First Nations to develop the solution, and that it would have been helpful if the Ministry had presented different mechanisms or models that could have been considered as part of this work. Overall, First Nations expressed that more direct involvement from the Ministry can help to support these discussions more fully.

### 5.2 *First Nation Involvement in Processes Outside of the Regional Board is Also Essential to Inclusive Governance*

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First Nations stressed that the Board is just one mechanism for meaningful participation in regional governance, noting that the work on inclusive governance undertaken by the Ministry and CRD should be seen as “in addition to” and not “instead of” the work being undertaken by the CRD to further its relationship with First Nations. First Nations emphasized the importance of continued, meaningful consultation regardless of which mechanisms governments choose to foster inclusive governance.

One suggestion for shared decision making raised at the South Island Nations Forum on Inclusive Regional Governance was to launch a Reconciliation Task Force of southern island First Nations based on the United Nations Declaration of the Rights of Indigenous Peoples.

The CRD has been actively building government-to-government relationships and drafting MOUs that outline the relationship between the regional government and the First Nation. These MOUs will provide a forum for exploring shared decision making. To date, the CRD has one MOU in place with a neighbouring First Nation, one more approved and awaiting signing, and expects to complete two more by the end of 2024. While the MOUs do not include shared decision making, they do reference the *Declaration on the Rights of*



*Indigenous Peoples Act* as the framework for reconciliation, which includes the principal of seeking free, prior, and informed consent. As the MOUs are signed and become operational, the CRD and the First Nations will learn more about their implementation and how First Nation participation in projects and initiatives may influence CRD decision-making.

Another option for shared decision-making outside of First Nations participation in regional district boards may include section 6 and section 7 of the *Declaration of the Rights of Indigenous Peoples Act*, whereby the provincial government can enter into agreements with Indigenous governing bodies that allow the province to exercise statutory powers jointly with First Nations. This could lead to the development of agreements where shared decision-making is considered or where the consent of the Indigenous governing body in question is required before a statutory power is exercised.

### 5.3 *Diverse Views of First Nations require Diverse Approaches to Inclusive Governance*

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The First Nations conveyed diverse views of how to create an inclusive governance model. Some First Nations expressed a strong interest in participating in the CRD Board, while others stated a preference for other mechanisms, including agreements with the province and MOUs with the CRD, to pave a better and more efficient path forward. While all First Nations expressed concerns regarding capacity and competing priorities around inclusive governance, it was evident that there is no one model for inclusive governance that will fit all First Nations. This suggests that changes to the *Local Government Act* to include non-Treaty First Nations in regional government boards may not be taken up by all First Nations. As well, other mechanisms to include First Nations in regional decision-making may need to move forward in parallel with amendments to the *Local Government Act*.

### 5.4 *Relationship with Regional Districts must Focus on Services and Operations*

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Regardless of the approach taken to move forward with a more inclusive governance model, the work itself needs to be based on the specific ways that First Nations and the regional district interact. First Nations have emphasized to the CRD that the way their government-to-government relationship is built will be based on who the CRD is and what the CRD does, operationally.

Service agreements between the CRD and First Nations currently include water servicing, wastewater servicing, animal care, fire protection and emergency response. Discussions

are underway with one First Nation to provide sanitary sewer and stormwater inspection and enforcement services. Relationship agreements are in place and/or being negotiated related to traditional use, access, environmental monitoring, heritage conservation, park management, solid waste management, and land use planning.

First Nations have raised concerns around the long-standing inequity of regional district service delivery, that needs to be addressed. Through focusing on the key areas of interaction that shape the relationship, the CRD has an opportunity to demonstrate to First Nations governments a willingness to listen, work collaboratively, respect Indigenous self-determination and resolve issues that emerge around the provision of those services with respect.

While there is room to build more understanding between governments of the key role, responsibilities and approach they take to their operations, the consistent message from First Nations governments has been the need for mechanisms to resolve long standing and critical issues for their communities.

First Nations have stated that relationships at the leadership level must be based on clear objectives related to what regional districts are responsible for and how they are interacting with First Nations communities. The First Nations noted that management and governance go hand in hand, and that having a say in operational decisions that affect First Nations communities requires ongoing dialogue in a number of forums, not just at the leadership level, but in day-to-day operational meetings and activities.

## **6. Conclusion**

The CRD is committed to building stronger and more meaningful relationships with First Nations who have been stewarding these lands since time immemorial. Discussions on inclusive governance have further demonstrated the need for more frequent dialogue with First Nations that focus the implementation of the *Declaration of the Rights of Indigenous Peoples Act* and the acknowledgement that First Nations have the inherent right to self-determination. The CRD looks forward to continuing to collaborate with the Ministry and First Nations to identify and implement new approaches to inclusive regional governance.

