

## REPORT TO FIRST NATIONS RELATIONS COMMITTEE MEETING OF WEDNESDAY, FEBRUARY 26, 2020

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### **SUBJECT**     First Nations Inclusion on CRD Board Standing Committees

### **ISSUE SUMMARY**

This report seeks direction for staff to bring back implications and proposed draft amendments to Board Procedures Bylaw No. 3828 (the "Procedures Bylaw") and appropriate Board Standing Committee Terms of References that would enable the inclusion of First Nations elected representatives in discussions that take place through the existing CRD governance structure.

### **BACKGROUND**

Several First Nations within the capital region have signaled their interest in being a part of the CRD Board and its committee structure, expressing a desire for more involvement in discussions and, ultimately, in decisions that may impact First Nations. There are provincial legislative restrictions within the *Local Government Act (LGA)* and practical reasons related to the requisition, regional service structure and weighted voting requirements as to why First Nations are not Members of the CRD Board as defined in the Procedures Bylaw. However, a number of approaches have been explored and implemented by other regional districts that the CRD can consider that are within its authority to create more opportunities for First Nations inclusion in regional discussions.

A complete timeline of activities related to this initiative is attached to this report (Appendix A). Following Ləkʷəŋən (Songhees First Nation) Chief Ron Sam signaling the Nation's interest in having formal representation on the CRD Board in October 2014, the CRD established the Special Task Force on First Nations Engagement (Task Force) with the mandate to recommend more inclusive models of governance and decision-making. The Task Force undertook direct engagements with First Nations and letters were sent to the province from past CRD Board Chair Nils Jensen in 2015 (Appendix B) and past CRD Board Chair Steve Price in 2017 (Appendix C) along with a supporting letter from W̱SIKEM (Tseycum First Nation) in 2018 (Appendix D). The letters all expressed, in various ways, the need for the provincial government to address the legislative and capacity barriers impacting the ability of local governments and First Nations to move their relationships forward.

In December 2016, the CRD Board adopted the suite of recommendations contained within the Year End Report from the Task Force (Appendix E) with the direction that the Task Force guide the completion of the items that include, among others, developing recommendations to allow for First Nations representation and options for increased resourcing to accommodate greater participation, engagement and reconciliation. Staff are now looking to reaffirm the commitment of the sitting CRD Board on this approach in support of more inclusive regional discussions with First Nations participation.

### **ALTERNATIVES**

#### *Alternative 1*

The First Nations Relations Committee recommends to the Capital Regional District Board:

That staff bring back implications and draft amendments to the Capital Regional District Procedures Bylaw No. 3828 to enable the inclusion of First Nations elected representatives on Board Standing Committees, Select and Advisory Committees, Commissions and other appointed bodies of the Board.

#### *Alternative 2*

The First Nations Relations Committee recommends to the Capital Regional District Board: That this report be referred to staff for additional information, as directed.

### **IMPLICATIONS**

#### *Legislative Implications*

The LGA is explicit under Section 196(1) that a Regional Board consists of municipal Directors and electoral area Directors, except in the specific case under Section 253(1) where a Treaty First Nation is a member of a regional district. This section limits any non-treaty First Nations from full participation on the Board or as a service participant, other than as a third-party client of a service (such as a water supply contract to reserve lands). Section 218(3) of the LGA allows persons who are not Directors to be appointed by the Board to a Select Committee or by the Chair to a Standing Committee. Within the context of this staff report, Section 218(3) allows voting participants at a Select Committee and/or at a Standing Committee to include First Nations at the discretion of the Board or the Board Chair. Should there be a questions of matters discussed in closed meetings, the *Community Charter* Section 91(2)(b) allows for any participants the Board considers appropriate, which could include First Nations, to be present in matters discussed in closed.

Staff have identified that there will remain some specific commissions where First Nations participation will not be possible. In response to First Nations expressing an interest in participating in regional water commissions, staff undertook a review of the ability to do this and identified that the *Capital Region Water Supply and Sooke Hills Protection Regulation*, BC Reg. 287/97 sets a fixed, elected-official-only membership for the Regional Water Supply Commission and the Juan de Fuca Water Distribution Commission. This regulation only allows for local government participants to be members of the commission, with voting being conducted according to LGA weightings. Under the regulation, First Nations participation is limited to the Water Advisory Committee, where they are already included as members in the Water Advisory Committee Terms of Reference. The regulation permits one or more First Nations entities to propose a member, who may be appointed by the Board to the Water Advisory Committee.

#### *Environmental & Climate Implications*

It is likely that as First Nations participation increases in discussions relating to the environment and climate that elements relating to cultural practices and traditional uses of areas are brought forward with the expectation that these shared teachings are woven into existing approaches. This could add additional time and complexity to projects that are already underway as staff consider how to incorporate any information that may come forward. However, this additional perspective also could enhance the effectiveness of efforts being made by the CRD through the incorporation of cultural knowledge as well as additional partnership or collaborative opportunities as First Nations are also looking to support work related to taking care of the land and water.

#### *Governance Implications*

The proposed inclusion of First Nations would require amendments to the Procedures Bylaw to define the various appointments as well as amendments to the Terms of Reference of the

identified Committees and Commissions. An amendment to the Procedures Bylaw would then enable Committee and Commission Terms of References to be updated upon request by First Nations Band resolution so as to enable First Nations inclusion. As staff work on the proposed bylaw amendments, consultation will be conducted with the First Nations to gauge specific levels and items of interest.

#### *Intergovernmental Implications*

First Nations currently have the ability to participate on the CRD Water Advisory Committee, the Core Area Waste Liquid Waste Management Committee and the Saanich Peninsula Water Supply Commission. Providing additional opportunities for First Nations to participate in discussions on Committees and Commissions and for the Nations to have the space to bring items forward for discussions or information sharing, will significantly enhance the ability of First Nations and the CRD to work together towards building strong relationships that are based on trust and mutual respect, partnerships and working together on shared goals. Based on the expressed interests of First Nations, staff will look to take an incremental approach towards increased inclusion.

#### *Financial Implications*

Parallel to this report, staff are bringing forward a report proposing amendments to the CRD Board Remuneration Policy and the creation of a First Nations Remuneration Policy in order to establish a corporate approach to providing First Nations elected representatives with remuneration for participation on Committees and Commissions as well as to establish guidelines relating to the way the CRD compensates First Nations for supporting the CRD with meeting openings and cultural work.. In the 2020 CRD Budget, which has received provisional approval, \$12,000 was included in the CRD Board Budget with the intent that these funds would be available to support First Nations participation when an enabling amendment to the Board Remuneration Policy was approved. Specific costs for increased First Nations participation would be borne by each individual commission budget or, in the case of Committees, by the CRD Board budget.

#### *Service Delivery Implications*

Provincial legislation does not permit for First Nations to have a vote at a Regional District Board without signed modern treaties. Increased inclusion of First Nations in discussions at the CRD Board will not fetter the decision-making authority of Directors in any way. However, it will likely bring additional perspectives forward that contain new information or approaches that directors may wish to consider in their decision-making.

#### *Alignment with Board & Corporate Priorities*

The 2019 – 2022 CRD Board Priorities include Reconciliation with First Nations, specifically:

- 3a Look to First Nations for leadership in understanding how to create new regional planning and decision-making systems together on their Traditional Territories.
- 3b Seek partnerships, share information and deliver fair and equitable services in working with First Nations on achieving their economic goals.
- 3c Work with First Nations on taking care of the land and water while providing space for cultural and ceremonial use, food and medicine harvesting, traditional management practices and reclaiming Indigenous place names.

#### *Alignment with Existing Plans & Strategies*

The following strategies have been identified as related to the Reconciliation with First Nations

board priority:

- Special Task Force on First Nations Relations Final Report and the Statement of Reconciliation;
- Regional Climate Action Strategy;
- Regional Food and Agricultural Strategy;
- Regional Growth Strategy;
- Regional Housing Affordability Strategy;
- Regional Parks Strategic Plan;
- Regional Water Supply Strategic Plan;
- Organizational Development Plan; and,
- Corporate Asset Management Strategy.

## **CONCLUSION**

First Nations have previously expressed an interest in increased participation in regional discussions and, ultimately, an impact on regional decision-making. Provincial legislation limits full First Nations participation at the CRD Board prior to the completion of a treaty process, but there are options for the CRD to move towards greater inclusivity in discussions at the CRD Committee and Commission tables. Taking a more inclusive approach has the potential to impact ongoing or upcoming projects with the inclusion of First Nation's perspectives in various plans and strategies. However, the reconciliation mandate adopted by the Board requires that we look to include the perspective of First Nations in CRD projects and plans, and having greater inclusion on Committees and Commissions could support a more collaborative and effective process. It could also strengthen existing partnerships and identify additional collaboration efforts.

