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# REGIONAL GOVERNANCE AND GOVERNANCE IN THE REGION

An LMTAC Discussion Paper

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Revised: April 2003

***Draft #8***

*For Discussion Purposes Only – Without Prejudice  
(This draft discussion paper is intended to stimulate further debate on the  
issues and does not present final, defined positions.)*

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## EXECUTIVE SUMMARY

The purpose of this discussion paper is to educate the reader on regional government functions and responsibilities, as well as to begin to identify issues that local governments have with First Nation governance and membership on regional district boards, post-treaty, in the Lower Mainland.

The paper reveals that First Nations can have a wide range of authority to manage local affairs on the lands they have been allocated as Indian Reserves under the federal *Indian Act*. In many cases, these powers are quite similar to powers of local governments in British Columbia. However, a band council has some powers under the *Indian Act* that are much different than those of local government in British Columbia. Therefore, local governments will need to develop a variety of intergovernmental links, for the post-treaty era, to deal with shared areas of jurisdiction, issues of local, provincial and national concern, and disputes over jurisdiction.

While the Greater Vancouver Regional District (GVRD) is the primary focus of specific examples and policies presented in this paper, the discussion is applicable to all three regional district members of LMTAC: GVRD; Sunshine Coast Regional District (SCRD); and Squamish-Lillooet Regional District (SLRD).

The paper identifies various models for First Nation participation on regional district boards that have been identified in recent literature. However, there are also some challenges facing local governments with respect to First Nation governance as well as servicing issues. The issues of representation and taxation of non-Aboriginal residents on Indian Reserves is also presented. The position of local government is that if treaty settlements are to impact on regional governance in the future, then regional district boards must be directly involved in those treaty discussions.

This document reflects a combination of contributions from LMTAC, its members and subcommittees, as well as an articulation of principles, positions, interests and concerns on the subject of First Nation self-governance models drawn from specific LMTAC and other local government documents. The valuable comments and input from representatives of the three LMTAC-member regional districts who participated in the October 2002 and March 2003 workshops on this subject are also reflected in the revised draft.

Two options (i.e. full membership and service delivery) are desired by First Nations but it may not be possible to have both. Flexibility and built-in mechanisms, therefore, may be required in order to ensure that a new governance model is developed for First Nations that also protects the fundamental principles of regional districts. Developing the necessary framework and protocols to facilitate such discussions and First Nation-local government relationships will be a process of progressive successes. The degree to which the separate realities of First Nations and regional districts can be addressed depends on a variety of factors. For the moment, it is important that First Nations and local governments talk to one another in order to begin to establish the common understanding required for creating effective working relationships in the future. The recently proposed intergovernmental relations side tables may be one way of creating such opportunities for discussion and debate.

This paper is anticipated to evolve with continued discussion on this topic.

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## **1.0 INTRODUCTION**

### **1.1 Purpose**

The purpose of this discussion paper is to educate the reader on regional government functions and responsibilities, as well as to begin to identify issues that local governments have with First Nation governance and membership on regional district boards, post-treaty, in the Lower Mainland.

The Lower Mainland region, as presented in this paper, includes the area covered by the 25-member jurisdictions of the Lower Mainland Treaty Advisory Committee (LMTAC). For a listing of LMTAC-member jurisdictions, please see Attachment 1.

Existing examples of First Nation participation on regional district boards elsewhere in British Columbia are presented, along with some of the challenges faced by local governments. This paper is anticipated to evolve with continued discussion on the topic of Aboriginal governance, which is a topic of discussion at several Lower Mainland treaty negotiation tables.

### **1.2 Process**

This document reflects a combination of contributions from LMTAC's Technical and Strategic Working Group (TSWG) members (technical staff from LMTAC-member jurisdictions) as well as an articulation of principles, positions, interests and concerns on the subject of First Nation self-governance models drawn from specific local government documents. These documents include: *LMTAC's First Principles; Considerations – A Guide to Lower Mainland Area Local Government Interests in Treaty Negotiations; Principles and Perspectives on Aboriginal Governance; Aboriginal Governance and First Nation Membership on Regional District Boards*; an LMTAC summary prepared for the Prince George Treaty Advisory Committee entitled *First Nations Participation on Regional District Boards*; and *GVRD Principles for Treaty Negotiations*. For a listing of LMTAC's *First Principles* and interests that relate to First Nation governance, please see Attachment 2.