## Terms of Reference

### Regional District and First Nation Partner(s) Study Grant for Inclusive Regional Governance

#### Purpose:

The province has committed to support inclusive regional governance by advancing First Nations participation in regional district boards in the implementation Action Plan that supports the *Declaration on the Rights of Indigenous Peoples Act* (Action 1.11 - Ministry of Municipal Affairs).

These terms of reference provide background information and describe the scope for study grant-funded discussions to help regional districts and partner First Nations to explore how to enable First Nations (outside of the treaty process) to join the board table as voting members. There is latitude for regional districts and First Nations to design how they want to engage and make use of funds (e.g. hiring consultants, holding events, and administrative costs).

The intent of the study grant is to enable regional discussions that will reveal the key themes, interests, and questions to be pursued in the consultation and development of legislation to meet the varied needs of First Nations and regional governments.

#### Background

The Union of British Columbia Municipalities (UBCM), First Nations and several regional districts have directly requested that the Ministry explore how First Nations could become voting members of regional districts without concluding a modern treaty that specifies regional district membership.

The regional district framework provides a unique system of governance where the member jurisdictions maintain their autonomy but govern as a board of directors to make regional, regulatory and service decisions.

This framework offers a important opportunity to bring indigenous perspective and values to regional governance and may provide balance between Indigenous peoples right to participate in decisions that impact them (i.e. regional district decisions) while maintaining First Nation decision making structures and institutions.

Achieving broader First Nation representation on regional district boards requires better understanding and recognition of:

- the significant variation of First Nation/Indigenous governments in terms of how they govern themselves
- how First Nation governing approaches intersect with regional district governance
- complexity of regional districts (in and of themselves) including the different numbers of municipalities, electoral areas and treaty first nations, and that each delivers a unique range of local, sub-regional, and regional services to its members.
- the need to maintain the capacity of local governments to serve its constituents.
- and that implementation may ultimately require changes to provincial legislation, regional district letters patent, regional bylaws, policies, and agreements.

The Ministry is providing study grants, to a select group of regional districts, who will then work with local First Nation partners to discuss how the regional district board might operate with the addition of First Nation directors representing their community governments.

### Scope for Discussions

Regional districts and First Nation partners will have latitude to design their own engagement processes and discuss what interests them regarding regional district board participation. To support the Ministry's understanding of what system design changes may be needed, including potential legislative change, each region is expected to commonly explore and report back on the following (as a starting point):

#### *Building Understanding and the Current state of relationships*

- The Ministry will share some general information about the current regional district system and points of interactions with First Nations.
- Regional districts may present information about their specific structure, service profile, and approach to regional decision-making.
- First Nations may also want to present information about their community and how they generally govern themselves.
- The parties can explore and describe the current state of the relationship between the specific regional district and First Nation(s) and current areas of collaboration.

#### *Shared Interests*

- What is it about the regional district, its role, and functions, that interest the First Nation?
- What kinds of regional district decisions and initiatives, does the First Nation want to directly participate in? What are the ways to participate in governance? On which matters is voting critical?
- How might the current relationship change as a result of the First Nation being a voting member?
- What benefits will be generated for the current regional district members by First Nations joining?

#### *Exploring Governance Factors*

Regional districts and partner First Nations should explore key governance factors and alignment between the regional district system and First Nation self-government. Key aspects of the system to discuss include, but are not limited to:

- Constituents (e.g. who is your decision-making authority representing?) and their representative (e.g. who may be the decision-making authority at the board table and how, and by whom, may they be appointed?)
- Geographic area of jurisdiction (e.g. thoughts on what area is the decision-making authority representing geographically)
- Law-Making Authority (e.g. exploring limitations of regional district authority [e.g. not education] and limitations of existing First Nations authority [e.g. that which differs from regional district board current authority])

- Service provision (e.g. what services do the partners currently provide to one another? By what mechanisms are those services provided [e.g. 5 year service contract, users fees]; How do the partners envision this improving if membership changes? What challenges are foreseen?)
- Land use (e.g. how is land use planning conducted for the First Nation and regional district; how are they different or similar processes? How do you envision them working together?)
- Financial Contributions (e.g. How do the partners envision determining equitable cost-recovery? How is certainty of contributions achieved?)

#### Coordination and Collaboration

The Ministry may establish a working group between the interested First Nations and regional district CAOs (or assigned senior staff) to help steer this overall initiative. To support shared learning there may be opportunities for some or all regional districts, and partner First Nations, to participate in joint meetings or workshops.