## **RECOMMENDATION**

The First Nations Relations Committee recommends to the Capital Regional District Board: That staff bring back implications and draft amendments to the Capital Regional District Procedures Bylaw No. 3828 to enable the inclusion of First Nations elected representatives on Board Standing Committees, Select and Advisory Committees, Commissions and other appointed bodies of the Board.

Submitted by:	Don Elliott, MUP, Manager, First Nations Relations
Concurrence:	Kristen Morley, J.D., General Manager, Corporate Services & Corporate Officer
Concurrence:	Robert Lapham, MCIP, RPP, Chief Administrative Officer

## **ATTACHMENT(S)**

Appendix A: Background on Activities Related to First Nations Inclusion  
Appendix B: Letter to Premier Christy Clark, 2015  
Appendix C: Letter to Scott Fraser, Minister of Indigenous Relations and Reconciliation, 2017  
Appendix D: Letter to Scott Fraser, Minister of Indigenous Relations and Reconciliation, 2018  
Appendix E: Year End Report on the Activities of the Special Task Force on First Nations Engagement, 2016

## APPENDIX A: BACKGROUND ON ACTIVITIES RELATED TO FIRST NATIONS INCLUSION

Related to this work on First Nations participation at the CRD Board and/or Committees, the following timeline illustrates the various steps that have been undertaken from 2014 to present day. Identified steps include:

- **October 2014** - Ləkʷəŋən (Songhees First Nation) Chief Ron Sam signalled the Nation's interest in having formal representation on the CRD Board.
- **January 2015** – The CRD's Special Task Force on First Nations Engagement (Task Force) was established with a mandate to recommend more inclusive models of governance and decision-making between the CRD and First Nations governments.
- **April 2015** – W̱SIKEM (Tseycum First Nation) Chief XÁLÁTE (Jacks) acknowledged that Tseycum would like to sit and share knowledge with the Board. He said that it is time to “cut the strings that separate us and start working together”.
- **May 2015** - STÁUTW̱ (Tsawout First Nation) Chief Underwood identified that representation on the CRD Board has been an ongoing issue for STÁUTW̱ and recalled that this topic was discussed at Chief and Council 30 years earlier.
- **June 2015** – Alberni-Clayoquot Regional District Chair Josie Osborne shared with the Task Force that the most noticeable benefit of having First Nations at the table is the expansion of minds and diversity of perspectives that is brought to the decision making. It has brought fulsomeness to discussions around the Board table.
- **July 2015** - W̱JOŁŁP (Tsartlip First Nation) expressed a challenge relating to existing capacity limitations should W̱JOŁŁP sit on committee positions to fully participate in regional decisions.
- **August 2015** - BOKÉĆEN (Pauquachin First Nation) Chief Harris noted that is it time to learn more about local government, the CRD, and is interested in learning more.
- **September 2015** – T'Sou-ke First Nation Councillor Dumont stated that they are looking forward to future meetings and decisions about either sitting on the CRD Board or an alternative that supports shared governance.
- **October 2015** – CRD Board Chair Nils Jensen sent BC Premier Christy Clark a letter thanking Premier Clark and John Rustad, Minister of Aboriginal Relations for a meeting at the 2015 UBCM conference and further detailing that the province remove identified legislative barriers and support First Nations capacity to participate in local government matters.
- **November 2015** - Xwsepsum (Esquimalt First Nation) Chief Andy Thomas expressed to the Task Force that he has asked for a seat at the CRD for a long time.
- **November 2015** - W̱SIKEM (Tseycum First Nation) newly elected Chief Jimmy emphasized the importance of W̱SIKEM involvement in (local government) matters whenever they are able. The Nation is looking to work on together on practical day-to-day activities to build experience at the “lower level” and work up to higher level governance such as the CRD Board.
- **December 2016** – The suite of recommendations contained within the Year End Report from the Task Force were adopted with the direction that the Task Force guide the completion of the items that include the following selected recommendations:

- To undertake a comprehensive review of the suite of policies and procedures bylaws for CRD Committees and Commissions with recommendations for proposed amendments that will allow for First Nations representation; and,
  - Direct staff to develop options for increased resourcing and financial implications to accommodate greater participation, engagement and reconciliation.
- **November 2017** – CRD Board Chair Steve Price sent a letter to Scott Fraser, Minister of Indigenous Relations and Reconciliation requesting the opportunity to connect on obstacles faced by First Nations and local governments, legislative barriers for First Nations in obtaining a vote at the CRD Board, and understanding the provincial governments approach to historical treaties.
- **August 2018** - WSIKEM (Tseycum First Nation) sent a letter to Scott Fraser, Minister of Indigenous Relations and Reconciliation requesting that First Nations not participating in the modern treaty process are offered a formal voice in matters that affect the territories, rights, and WSIKEM people.
- **2018 Onward** – The CRD continue to meet with staff from the Ministries of Municipal Affairs and Housing and Indigenous Relations and Reconciliation to explore other avenues to address the challenges relating to increasing First Nations participation in regional discussions.
- **2019 Onward** – The provincial government tabled Bill 41: Declaration of the Rights of Indigenous Peoples Act, which received Royal Assent on November 28, 2019 and has passed into law. This Bill mandates the provincial government to bring provincial laws into harmony with the UN Declaration of the Rights of Indigenous Peoples through:
  - The development of an action plan to achieve alignment over time;
  - Requiring regular monitoring on progress;
  - Allowing for flexibility for the types of agreements the Province can enter with Indigenous governments; and,
  - Provides a framework for decision-making between Indigenous governments and the province.

## APPENDIX B



Making a difference...together

### Capital Regional District

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October 14, 2015

File: 0220-20

The Honourable Christy Clark  
PO Box 9041 Stn Prov Govt  
Victoria, BC V8W 9E1

Dear Premier Clark:

### **RE: AUTHORITY TO HAVE FIRST NATIONS AT THE CRD BOARD**

I would like to thank you and the Honourable John Rustad, Minister of Aboriginal Relations and Reconciliation for taking the time to meet with myself and members of the Capital Regional District (CRD) Board and First Nations Task Force at the Union of British Columbia Municipalities Conference.

During the meeting we expressed our interest in exploring ways to have First Nations participate more directly in decision making at the CRD. As a regional district we provide a wide range of local, sub-regional and regional services and are actively involved in providing services to First Nations through a variety of service agreements. As we expand our relationship with First Nations, particularly the 9 Nations which have occupied reserves in the region, it has become evident that there are some barriers to participation in service delivery as compared to the service participation model available to our member municipalities and electoral areas. We recently amended our Procedures Bylaw to allow First Nation participation from the Songhees & Esquimalt First Nations on the Core Area Liquid Waste Management Committee (CALWMC) of the CRD Board. However to enable direct participation by First Nations on specific service decisions, there would need to be legislative changes which are beyond the authority of the CRD Board.

At our October 14, 2015 Board meeting we announced that the Songhees and Esquimalt Nations have formally joined our CALWMC as voting members. These Nations have also expressed a desire to join the Board to vote on issues which impact them directly as participants of a service. Other First Nations with Douglas Treaties have also expressed a desire to participate, however as there is currently no legislative avenue to provide for direct participation on service delivery, outside a modern day treaty, we are unable to make any progress on this issue.

Some of the suggested avenues we would like you to consider include:

1. Removing Legislative Barriers:
  - a. Review of Division 3.1 of Part 24 of the Local Government Act with consideration to allow Douglas Treaty First Nations the ability to join regional districts
  - b. In the interim, create a governance vehicle that allows First Nations to be equivalent participants in local services without mandatory membership on the regional board
    - Issues imbedded in this framework will have to address:
      - o Indemnification/liability/ insurance provisions
      - o Regulatory powers
      - o Exit provisions
      - o Service review
2. Support First Nations Capacity to Participate:
  - a. Training and education for both local government and First Nations staff
  - b. Programming funds, which build on the Community to Community Forum grants

Thank you again for taking the time to meet with us and we greatly appreciate any consideration you are able to give to our concerns and suggestions.

Yours truly,



Nils Jensen, Chair  
Capital Regional District

cc: All CRD Board Members  
Robert Lapham, Chief Administrative Officer, Capital Regional District  
Sonia Santarossa, Corporate Officer, Capital Regional District



November 29, 2017

The Honourable Scott Fraser  
Minister of Indigenous Relations and Reconciliation  
Parliament Buildings  
Victoria, BC  
V8V 1X4

Dear Minister:

We are requesting a meeting with yourself to offer an update and to seek assistance with recent activities undertaken by the Capital Regional District's (CRD) Task Force on First Nations Engagement.