Other primary sources analyzed in preparing this discussion paper include: *Self-Government for Aboriginal People in Urban Areas* (Evelyn Peters); *Self-Government Agreements and the Public Works Function* (Institute on Governance); *Regional District Governance in British Columbia: A Case Study in Aggregation* (Institute on Governance); and *Aggregation Among First Nations: A Handbook for Self-Government Negotiators* (Institute on Governance).

### **1.3 Regional District Members of LMTAC**

This discussion paper uses examples from various regional districts throughout the province. However, the discussion is intended to apply to all three regional district members of LMTAC: Greater Vancouver Regional District (GVRD); Sunshine Coast Regional District (SCRD); and Squamish-Lillooet Regional District (SLRD).

### **1.4 Audiences**

There are several key audiences for this discussion paper:

- LMTAC-member jurisdictions
- Provincial and federal government negotiators

- Other parties in the treaty process or involved with Aboriginal issues
- First Nations (including those not involved in treaty negotiations)
- Students and academics of treaty negotiations and Aboriginal issues
- The public at-large

## **1.5 Authors**

This document reflects a combination of contributions from LMTAC, its members and subcommittees, as well as an articulation of principles, positions, interests and concerns on the subject of First Nation self-governance models drawn from specific LMTAC and other local government documents.

LMTAC also wishes to thank the representatives of the three regional districts who participated in the October 2002 and March 2003 workshops. Their valuable comments and input on the subject are reflected in this revised draft.

## **2.0 REGIONAL GOVERNANCE**

### **2.1 The Basics of Local Government in British Columbia**

Local governments in British Columbia are organized as either municipalities or regional districts.

There are 5 types of municipalities: villages, with population under 2,500 (e.g. Village of Lions Bay); towns 2,501 – 5,000 (e.g. Town of Gibsons); cities, more than 5,000 (e.g. City of Surrey); and district municipalities, if the area to be incorporated is greater than 800 hectares and has an average population density of less than 5 persons per hectare (e.g. District of Maple Ridge). The final type is island municipalities, which tend to be self-contained jurisdictions with a small population base (e.g. Bowen Island Municipality). Villages and towns may grow larger without altering their corporate status. There are currently 44 cities in BC, 53 districts, 15 towns and 40 villages. Over 80% of the population lives within municipalities, although municipalities account for less than 1% of the total area in the province. There are also two Indian government districts in the province, one at Sechelt and one in the Nass Valley (Nisga'a).

Regional districts were created in 1965 to perform two functions. They provide a means to deliver local services to areas outside of municipalities (e.g. electoral areas) and a way for combinations of municipalities and electoral areas to jointly fund services which are of benefit to the region. Regional districts are governed by a board of directors that represents the electoral (or rural) areas of the member municipalities. Directors representing electoral (or rural) areas are elected directly in elections held every three years. Municipal directors are appointed by the council or the municipalities they represent. BC is currently divided into 27 regional districts.

### **2.2 Extent of Local Government Authority**

The *Local Government Act* gives municipalities and regional districts the authority to deliver a broad range of services, and the authority to regulate some specific but important matters.

The *Act* prescribes broad authority for local governments to deliver services, including:

- Part 15 of the Act provides that local governments may “operate any service that Council considers necessary or desirable” (such services may be established by bylaw);
- Part 15 gives municipalities the “right of possession” of local roads;
- Part 15 allows servicing bylaws to provide for different levels of service for different areas, and Part 19 allows local governments to offer services or improvements to selected areas or residents;
- Part 5 places significant limits on the ability of local governments to offer benefits to commercial, industrial or business undertakings, but still allows local governments some meaningful tools to support “private” activities;
- Part 8 gives local governments some power to create parks and forest reserves, and to work with school districts; and
- Part 27 gives local governments some tools to support heritage conservation.

The Act also allows municipalities to regulate several local matters, including:

- Business regulation and licensing (Part 20);
- Building regulation, including permits and licensing (Part 21);
- Development of land, including zoning (Part 26); and
- Miscellaneous matters including animals, trees, cemeteries, night patrols, bicycle licenses, wild flowers, auctions, athletic contests, athletic commissions, removal and deposit of sand, gravel and other soil, noise, nuisances, fire and security alarm systems, dangerous buildings and structures, unsanitary conditions, firearm, explosives and fireworks (Part 22).