#### Reporting back to the Ministry

An Interim Progress Report, on or before September 1, 2023 demonstrating that the regional district has begun activities to complete the work described within scope of the these Terms of Reference.

At the completion of the engagement work with partner First Nations, the regional district must compile a final report for the Ministry that documents:

- Description of the engagement process undertaken.
- Record of what was discussed at a thematic level.
- Observations on possible next steps.

The final report is required on or before March 31, 2024.

An Account of Study Expenses is required, on or before May 1, 2024, comprised of a summary of all project expenses and confirmation that either all grant funding has been expended or an unused portion of the grant funding that will be returned to the provincial government.

# Inclusive Regional Governance

Feedback to the Ministry of Municipal Affairs

Capital Regional District | August 2023

## Overview

The Capital Regional District (CRD) has received a Study Grant from the Ministry of Municipal Affairs to explore, with First Nations in the region, how to engage First Nations (outside the treaty process) to join the board table as voting members. The intent of this study grant is to enable regional discussion that will reveal the key themes, interests, and questions to be pursued in the consultation and development of legislation to meet the varied needs of First Nations and regional governments.

## Background

The Union of British Columbia Municipalities (UBCM), First Nations and several regional districts including the CRD have directly requested that the Ministry explore how First Nations could become voting members of regional districts without concluding a modern treaty that specifies regional district membership.

The regional district framework provides a unique system of governance where the member jurisdictions maintain their autonomy but govern as a board of directors to make regional, regulatory and service decisions.

The province has committed to support inclusive regional governance by advancing First Nations participation in regional district boards in the implementation Action Plan that supports the Declaration on the Rights of Indigenous Peoples Act (Action 1.11 - Ministry of Municipal Affairs).

## First Nations Engagement

The CRD is reaching out to the following First Nations to invite dialogue on this topic:

P'a:chi:da?ah̓t First Nation	Songhees Nation	W̱S̱ÁNEĆ Leadership Council on
Sc'ianew (Beecher Bay) First Nation	STÁUTW (Tsawout) First Nation	behalf of W̱S̱IKEM (Tseycum) &
T'Sou-ke Nation	BOKÉCEN (Pauquachin) First Nation	W̱JOLÉLP (Tsartlip) First Nations
x̱w̱seps̱əm (Esquimalt) Nation		

Feedback is welcome through the Government-to-Government Relationship Building Initiative meetings, separate meetings on this topic, written submissions, or other format as preferred by the Nation.

The CRD will be gathering input from First Nations until the end of 2023 and then compiling it into a report for the province that describes the engagement process, what was discussed, and observations on possible next steps. We will share the draft report with participating Nations in early 2024, with a final report due to the province in March 2024.

## Scope for Discussions

The Ministry of Municipal Affairs is asking the following questions of regional districts and First Nations, to support provincial understanding of what system design changes may be needed:

## Building Understanding and the Current state of relationships

- The Ministry will share some general information about the current regional district system and points of interactions with First Nations.
- Regional districts may present information about their specific structure, service profile, and approach to regional decision-making.
- First Nations may also want to present information about their community and how they generally govern themselves.
- The parties can explore and describe the current state of the relationship between the specific regional district and First Nation(s) and current areas of collaboration.

## Shared Interests

- What is it about the regional district, its role, and functions, that interest the First Nation?
- What kinds of regional district decisions and initiatives, does the First Nation want to directly participate in? What are the ways to participate in governance? On which matters is voting critical?
- How might the current relationship change as a result of the First Nation being a voting member?
- What benefits will be generated for the current regional district members by First Nations joining?

## Exploring Governance Factors

Regional districts and partner First Nations should explore key governance factors and alignment between the regional district system and First Nation self-government. Key aspects of the system to discuss include, but are not limited to:

- Constituents (e.g. who is your decision-making authority representing?) and their representative (e.g. who may be the decision-making authority at the board table and how, and by whom, may they be appointed?)
- Geographic area of jurisdiction (e.g. thoughts on what area is the decision-making authority representing geographically)
- Law-Making Authority (e.g. exploring limitations of regional district authority [e.g. not education] and limitations of existing First Nations authority [e.g. that which differs from regional district board current authority])
- Service provision (e.g. what services do the partners currently provide to one another? By what mechanisms are those services provided [e.g. 5 year service contract, users fees]; How do the partners envision this improving if membership changes? What challenges are foreseen?)
- Land use (e.g. how is land use planning conducted for the First Nation and regional district; how are they different or similar processes? How do you envision them working together?)
- Financial Contributions (e.g. How do the partners envision determining equitable cost-recovery? How is certainty of contributions achieved?)