Over the past two years, we have met with the majority of First Nations governments in the south island to discuss how they might like to be involved in regional decision making. Last year we approved a report with recommended actions for addressing the issues raised in those discussions. Some of the recommendations require further conversations with provincial officials in order to realize the opportunities that exist around sharing governance with First Nations.

We are requesting a meeting to discuss the following issues:

- Obstacles faced by First Nations and local governments for deep engagement and meaningful relationship building
- Legislative barriers for First Nations to participate as full voting members on the CRD Board
- Current provincial understanding of the responsibilities to pre-confederation treaties such as the Douglas Treaty.

We understand that scheduling can be a challenge and we would be looking to sometime in the New Year when you are already in Victoria on other business. Our staff can follow up to arrange a time. We look forward to this discussion and to working together with you on these issues.

Sincerely,



Steve Price  
Board Chair, Capital Regional District

Cc: Director Marianne Alto, Chair, First Nations Task Force, CRD  
Bob Lapham, CAO, Capital Regional District

**APPENDIX D**



**Tseycum First Nation**

1210 Totem Lane  
Sidney, BC V8L 5S4  
Phone: (250) 656-0858  
FAX: (250) 656-0868

August 21, 2018  
The Honourable Scott Fraser  
Minister of Indigenous Relations and Reconciliation  
Parliament Buildings  
Victoria, BC  
V8V 1X4

Dear Minister Fraser:

Tseycum First Nation is focused on working with other governments towards a better relationship that places the emphasis on moving forward together. We want to be involved in decision making that affects our territories, our rights and our people. It is important for the work of healing and reconciliation that we are able to be in partnership with those decision makers who are active in our territory.

To this end, Tseycum is interested in exploring a workable solution for the governance gap that exists with the current Regional District system where First Nations who have not signed modern treaties are not offered a formal voice at the table. Decisions Regional Districts make have the possibility to affect our rights and so we are looking for a way to be included in the process. We are looking for a respectful solution that incorporates our governance structure and allows us to meaningfully engage with the Capital Regional District.

We are looking forward to hearing from you as to what this could look like and would like to set up a meeting to discuss possibilities at your earliest convenience.

HÍSWKE

A handwritten signature in black ink, appearing to read 'Tanya Jimmy', with a large circular flourish at the end.

Chief Tanya Jimmy

Cc: Director Marianne Alto, Capital Regional District

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**YEAR END REPORT ON THE ACTIVITIES OF THE SPECIAL TASK FORCE ON FIRST NATIONS ENGAGEMENT  
MEETING OF WEDNESDAY, December 14, 2016  
SUBMITTED TO: CAPITAL REGIONAL DISTRICT BOARD  
SUBMITTED BY : THE TASK FORCE MEMBERS**

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**EXECUTIVE SUMMARY**

Local government has a critical role to play in supporting First Nations economic aspirations and cultural resurgence. A proactive approach with deep engagement and a commitment to establishing a thoughtful governance framework that both resonates with First Nations and reflects the Board's strategic priorities, will ensure a strong fully regional approach relative to growth management, environmental protection and restoration, efficient service delivery and smart infrastructure planning.

Building on the solid footing established through the Aboriginal Initiatives Office (AIO) and the Special Task Force on First Nations Engagement (Task Force) this report recommends that the Board support a continued and ongoing role for the Task Force in shaping the Aboriginal Initiatives Office as the Board's tool for ensuring strong and enduring First Nations relations, as well as practical ways and means for ongoing two-way information sharing and, where appropriate, establishing a decision making framework on matters of common interest.

This area of governance is emergent and evolving and requires a pragmatic, incremental approach that builds on and is responsive to local successes as well as best practices from other jurisdictions.

The funding for this work is largely covered within the existing AIO budget, which draws from the General Government and Legislative Services requisition. This report recommends that the AIO office be temporarily resourced with a half time term position (to 2018) bringing the staff complement for the division to 2.0 FTE along with a modest increase in funds to accommodate the expected increase in remuneration for First Nations participation on Committees. No new additional funds are required.

In addition to providing oversight to the AIO, the Task Force will continue to foster the leadership relationship with elected First Nations by meeting with Chiefs and Councils. The Task Force will be accountable to the Board, and its strategic priorities, by way of quarterly reports, The term for this mandate would extend to the end of this election cycle in November 2018.

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<b><u>SUBJECT</u></b>	<b>Year End Report from the Special Task Force on First Nations Engagement</b>
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**ISSUE**

The purpose of this report is to provide a year-end summary of the activities and outcomes of the Special Task Force on First Nations Engagement (Task Force) with recommendations to the Board for seeking direction in how the CRD can continue to move forward on including interested First Nations governments in decision-making on regional matters of common interest.

**1.0 BACKGROUND**

The Task Force was established in January 2015 with a mandate to meet with Chiefs and Councils of each First Nation with Reserve Lands in the CRD to discuss their respective interests in participating in the CRD governance framework. The Task Force had an opportunity to meet with 8 of the 11 First Nations in the first year. A final report was submitted to the Board in November 2015 with a request for a time extension to allow for further engagement with First Nations. The Task Force mandate was extended to December 2016.

The Task Force's second year focused on follow-up actions stemming from feedback received from the initial delegations, as well as research into governance options and some further meetings with First Nations. This report briefly summarizes the outcomes from both years and offers a suite of recommendations for future work for the Task Force.

**1.1 Summary of Task Force Activities**

Over the course of the Task Force's two year mandate, 12 Committee meetings were held (minutes posted [on the website](#) ) and 9 delegations were made to First Nations communities. The Task Force reached out to the Chair of the Alberni-Clayoquot Regional District (ACRD) regarding that region's experience with First Nations participating on the Board. Detailed summaries can be found in the 2015 Year End Task Force 2015 report ([document link](#)) Following that communication, the Task Force approached the Province to discuss the legislative barriers in the Local Government Act (LGA) for First Nations participation on the Regional Board, and met with the Premier during the UBCM conference. Staff followed up with the Ministry of Community, Sport and Development, the results of which are summarized below (Section 2.1.1).

Corollary activities included:

- Undertaking an Indigenous cultural training event as a Forum of Councils ( [YouTube Link](#) )
  - Approval to extend invitations to First Nations for participation in all future Forum of Council events.
  - Approval of remuneration for FN attendance at Forums of Councils

- Amending Procedures Bylaw to better reflect and accommodate cultural protocols
- Inclusion of First Nations on the CALWMP Committee
- Integration of an opening Territorial Acknowledgement by the Board Chair
- Presentation to the Board on FN Taxation Authority

## 1.2 Summary of Findings

The delegations to each of the First Nations revealed a diversity of perspectives, interests and priorities on the part of the First Nations. Although each Nation is unique, there were some common threads:

### 1.2.1 Common messages from First Nations:

- Local and regional government are not tangibly differentiated from Provincial and to some extent, Federal government.
- The legacy of exclusion by all levels of government, in decisions that have directly impacted First Nations, has allowed for a culture of distrust to take hold.
- There is an interest in either exploring improved ways of engagement with the CRD and /or mechanisms for shared decision making on matters of common interest.
- A demonstrable commitment to building trust and establishing an enduring relationship is imperative before any formal commitments can be made.
- Although there is genuine interest in deeper engagement and consultation with local governments, First Nations do not have the capacity to respond to the multitude of requests from all levels of government and agencies.
  - Governments are being asked to consider resourcing these consultation requests in order to meaningfully engage with First Nations.

### 1.2.2 Areas of interest include:

- Employment of First Nations community members in government positions
- Economic development opportunities
- Protection and respect for ancestral remains
- Access to parklands for traditional uses and cultural practices, including harvesting plant medicines, ceremonies
- Protection and promotion of Douglas Treaty Rights
  - Education of local governments on the ways those rights are perceived to be infringed.
- Environmental restoration including eradication of invasive species, shellfish harvesting, habitat protection, ecological stewardship.
- Financial accommodation to support referral and review processes

### 1.2.3 Differing perspectives from First Nations:

- Some Nations are pursuing modern treaties through the BC Treaty process and as a result will have an ability and responsibility to participate in the decision-making process with local government - (Scia'new (Beecher Bay), T'Sou-ke, Songhees, MÁLEXEŁ (Malahat), Pacheedaht First Nations)
- Some Nations are choosing greater independence from the Indian Act through other means such as adopting their own Land Code. (Tsawout, Songhees and T'Sou-ke)
- Each Nation has a unique set of priorities for its community to which its resources are assigned. Communications and familiarity are increasing as a result of the relationship-building activities, but the ability to fully and meaningfully engage with the region is contingent on the Nation's capacity to assign its under-resourced government services to the particular issue, project plan or initiative. In competition for scarce resources, certain priorities take precedence depending on the community.