Several pieces of legislation require municipal governments to deliver services or perform functions in certain ways, including:

- Part 26 of the *Local Government Act* requires municipalities to create an independent Board of Variance to hear requests for relief from aspects of a zoning bylaw;
- Part 21 of the *Local Government Act* requires municipalities and regional districts to appoint a chief building inspector for enforcing the BC Building Code within its jurisdiction, whether or not it has formally adopted the code by bylaw. However, local governments may choose how to enforce the code;
- The *Fire Services Act* RSBC 1996, c. 144, provides that a municipality must provide a local assistant to the provincial fire commissioner, and must provide for a regular system of inspecting hotels and public buildings in the municipality;
- Part 15 of the *Local Government Act* and Part 2 of the *Police Act* RSBC 1996, c. 367 require municipalities to provide (and pay for) police services;
- The *Library Act* RSBC 1996, c. 324 places limits on when and how a municipality may establish a library;
- Section 77 of the *Land Titles Act* requires a municipal government to appoint an approving officer for subdivision applications;
- The *Emergency Program Act* RSBC 1996, c. 111 and the Emergency Program Management Regulation require municipalities to prepare a local emergency plan; and
- The *Waste Management Act* RSBC 1996, c. 482 requires municipalities to prepare waste management plans and sometimes to screen site profiles before approving applications for rezoning, development permits, subdivision, and some other types of permits.

Some provincial laws and regulations also restrict local government's bylaw-making authority. For example, the *Agricultural Land Reserve Act*, *Forest Land Reserve Act*, and *Farm Practices Protection (Right to Farm) Act* all place limits on municipal bylaw authority relating to farms and farming practices (e.g. restrictive definition of nuisance).

Land use planning and zoning among neighbouring municipalities are somewhat coordinated through several parts of the *Local Government Act*. Part 25 of the Act requires a regional district to develop a "Regional Growth Strategy" which contains a broad statement of the future of the region. Affected local governments must adopt the regional growth strategy. Part 26 of the Act requires municipalities to develop "Official Community Plans" (OCP) setting out objectives and policies to guide decisions on planning and land use management. Parts 25 and 26 require OCPs to contain a regional context statement, describing the relationship between the OCP and the regional growth strategy, and how the OCP will become consistent with the regional growth strategy over time.

In addition to these acts and regulations, local governments may be subject to other provincial legislation including, but not limited to, the *Freedom of Information and Protection of Privacy Act* and the *Municipal Finance Authority Act*.

The *School Act* also applies to local governments. As of December 2, 1996, the previous 75 public school districts were restructured into 59 districts serving 583,000 students. Each school district is governed by a school board. According to the *School Act*, school board trustees are elected by the public every three years to represent the interests of local communities in public schools. The elections for school board trustees coincide with local government elections. Governance of school districts is also enhanced through the effective operation of committees and trustee assignment to various liaison processes with schools.

### **2.3 Governance Structure of Regional Districts**

Regional districts are, in essence, federations of municipalities and electoral (or unincorporated) areas. The system balances representation by population with representation by community. Representation of municipal areas on a regional district's board of directors is ensured by director(s) who are members of a municipal council and appointed by the council for terms of three years; representation of electoral areas is direct as the population elects directors for terms of three years.

Regional districts accomplish three roles:

- (1) Regional districts provide a political forum for representation of regional residents and communities and a vehicle for advancing the interests of the region as a whole. More practically, they provide a vehicle for the delivery of typical regional services like economic development, water supply, sewage disposal, and solid waste management. An example that illustrates the respective roles of municipalities and regional districts is to think of regional districts as the "wholesaler" of services to the municipality that acts as the "retailer".
- (2) Regional districts provide a political and administrative framework for inter-municipal or sub-regional service delivery on a partnership basis through the creation of "benefiting areas". Any combination of municipalities and electoral areas can jointly decide to provide services and recover the costs from the beneficiaries. Examples include: a large-scale

recreation centre that benefits four municipalities and an electoral area or a fire protection service that enables a municipal fire department to provide fire protection to a rural area immediately adjacent to municipal boundaries.

- (3) Regional districts are the “local government” for the electoral areas. At the very least, this means that a regional district provides the services of community planning and land use regulation in rural areas. However, in addition, it typically means that the region is providing building regulation and inspection, nuisance regulation and a variety of other services that the residents of an area request.

## **2.4 Voting Procedures**

Voting in regional districts on certain issues, as prescribed by the *Local Government Act*, is by means of a weighted vote. A voting unit is established by the Letters Patent that created the regional district. The number of votes to which a municipality or electoral area is entitled is determined by dividing the population of the municipality or electoral area by the voting unit. In the GVRD, the voting unit is set at 20,000 in population (see Table 1).