## 2.0 Governance Options

With increased understanding of the long-term impacts of assimilation on Indigenous cultural recovery and resilience, the Task Force expressly conveyed to First Nations the understanding that while full Board participation may be a long-term goal, accommodating First Nations at the Board table is not the only option for first Nations' participation into the CRD's existing framework. Discussions also considered the development of a common framework that reflects the values, protocols, regulatory and legislative realities of both local and First Nations governments.

The Task Force discussed options that would both include First Nations into the existing CRD governance framework as well as options for new co-developed decision-making models.

### 2.1 Inclusion of First Nations into Existing Regional Governance Framework

#### 2.1.1 Board Membership

In 2007, the *Local Government Act* was amended to enable Treaty First Nation (TFN) membership in a regional district, out of acknowledgement that a TFN is no longer governed by the federal *Indian Act*. As a government with natural person powers, a TFN has the authority and capacity to commit their governments to participating within the regional district legislative framework thereby ensuring the administrative and financial stability of the regional district system.

Of the 11 First Nations with reserve lands within the CRD, 9 of those Nations hold Douglas Treaty rights with the "liberty to hunt over unoccupied lands" and the right to "carry on their fisheries as formerly."

Six of these Nations are in the modern Treaty process (See Table 1).<sup>1</sup> It will likely be years before the final treaties are signed and implemented. The other Douglas Treaty Nations have declared that they have no intention of engaging in the modern treaty process and intend to hold to their Douglas Treaty rights.

Currently within the CRD there are no First Nations with ratified Treaties and therefore under current legislation it is not possible for First Nations to participate as full members of the CRD Board.

Changes in provincial legislation would be required to enable “non-treaty” (in the case of the CRD, this includes Douglas Treaty) First Nations regional district membership. There are a number of complex considerations:

- Any Legislation amendments must be considered for applicability Province-wide and in the context of precedent setting for other Treaty negotiations.
- Under the *Community Charter*, the Province is to consult with municipalities on proposed changes to local government legislation. Generally, this is done through the Union of B.C. Municipalities.
- Regional district members have the capacity to relinquish some autonomy to be part of a larger body and adhere to regulatory frameworks and provincially legislated dispute resolution. Similarly, a regional district director has the authority to make decisions on behalf of their jurisdiction at the board table.
  - It is not known if or how autonomy could be relinquished by a non-treaty First Nation as they operate under the *Indian Act* and other federal legislation and depending upon their governance model, their powers and authorities vary.
- All regional district directors are elected officials with the same functions, powers, duties and obligations including voting rights, provisions for participating in or withdrawing from services, conflict of interest and disqualification rules, all of which fall under provincial legislation. It is not known how equivalency functions and powers within the Federal Indian Act context could be reasonably assured.
- The regional hospital district legislation and system are tied to the regional district membership and therefore would have to be modified to either include or exclude First Nations participation.

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<sup>1</sup> It is not yet known the status of whether a BC Treaty will include the rights inherent in the Douglas Treaty or extinguish the link in favour of the agreements established in the modern Treaty document.

### Examples from other jurisdictions

The following regional districts have Treaty Nations on their boards:

- Metro Vancouver – Tswaassen First Nation
- ACRD – all 4 of the Maa-nulth Treaty Nations are now Board Members

There is an example of non-modern treaty Nations participating as voting members on a regional district by way of representatives in Electoral Areas. First Nations typically fall within the letters patent of Electoral Areas (EAs) therefore citizens living on Reserve, including members can run for the position of EA Director. In the Central Coast Regional District (CCRD) Board is composed of five directors. Four of the five directors are First Nation from each of the Wuikinuxv (Area A), Heiltsuk (Area B) and Nuxalk (Area D and E) Nations. Recently, the Area A position was vacated by the elected representative, who was not First Nations. A subsequent bi-election did not fill the position, so the regional board appointed a member of the Wuikinuxv First Nation. His appointment will stand until the next local government election in October 2018. *(Source: CoastMountainNews)*

#### 2.1.2 Ex-Officio, non-voting board participation

Barring full Board membership there are other ways that non-treaty First Nations can (and do) participate in local government activities within the existing legislative framework.

##### Observer Status

First Nations could propose to join the Board in the capacity of Observer(s) where they engage in the discussions and submit agenda items through the Chair, however they would not be able to vote, second or move on motions. Observer status can take many forms, from an occasional appearance at regional district meetings, to regular ongoing involvement. Typically observers are not permitted in closed meetings, however on topics that are of direct interest, non-disclosure agreements could be signed to allow their attendance, subject to Board approval on an item by item basis.

In other communities where First Nations participate as observers, it is understood that this approach provides opportunities for relationship building, two-way mentorship and capacity building and generating interest in, and understanding of, regional governance as well as indigenous ways of knowing and decision making.



Observer status in BC is typically used by Treaty First Nations or soon-to-be-Treaty Nations to familiarize themselves with regional district governance before becoming full members when their final agreements conclude.

#### **Examples from other jurisdictions**

- Strathcona Regional District has, as “expanded observer” status, Ka:’yu:’k’t’h’ / Che:k’tles7et’h’ First Nation which is one of the five Maa-nulth Treaty Nations. This Nation has its own designated seat at the table and the right to participate in debate and to submit items for the agenda.
- Huu-ay-aht, Toquaht, Uchucklesaht and Yuułu?if?atḥ First Nations, originally sat as observers of the Alberni-Clayoquot Regional District board before joining as full members, once they finalized their Treaty.
- Westbank First Nation is a non-voting member of the Central Okanagan Regional District (CORD). Westbank’s appointed representative sits at CORD Board meetings and, by invitation, attends closed Board sessions. Services are provided under a 15 year general servicing agreement that includes all the services of a typical municipality. Some of the services are provided by Westbank to participating areas of the regional district such as law enforcement, snow removal recreation, utilities and public works. The terms and services provided under the agreement are discussed once a year and the parties meet every 5 years to review the agreement as a whole. The Westbank / Regional District of Central Okanagan and Sechelt (Self-government Agreement)

#### **2.1.3 Committee and Commission Membership**

Membership on Board Committees is at the call of the Chair. In 2016, CRD’s procedures bylaws were amended to create two seats for First Nations on the Core Area Liquid Waste Management Committee. The CRD Board could change its procedures bylaws, to allow for First Nations representation on all standing committees at which point the Chair could appoint First Nations representatives to those committees. First Nations members could be remunerated for their participation on those committees, similarly to how Alternates are remunerated.

### **Examples from other jurisdictions**

Metro Van has created an Aboriginal Relations Committee of the Board, made up of 13 Directors of which one is the Treaty First Nation that sits at the Board. (Appendix XX for more detail). This Committee meets quarterly and is supported by the Aboriginal Relations Division. The Committee is also tangentially linked to the work of a municipal working group, made up of staff from other municipalities and First Nations (see below under Technical Committees)

There are over 60 CRD Commissions, the composition and authorities of which vary. Some commissions are set up through letters patent and so may have limits to First Nations membership while other bylaws could be amended as approved by the CRD Board. Appendix C lists the Commissions and their respective structures.

There is (at least) one CRD Commission that currently has seats reserved for First Nations representation (Peninsula Water Commission) and the Advisory Committee of the JdF Water Commission also has a seat allocated to a First Nations representative.

There is a growing interest, on the part of both commission members and First Nations, to have greater First Nations representation on other CRD Commissions. For example, the Southern Gulf Islands Electoral Area (EASC) is working with the SGI Community Economic Sustainability Commission (CESC) to amend its bylaw to provide 4 seats representing the four Nations with Reserve lands on the islands ([link to the staff report](#)). Tsawout First Nation has expressed its interest in having representation on the Regional Water Commission.

Changes to the Commission structure to accommodate First Nations must be thoughtfully considered, to avoid unintended consequences. For example, overlapping territories will inform which communities should be approached for membership, and cultural and political protocols will inform the ability or the authority for one nation to represent another as a commission members. Equitable remuneration that acknowledges the draw on capacity and resources that participation demands must also be considered.

#### **2.1.4 Technical Committees**

The technical committee structure, operating at the staff level, is an increasingly common framework in other jurisdictions. Such a committee can be struck by the Board or can be initiated by staff outside the Board's direction.

### Examples from other jurisdictions

**Metro Vancouver** has a Treaty Nation Board member and 3 non-treaty neighbouring First Nations. Much of the relationship is fostered at the staff level through various technical committees: The Regional Administrative Committee, made up of CAO's from local government and First Nations, meet regularly. There are technical committees that are project specific and First Nations participate if there is a direct interest. For example, Musqueam staff attend Parks Committees for specific parks, Squamish staff attend the Lions Gate Wastewater project committee. There is also a Technical Committee whose purpose is to provide direct and quarterly updates to each of the First Nations on Metro Vancouver projects.

#### 2.1.5 Formal Agreements

Agreements in the form of Memorandums of Understanding (MoU), Protocol Agreements, Consultation Agreements or Community Accords can be useful tools for establishing expectations and protocols. The CRD has completed a comprehensive Cultural Use Access agreement with T'Sou-ke First Nation for the water supply lands and is in the process of developing a similar agreement for Cultural Use in the Sea to Sea Park. These two agreements build on the original MoU developed with T'Sou-ke in 2008 which laid out a blue-print for how to proceed in areas of collaboration. With the establishment of the Aboriginal Initiatives office, resources were allocated this year to foster the relationship and implement the spirit of the MoU.

Appendix D has links to a variety of formal agreements from other local government jurisdictions.

An example of a successful model for consultation has been developed by Parks Canada for the Gulf Islands Conservation Park, which has a requirement for deep consultation on park management. The W̱SÁNEĆ Leadership Committee was developed to facilitate regular and ongoing engagement and oversight. The W̱SÁNEĆ Leadership Committee is made up of 4 Chiefs, 4 Councillors, 4 Elders and a staff person. The committee is charged with providing oversight, guidance and is mandated to speak on behalf of the W̱SÁNEĆ Nations on particular matters. Parks Canada provides an annual contract for services.

This type of model would benefit CRD's engagement process by ensuring timely and deliberate discussion that would include feedback from First Nations on CRD projects where the current process tends to be an extra burden on their communities. However, this type of commitment will result in the requirement for additional staff and financial resources.

## 2.2 Options for a New Co-developed Framework

It was the original hope of the Task Force that through the engagement process, a new governance model, co-developed with First Nations, would be proposed within two years. More time is required to allow for the exploration of and familiarization with, our respective governments. As the number of interactions increases, the closer we are to identifying an approach that both respects indigenous laws and ways of making decisions, while acknowledging the regulatory framework in which the CRD operates.

For example, much has been learned through the negotiation process with T'Sou-ke First Nation in the development of a Traditional Access Agreement. Similarly, engagement with Songhees and Esquimalt Nations with the sewage treatment process and participation on the CALWMP and Westside Committees, the Shellfish Closure project, First Nations participation in Forum of Councils and the newly launched regional emergency management planning initiative are all bringing First Nations communities into the regional planning network.

These and other engagement activities, reveal a variety of ways to share knowledge and decision-making that resonates with First Nations and integrates well with their systems. With more time, there is little doubt that a model will be revealed that is supportable by all, makes CRD decision-making stronger and more inclusive, and is able to be sustained in the long-term.

Some of the concepts that have emerged so far include:

- Annual (or bi-annual) Committee of the Whole Meeting
  - with co-developed agenda topics.
  - decisions to be made by consensus.
  - meetings would not be considered 'consultation' with implied consent for any given topic, rather it would be a forum for information and perspective sharing
- Membership of First Nations on a Task Force, Standing or Select Committee
- Creation of a Leadership Council of south island First Nations, to provide guidance, referral responses and direction to the Board on specific areas of interest.
- Establishment of a staff technical committee from municipalities, Islands Trust and First Nations

### **3.0 RECOMMENDATIONS**

The Task Force recognizes that to meaningfully engage with First Nations, strong relationships must be built and maintained; from that foundation, a mutually agreeable approach to decision-making on a wide array of issues and interests will emerge. There is no single solution, rather a continuum of engagement that involves, but is not limited to:

- Greater accommodation in the form of staff and leadership resources as well as financial remuneration to support First Nations capacity to meaningfully participate
- Incremental development of protocols for referrals and information exchanges that build on real-world practice (versus conceptual approaches that have no practical application)
- Agreement on processes and procedures when First Nations and the region would come together on a regular and routine basis
- Better mechanisms / tools for on-going communications.
- Conflict resolution approaches, in the event a First Nation or Nations do not agree with a regional decision or approach.

The Task Force recommends a renewed commitment to the Board's priority of relationship-building with First Nations, with a focus on experimenting with various mechanisms for engagement. A suite of recommendations has been developed by the Task Force, as a blue print of support for the next phase of relationship building. The recommendations touch on the role of the Task Force itself, its relationship to the AIO and resourcing.

#### **3.1 Collection of Recommendations:**

1. To undertake a comprehensive review of the suite of policies and procedures bylaws for CRD Committees and Commissions with recommendations for proposed amendments that will allow for First Nations representation.
2. Continue to advocate, through UBCM, for changes to the Local Government Act that address complex legal issues raised for regional districts, with respect to non-treaty First Nation regional district membership.
3. At the next UBCM conference, hHst / facilitate an information / knowledge-share session with other local governments with First Nations participation within the governance structure, at the next UBCM conference
4. Dedicate a Committee of the Whole meeting, each year, to include First Nations Chiefs (and Councils where practical), with the agenda for that session to be co-developed with First Nations.
5. Direct staff to develop options for increased resourcing and financial implications to accommodate greater participation, engagement and reconciliation.

6. Extend the term of the Task Force to 2018, to coincide with the next Board strategic priority timeframe.
7. Expand the mandate of the Task Force to include support and oversight of the Aboriginal Initiatives office
8. Amend the Task Force Terms of Reference to include the possibility of First Nations representation
9. Change the name of the CRD Aboriginal Initiatives Office to First Nations Relations to better reflect the scope of the office and the focus on government to government relationship building
10. Expand the scope of the Aboriginal Initiatives Office to support municipalities in relationship building with First Nations in an effort to share emergent best practices, information sharing and efficiencies.
  - a. Activities and services could include:
    - i. Shared cultural training opportunities
    - ii. Facilitated inter-municipal and First Nations staff committee
    - iii. Clearinghouse for service agreements, contracts, protocols in the region; oversight and assistance in drafting agreements in support of consistency, equity and fairness
    - iv. Support for a collaborative approaches to Calls to Action from the Truth and Reconciliation Commission
11. Direct CRD Staff to be directed to survey municipal staff for interest and needs assessment and to report back to the Board with a proposed approach, including resources.

## **4.0 SUMMARY**

The Task Force has made significant strides in reaching out to First Nations, gaining a better understanding of the interests, the opportunities and the challenges to greater collaboration and decision-making between and amongst our respective governments.

Reconciliation and Indigenous resurgence is a national priority, and the next decade promises a significant shift in the role and participation of First Nations in nation-building. Local government has a responsibility to support its First Nations neighbours in their economic development and community-building aspirations, and we have an obligation to our constituency (residents) to ensure a strong, seamless and sustainable relationship with our neighbouring governments.

### **4.1 Resources**

The Task Force supports the thoughtful and often ‘deep’ engagement undertaken by the Aboriginal Initiatives Division in its first few years of operation, and asserts the importance of continuing the work and the time commitment and the resources required to foster greater understanding, familiarity and strong, resilient relationships.

As the field of “First Nations relations” continues to evolve and inevitably becomes a discipline, the Board’s direction will inform the shape and tenor of this area of interest for the CRD. The Task Force is well situated to provide that guidance to the AIO with direct and ongoing accountability to the Board.

The added administrative work of supporting the Task Force in an oversight role, as well as the additional workplan that will inevitably be directed to staff, requires a two-year term position of 0.5 FTE to the existing 1.5 FTE staff complement that makes up the Aboriginal Initiatives Office. Additional funds will be required for the remuneration of First Nations leaders to attend formal meetings. Budgeting for bi-annual meetings with 20 First Nations attendees receiving a \$100 honorarium, results in a funding requirement of \$8,000 over the course of two years. No new funding is required at this time, as funds to support this increase in resources can be drawn for the AIO’s reserve fund.

## **4.2 Reporting**

Within the first quarter of 2017, the Task Force will produce a workplan for Board approval, which will address an approach for further governance discussions with First Nations leaders, as well as identification of key policy and procedure reviews to be undertaken.

The Task Force will report quarterly either directly to the Board, or by way of a Committee, at the call of the Chair.

## **4.3 Alignment with Board's Strategic Priorities**

The Board has made relationship building with First Nations a strategic priority specifically:

- Organizing Board Training and education on First Nations' traditions, culture, history and approaches
- Exploring the feasibility of hunting protocols in CRD lands in recognition of the Douglas Treaty
- Investigating ways to best support First Nations economic development activities in co-operation with local government partners
- Completing the work of the Special Task Force on First Nations engagement
- Supporting dialogue between the public, municipalities, electoral areas and First Nations

The recommended actions in this report are all linked to these strategic priorities.



## Appendix A – Summaries of Delegations to First Nations

### TSEYCUM FIRST NATION

Date of Event: April 17, 2015

Location: Tseycum First Nation Band Office

Representing the CRD:

- Ex Officio, Chair Nils Jensen
- Director Ryan Windsor
- Staff from Aboriginal Initiatives, Sue Hallatt and Erich Nahser-Ringer

Representing Tseycum First Nation:

- XÁLÁTE – (Chief Jacks)
- 

XÁLÁTE began by first thanking the CRD for coming to Tseycum and welcoming the delegation to their community. He said this conversation is a good start and is long overdue. Communication is key to a strong relationship and all he asks is for the CRD to communicate with his government about regional decision making.

Policies have been a hurdle for Tseycum. They are often used as a shield to defend this or that action that is not beneficial to the First Nations peoples of this land. The shield needs to be brought down in order to honour the rights of the Douglas Treaty. XÁLÁTE: “Are you the local government willing to support us on the Douglas Treaty?”

XÁLÁTE also mentioned that his Nation is not just concerned with decisions made in the CRD, but other regional districts that reside in their Traditional Territory. Tseycum needs help protecting the natural environment.

Key issues:

- the cost of fresh drinking water,
- polluted shorelines / access to shellfish,
- desecration of ancestors / archeological protocols,
- potential relocation of CVRD sewage outfall to Satellite Channel.

Regarding participation on the Board, XÁLÁTE acknowledged that Tseycum would like to sit and share knowledge with the Board. He said that it is time to “cut the strings that separate us and start working together”. Chief Jacks does not feel he needs to be a part of all decision making at the CRD, only issues that affect First Nations such as fish, parks, land, food, and data sharing.

## **TSAWOUT FIRST NATION**

Date of Event: May 21, 2015

Location: Tsawout First Nation Band Office

Representing the CRD:

- Director Ryan Windsor
- Director Maja Tait
- Staff from Aboriginal Initiatives, Sue Hallatt and Erich Nahser-Ringer

Representing Tsawout First Nation:

- Chief Harvey Underwood
- Councillor Samantha Etzel
- Councillor Louis Claxton
- Councillor John Wilson
- Cathy Webster
- Councillor Stanley Sam
- Councillor Allan Claxton
- Councillor Elizabeth Hermsen
- Administrator Eric Pelkey

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Chief Underwood welcomed the Task Force.

The many initiatives between the CRD and Tsawout were discussed including the sewage treatment plant, discussions around the land-use referral initiative called WSANEC Connect, stormwater monitoring and Tetayut creek monitoring. There are also service agreements for building inspection, fire protection and a source control agreement to prevent grease from damaging Tsawout's sewage treatment system.

The recently developed watershed maps that show the health of the watershed in the area were shared with Tsawout.

Representation on the CRD Board has been an ongoing issue for Tsawout. It was recalled that this topic was discussed with the Chief and Council 30 years ago. Tsawout has representation on the Peninsula Water Commission but that is not enough.

Legal cases are bringing meaningful consultation forward however the exclusion of First Nations under the *Local Government Act* is "an insult".

Tsawout staff provided background to the Douglas Treaty that stemmed from the Royal Proclamation of 1762 that stated that the Crown had to enter into treaty with the legal owner of the land. "This has led us to where we are today." Tsawout is not part of the BC treaty process and never will be. "Canada and the Province don't recognize our pre-confederation, constitutionally protected treaty." As a practical example of how this plays out, Tsawout wanted to put a sign on the highway pointing to their Nation's reserve land and were told that because they weren't legally part of BC they would not be permitted.

Key issues:

- Concerns regarding agreement for sewage overflow from the CRD system utilising Tsawout's system
- Outstanding service contract to engage CRD to inspect grease traps
- Land use referrals and capacity to fully engage
- Closures of traditional shellfish harvesting sites
- Leachate / pollution into Saanich Inlet
- Biosolids as a valuable resource, going to waste
- Cost of drinking water
- Overall health of WSANEC territory

Closing remarks – Tsawout would like to work with the CRD to produce better solutions for the region.

### **WJOLELP (TSARTLIP) FIRST NATION**

Date of Event: July 03, 2015

Location: Tsartlip First Nation Band Office

Representing the CRD:

- Director Ryan Windsor
- Task Force Chair, Marianne Alto
- Ex Officio Chair, Nils Jensen
- Staff from Aboriginal Initiatives, Sue Hallatt and Erich Nahser-Ringer

Representing Tsartlip First Nation:

- Councillor Gord Elliot
- Councillor Joni Olsen
- Councillor Simon Smith Jr.
- Councillor Verna Ellsworth
- Administrator Karen Harry

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The Task Force was welcomed to the table. It is important to acknowledge the traditional territory. Tsartlip would like to see a change from a consultation paradigm to one of more consent.

Further discussion about erosion of natural resources due to development and the fact that serious changes are needed to protect the environment. "We believe you (CRD) play an important role in protecting the environment and our part is integral to that."

Tsartlip acknowledged efforts by the CRD in the RGS and the CRD's efforts in sensitive areas. Tsartlip has 3 reserves with ~ 1100 members and that they continue to strive in local economic development projects. They face difficult decisions to make for their community and they are looking forward to some meaningful dialogue.

It is difficult to square the Nation's federal connection and to connect the dots to local government and the CRD. The Nation works with the Department of Fisheries to address the Douglas Treaty rights, but it is not clear how CRD fits into the picture. In order to make effective change, it would be helpful to understand better how CRD is structured.

Capacity is an issue if Tsartlip is to sit on committee positions in order to fully participate in regional decisions.

Key issues:

- Marine sewage
- Runoff / pollution to the Todd Inlet
- Stormwater damage to local creeks / watersheds
- Economic development opportunities
- Environmental stewardship
- The draining of Mayber Flats
- Loss of critical habitat
- Access to traditional medicines
- Barriers created by the complexity of bureaucracy and many levels of government

Final comments expressed a desire to have a follow up meeting which focusses on the structure, funding and decision-making framework of the CRD.

The meeting concluded with a promise to have a follow up presentation from the CRD explaining how it operates and how it relates to WJOLELP First Nation.

### **BOKEĆEN (PAUQUACHIN) FIRST NATION**

Date of Event: August 17, 2015

Location: Pauquachin First Nation Band Office

Representing the CRD:

- Task Force Chair, Marianne Alto
- Staff from Aboriginal Initiatives, Sue Hallatt and Erich Nahser-Ringer

Representing Pauquachin First Nation:

- Chief Rebecca Harris
  - Councillor Darlene Henry
  - Councillor Alan Tom
  - Councillor Herman Henry
  - Councillor SI,OLTENOT (see-el-te-not) Madeline Bartleman
  - Acting Administrator Thelma
-

The Task Force was welcomed to the table.

Task Force Chair Marianne Alto opened with appreciation and gratitude for receiving the delegation on Pauquachin Territory.

The newly elected Chief noted that it is time to learn more about local government, the CRD and she is interested in engaging more.

It was noted that it appears that everything the CRD does, Pauquachin also does but on a smaller scale. "We have an interest in all those things that you mentioned in your presentation."

It is important for Pauquachin that the Douglas Treaty be recognized by any table that they sit at.

There was an interest to see an organizational chart that outlines how the CRD works for better understanding of how Pauquachin can relate to the CRD.

The meeting concluded with a promise of further conversation and information sharing about the CRD and ideas for shared governance.

### **T'SOU-KE FIRST NATION**

Date of Event: September 18, 2015

Location: T'Sou-ke Band Office

Representing the CRD:

- Task Force Chair, Director Marianne Alto
- Ex-officio chair Nils Jensen
- Director Ryan Windsor
- Director Maja Tait
- Staff from Aboriginal Initiatives, Sue Hallatt and Erich Nahser-Ringer

Representing T'Sou-ke Nation

- Chief Gordon Planes
- Councillor Alan Planes
- Councillor Rose Dumont

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Chief Planes welcomed the CRD to T'Sou-ke territory. He acknowledged the importance of having strong working relationships with neighbouring jurisdictions to support T'Sou-ke. Chief Planes spoke about Aboriginal rights within Canada and locally with the Douglas Treaty. He acknowledged that the Douglas Treaty was signed by various Chiefs as a *partnership agreement* with the newcomers. Chief Planes sees the Te'mexw Treaty as being a way to "fix the old things that are wrong with the relationship".

The T'Sou-ke people have always been stewards of the lands. They want to work with the CRD to continue as stewards of the park lands and watershed lands. The T'Sou-ke people are forward thinking and image what this place will look like in 100 years from now.

Land is critically important to the T'Sou-ke people because their culture, their way of life, their language and their medicines are linked to the stewardship of the land. "Our discussions when it comes to lands involve imagining fences around the lands that weren't there when we signed the [Douglas] treaty...it is good to establish words in stone so that our future will be preserved...we have to look at how we communicate about hunting and fishing."

Chief Planes believes that a relationship must start around formal recognition and that if the government could agree on formal recognition "we'd go a long way (together)." It is important to T'Sou-ke that these sacred sites and burial sites remain in their hands. It is important to do things in a respectful way, important that local governments formally recognize indigenous culture and spirituality.

Formal recognition lays the groundwork for agreements that are iron clad. The Chief is interested in drawing up formal agreements. He knows there are other examples of cooperation and partnership that can be duplicated from other jurisdictions, such as Cowichan Tribe's participation as Co-chair on the Cowichan Watershed Board.

Councillor Planes expressed his support for CRD's initiative in building relationships with T'Sou-ke by coming out and meeting with Chief and Council. With each visit, everyone learns a little bit more about each other.

Councillor Dumont looks forward to future meetings and decisions about either sitting on the Board or an alternative that supports shared governance.

Key issues:

- Access to land for cultural purposes
- Hunting and fishing in their traditional territory
- Economic development
- Stewardship of the land

## **ESQUIMALT NATION**

Date of Event: November 09, 2015

Location: Esquimalt Nation Administration Office

Representing the CRD:

- Task Force Chair, Marianne Alto
- Ex Officio Chair, Nils Jensen
- Staff from Aboriginal Initiatives, Erich Nahser-Ringer

Representing Esquimalt Nation

- Chief Andy Thomas
- Administrator Janice Rose

Discussion began with reflections on the recent economic development summit that Chief Thomas and Chair Jensen attended. The Chief spoke about the economic opportunities that have been lost to his people over time. "We've been facing a lot of hurdles in terms of economic development. We have a vision and sometimes it takes a generation to achieve that. We are trying to find our place in our own land."

The Chief talked about how he stopped travelling in 1992 and decided to focus here at home on building relationships. Mayor Alan Lowe was a big part in that for him and they have had a good relationship with Victoria since that time.

The Chief spoke about some of the struggles for his community. He said that it is a struggle for capacity with Esquimalt Nation because when a crisis happens it puts everything else on hold and crises happen often enough.

He appreciates that the CRD wants to build partnerships with First Nations and believes it's hard to get 9 nations together but that it would be good to try to do so. It is important to understand that each community has their unique challenges that they are working to address. "The cycle of poverty binds our Nation and stops us from living like the rest of the world. If we build partnerships it has to be something real so that we can be involved in the economy."

A discussion ensued regarding the CRD as a service delivery model, and the work the Task Force is undertaking to find a way for First Nations to participate in regional decision making.

Chief Thomas stated that he is not overly familiar with the CRD and it was agreed that a follow-up presentation on the CRD's structure would be beneficial to be able to move this conversation forward.

The Chief has asked for a seat at the CRD for a long time. In terms of CRD initiatives he has an interest in being able to access financing for housing, working together on sewage treatment and having access to the drinking watershed or other CRD lands for Winter Ceremonies.

Discussion finished with a desire to have another presentation about the CRD and to have a larger presentation about what some other Regional Districts have done in terms of First Nations representation.

### **WSIKEM (TSEYCUM) FIRST NATION (SECOND VISIT, NEWLY ELECTED CHIEF AND COUNCIL)**

Date of Event: November 10, 2015

Location: Tseycum First Nation Band Office

Representing the CRD:

- Ex Officio Chair, Nils Jensen
- Director Ryan Windsor
- Staff from Aboriginal Initiatives, Erich Nahser-Ringer

Representing Tseycum Nation

- Chief Tanya Jimmy
- Councillor Brian Jimmy

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The Chief welcomed the CRD to Tseycum and emphasized the importance of Tseycum's involvement in (local government) matters whenever they are able. They have received a mandate from their community to work on generating economic development, building housing for community members and to continue to practice Douglas Treaty rights in order to keep the community fed.

There was discussion about how the CRD operates as a service delivery model for the municipalities. It was recognized that some of the Chiefs in the area have said that they want to be a part of the decision making and the CRD is now working to figure out how that can be done.

There was a discussion about CRD water services to Tseycum First Nation and what happens in case of a drought. The Chief is concerned about drought years in the future.

Chief Jimmy expressed her interest in "moving forward" and that Tseycum wants to be an active, involved participant; they want to work on practical day-to-day activities in order to build experience at the "lower level" and work up to higher level governance such as the CRD Board.

The Chief's goal is to look after the six generations that come after them. She wants to see Mother Earth taken care of and wants to be a part of that legacy of change for the next generation. Chief Jimmy would like to see more engagement and is happy to start anywhere that is appropriate, with the CRD.

In closing, Chief Jimmy offered herself as a resource in connecting to the other Nations or bringing information that the CRD might be looking for.

## **SONGHEES FIRST NATION**

Date of Event: November 18, 2015, 6:30 pm

Location: Songhees Wellness Centre

Representing the CRD:

- Task Force Chair, Marianne Alto
- Director Ryan Windsor,
- Ex Officio Chair, Nils Jensen
- Staff from Aboriginal Initiatives, Sue Hallatt

Representing Songhees First Nation:

- Chief Ron Sam
- Councillor Gary Albany
- Councillor Jackie Albany
- Councillor Frank George
- Councillor Karen Tunkara
- Councillor John Rice Jr.
- Administrator Christina Clarke
- Director of Programs and Services, Danny Henry



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Chief Sam welcomed the CRD to Songhees. He acknowledged the growing relationship and number of common areas of interest between Songhees and the CRD. He invited the delegates to begin the conversation.

Board Chair and Ex Officio member of the Task Force, Nils Jensen reflected on the CRD Board's strong priority in reaching out to First Nations governments to begin the good work of building enduring relationships. Evidence of this commitment is the creation of the Aboriginal Initiatives Office, which reports directly to the Board's Governance Committee and the creation of this Special Task Force.

Task Force Chair Marianne Alto spoke about the mandate of the committee and gave an overview of the Nations the Task Force has met and summarized the messages the members had received so far.

Ryan Windsor acknowledged Songhees's leadership in calling for greater participation by First Nations in regional matters and acknowledged that it was the Chief's delegation to the CRD Board, requesting full membership on the Board that sparked this Task Force.

Chair Alto spoke about the legislative barriers to membership that fall within the purview of the Province.

Chief Sam noted that Songhees met with the Premier and broached this issue.

The Task Force members noted that the Board had sent a letter to the Premier and also met with the Premier during a very short meeting as part of the UBCM convention.

All parties agreed to keep each other in the loop as discussions progress.

Christina Clarke mentioned that they were asked by UBCM organizers to (2016 convention to be held in Victoria BC) to present on First Nations Tax Authority.

The Task Force members also suggested that the Board would also benefit from learning more about FN Tax approaches and it was agreed that staff would work with Christina to schedule a presentation to the Board.

The meeting ended at 7:00 pm

### **MÁLEXEĒ (MALAHAT) NATION**

Date of Event: August 29, 2016

Location: Malahat Nation Administration Office

Representing the CRD:

- Director Rick Kasper (Alternate for Director Tate)
- Staff from Aboriginal Initiatives, Sue Hallatt, Erich Nahser-Ringer

Representing Malahat Nation:

- Chief Caroline Harry

- Councillor Vincent Harry
  - CEO Renee Racette
  - Administrative Assistant Miya Inkster
- 

Director Kasper expressed gratitude for Malahat Nation welcoming the CRD and conveyed the purpose of the CRD coming was to engage in areas of common interest. It was referenced that the Water Supply Area and other CRD lands are within the traditional territory of the Malahat peoples.

Chief Harry welcomed the CRD and said that the door is always open to meeting with other levels of government.

#### **CRD representatives discussed:**

- the infrequent communications that they have had with Malahat
- recognition that Malahat is a member of the WSÁNEĆ family
- the purpose of the Special Task Force on First Nations engagement.
- CRD's interest in "becoming whole" by including First Nations in governance and decision making;
- CRD's appreciation for the impact land use decisions can have on Malahat's interests
- The potential interest of Malahat's leadership in participating in decisions of regional concern

Malahat brought up some of their more challenging relationships with other government agencies and expressed support for a more proactive approach towards relationship building.

Malahat further conveyed the following messages:

- It is important to have lines of communication with other levels of government and it is optimal if this is formalized, perhaps in the form of an annual meeting or a one page agreement that lays out how parties can talk to each other.
- There is an important opportunity for Malahat and CRD to model good relationships for other levels of government to witness and build upon.
- It is a good sign that local government has invested in an office dedicated to relationship building with First Nations.
- Malahat is working on a consultation policy and would like to workshop that policy with the CRD.
- Malahat believes that consultation is a two-way responsibility and is committed to keeping its neighbours informed as to the Nation's development aspirations;
- Malahat also has an interest in understanding what decisions the CRD makes that impacts Malahat's decisions.
- Referrals can take up significant resources, but timely responses to referrals is important to Malahat.
- When governments include First Nations, this can showcase what is possible to other governments.
- Malahat Nation is poised for significant and exciting economic development in the near future;
- The Chief mentioned that as a leader, she is also focused on learning more about language, culture, history, treaty rights and family connections. People are coming to help in this regard and such support is welcomed by Malahat.

Summary Comments:

The CRD has come to understand the importance of building strong relationships with First Nations as a foundation on which to build government to government protocols. Because Malahat's primary local government relationship will be with the CVRD, it will be helpful to establish ongoing communications with CRD; the Board would prefer direct channels with Malahat so that any decisions or discussions are not received second hand or in the media and Malahat feels confident it can approach the CRD with its concerns.

Director Kasper framed his perspective by saying: "It's about negotiating the needs and wants of each community, it is not a *problem* discussion but rather an *opportunity* discussion."

The CRD has begun to include First Nations Chiefs and Councils in the bi-annual Forum of Councils events with the hope of holding regular *all council* gatherings to discuss emerging topics of common interest. The first Forum of Councils was held in June 2016 around the topic of Indigenous Cultural Training. Future topics include Food Security (October 2016) and Adaptation to Climate Change (Nov. 2016).

The CEO will try to make sure a technician or other representative from Malahat attends future meetings of this kind.

A map of the region was left with Malahat Nation and gifts were shared with the attendees.

**Next Steps / Action Items:**

- Both the CRD and Malahat are keen to have a follow-up meeting.
- CRD staff will meet with Malahat Lands Department to begin the work of establishing a communications protocol between the two governments.
- The CRD will extend invitations to Malahat Nation to future Forums of Councils or other relevant regional meetings.
- The CRD also offered support in terms of connecting to regional counterparts with the CVRD as well as any mapping resources they may need.

## Appendix B – Examples from other jurisdictions

### METRO VANCOUVER

One Treaty FN sits on the Board (Tsawassen)

- They did not sit as an observer before Treaty but rather had workshops and meetings with Metro representatives to get an understanding of the governance system

Regional Administrative Committee

- Composed of all the CAOs in Metro Van
- First Nations staff attend these meetings
- Formal meetings that take place regularly throughout the year

Technical Committee for parks or specific projects

- Separate staff committees with staff from different First Nations
- Musqueam staff and Metro Van staff on a parks committee for a specific parks
- Squamish staff on Lions Gate Wastewater project committee
- Meets at least quarterly depending on the project
- Committees were set up by staff and did not need direction from the Board

Technical Committees to update First Nations on projects

- Three separate meetings with three separate First Nations
- Take place every three months
- Aboriginal Relations staff, technical staff and staff from First Nations
- Terms of Reference is to update First Nations on projects
- Found to be more effective than sending letters

*Other general notes:*

- Committees were mainly initiated by Metro Van after hearing feedback from First Nations however, recently a new committee was suggested by Musqueam First Nation.
- Metro Vancouver does **not** pay meeting fees, they were clear from the beginning that they would not be compensating these meetings
- Regional Politicians and FN elected leadership have had informal breakfast meetings before Aboriginal Relations Committee meetings
- Metro regularly engages with 3 of the non-Treaty FNs in addition to the Treaty FN that is a member. There is very little engagement with the other First Nations, who have not, as yet, expressed interest.

## **REGIONAL DISTRICT OF CENTRAL OKANAGAN**

Westbank First Nation has signed a self-government agreement with the Province

- They were invited to participate as an observer member by the Regional District Board
- Observer can't vote, move motions or put items on the agenda but they can speak to any item that is on the agenda
- Westbank pays in the wastewater treatment service and sits on that committee as a member
- Sometimes staff members attend on the committee instead of the elected councillor who attends the Board meetings

The Regional District of Central Okanagan has no other standing committees as it is all dealt with through Board meetings.

They have a services agreement:

[http://www.civicinfo.bc.ca/Library/First Nations Service Agreements/Services Agreement--CORD Westbank First Nation--2007.pdf](http://www.civicinfo.bc.ca/Library/First_Nations_Service_Agreements/Services_Agreement--CORD_Westbank_First_Nation--2007.pdf)

And a protocol agreement:

[http://www.civicinfo.bc.ca/Library/First Nations Service Agreements/Protocol Agreement--CORD Westbank First Nation--1999.pdf](http://www.civicinfo.bc.ca/Library/First_Nations_Service_Agreements/Protocol_Agreement--CORD_Westbank_First_Nation--1999.pdf)

The protocol agreement outlines meetings at least twice a year to discuss issues of mutual concern. Recently they met regarding issues of Regional parks.

The Regional District of Central Okanagan also shares a border with the Okanagan Indian Band however they don't deliver any services to that community and they do not have a relationship with them.

## **REGIONAL DISTRICT OF OKANAGAN SIMILKAMEEN**

The Regional District of Okanagan Similkameen as a protocol agreement with three First Nations which form part of the Okanagan Nation of the Region - <http://www.rdos.bc.ca/departments/office-of-the-cao/community-to-community-relations/>

Staff Steering Committee on First Nations issues

- Senior Staff and Band Managers meet to discuss common issues
- Meet every 6 weeks to 2 months
- Relationship Building meetings and to discuss projects or issues

Joint council meetings twice a year

- Composed of 3 of the Chiefs, The Chair, Vice Chair and 1 other Director
- They receive reports from the Staff Steering Committee
- The Regional District has a task to look at including FN membership on their Board in 2017

#### Celebrate the Anniversary

- Ceremony every year to celebrate signing of the protocol agreement (It's been three years since it was signed)

#### Referrals working group

- Land use departments from the First Nations and planning departments from member municipalities and the Regional District are meeting to discuss how to better do referrals
- Referrals are not paid at the moment but First Nations have indicated that they would like compensation for their time

#### **ALBERNI-CLAYOQUAHT REGIONAL DISTRICT**

- There are now 4 Board members from Treaty First Nations who sit on the ACRD Board, the Board totals 14 members.
- Before First Nations joined they sat as Observer members where they could participate in discussion but could not vote or move motions
- The Treaty First Nations had up to 10 years to join as formal members however they have all now joined the board.
- Under the treaty the First Nations have to join the general government services and the Hospital district, all other services were up for negotiation.
- The ACRD also has several service agreements with some of the First Nations around Fire services and Building Inspection
- First Nations sit on committees for geographical areas and for specific projects at the appointment of the Chair
- The ACRD sends all of its Board minutes and agendas to all other neighbouring First Nations who may attend to watch from time to time if there is an issue that concerns them

Orientation manual For ACRD and Maa-nulth Treaty Nations Cooperation -

<http://www.acrd.bc.ca/cms/wpattachments/wpID320atID1233.pdf>

## Appendix C – CRD Commissions



## Appendix D – Formal Agreement Examples

A number of non-treaty First Nations are participating in local government activities within the existing legislative framework. Examples include:

- The City of Penticton and Penticton Indian Band have an [agreement](#) on joint economic development, land use and revenue sharing;
- The City of Kimberley and Ktunaxa Nation have a [Memorandum of Understanding](#) (MOU) to explore opportunities in economic projects, infrastructure, services, emergency preparedness and events;
- Sts'ailes First Nations and Fraser Valley Regional District have a [MOU](#) and Intergovernmental Relations Protocol) with plans to work together on economic development, land use, emergency services, and transportation;
- The District of Ladysmith and the Stz'uminus First Nation have a [Community Accord](#) guiding their work together on joint initiatives and partnerships, and;
- The Songhees Nation and Esquimalt Nation are voting members on the Core Area Liquid Waste Management Plan Committee (CALWMP) of the CRD Board

Non-treaty First Nations also sit as ex-officio (non-voting) members on the following regional district boards:

- Westbank First Nation / Regional District of Central Okanagan and
- Ka:'yu:'k't'h' / Che:k'tles7et'h' First Nation / Strathcona Regional District
- The Toquaht and Uchucklesaht Nations were ex-officio members of the Alberni-Clayoquot Regional District board before joining as TFN members

### Protocol Agreements and MOUs:

Formal protocol agreements and MOUs are typically a first step towards deeper participation and collaboration. They are usually high-level agreements between two or more parties to work together on areas of mutual interest. Often they acknowledge the history and rights of both parties and *may* include specific points like a certain number of meetings per year to ensure continued dialogue or dispute resolution processes for the parties. There have been attempts to craft protocol agreements between the CRD and First Nations, but none executed, with the exception of a 2008 Relationship MoU with T'Sou-ke. There are some protocol agreements in place within the CRD with First Nations, including a 2011 Relationship Agreement between the District of Central Saanich and Tsartlip First Nation. This Relationship Agreement serves the intended purpose of supporting a stronger connection between the local government and the First Nation. There are numerous examples from across BC, including:

- Powell River Regional District - Tla'amin First Nation protocol agreement
- Squamish-Lillooet Regional District - Lil'wat First Nation
- Caribou Regional District – Williams Lake Band protocol agreement