The most recent Census of Canada statistics are used in determining population figures for purposes of calculating the number of votes assigned to a municipality or electoral area. No director may hold more than 5 votes (a factor that Cabinet can modify), with the result that the largest municipalities in population – Vancouver, Surrey, Burnaby, Coquitlam, and Richmond – will have more than one director. (The City of Abbotsford, from the Fraser Valley Regional District, votes on GVRD regional parks matters only.)

The *Local Government Act* also provides for a corporate vote whereby all members vote according to the ‘one director = one vote’ principle. Thus, matters are decided by either a corporate vote or a weighted vote. The corporate vote is mandated for decisions on the general conduct of board business and significant issues affecting all members (e.g. voting on bylaws to establish a new service or exercising a regulatory authority). A weighted vote is used by the board as a whole whenever it is contemplating a financial obligation (e.g. entry into a contract, adoption of the regional district’s financial plan or authorizing borrowing). The weighted vote is also used by directors when voting on matters of administration or operation of a service that does not encompass the entire regional district. In that only participating directors may vote in these matters, this voting practice is often referred to as a “stakeholder vote.”

## **2.5 Services Provided by Regional Districts**

Regional district board members decide what services its region and members require, and how these should be provided. A number of options are available. Regional districts may

- establish or operate any service deemed necessary
- make arrangements with other public authorities, individuals, private-sector partners to provide desired services
- acquire, manage or dispose of land
- grant assistance to benefit the region
- delegate authority to board members, staff, committees or other local government bodies

**Table 1: Voting Allocation for the 2003 Greater Vancouver Regional District Boards**

<b>GVRD-Member Jurisdictions</b>	<b>2001 Census Population (Statistics Canada)</b>	<b>Number of GVRD Directors in 2003</b>	<b>2003 Voting Allocation: Greater Vancouver Regional District Board</b>	<b>2003 Voting Allocation: Greater Vancouver Sewage &amp; Drainage District Board</b>	<b>2003 Voting Allocation: Greater Vancouver Water District Board</b>
Anmore	1,344	1	1	-	1
Belcarra	682	1	1	-	-
Bowen Island	2957	1	1	-	-
Burnaby	193,954	2	10	10	10
Coquitlam	112,905	2	6	6	6
Delta	97,429	1	5	5	5
Electoral Area A	8,080	1	1	1	1
Langley City	23,643	1	2	2	2
Langley Township	87,403	1	5	5	5
Lions Bay	1,379	1	1	-	-
Maple Ridge	63,174	1	4	4	4
New Westminster	54,656	1	3	3	3
North Van. City	44,642	1	3	3	3
North Van. District	83,924	1	5	5	5
Pitt Meadows	14,894	1	1	1	1
Port Coquitlam	51,262	1	3	3	3
Port Moody	23,816	1	2	2	2
Richmond	164,345	2	9	9	9
Surrey	347,956	4	18	18	18
Vancouver	546,976	6	28	28	28
West Vancouver	43,294	1	3	3	3
White Rock	18,250	1	1	1	-
Abbotsford*	115,711	2	6	-	-
<b>TOTALS**</b>	<b>2,102,676</b>	<b>35</b>	<b>119</b>	<b>109</b>	<b>109</b>

## NOTES:

\* The City of Abbotsford is a voting member of the GVRD Board for regional parks services only.

\*\* The combined total population figure for the GVRD communities and City of Abbotsford does not include the population figures of Indian Reserves.

Since the 1960s, the number and types of services a regional district provides has grown steadily. In fact, the *Local Government Act* now provides broad service powers to regional districts, confirming that their boards may decide what services a region or its member communities need and how these will be provided. They can range from typically “regional services” such as regional bulk water delivery and waste management to wider services encompassing safety and economic development or more specific services such as fire protection or street lighting services to specified areas within an electoral area. A regional district can also provide a different level of

service to different areas. The costs for the service are recovered from the benefiting area; be it a portion of an electoral area, a combination of municipalities and electoral areas, or from the entire regional district. A service can be provided to outside municipalities or regional districts. For an example of the number of services which can be provided, in the Capital Regional District (encompassing the City of Victoria and surrounding area), 150 different service areas exist. Cabinet has retained the power to grant additional powers and jurisdictions to regional districts. For example, the GVRD has obtained exclusive jurisdiction over roads and transit. (Table 2 provides examples of shared services typically provided by regional districts.)

**Table 2: Examples of Shared Services Provided by Regional Districts**

<b>Environmental Management</b>	Water Supply and Distribution, Sewage Collection and Treatment, Solid Waste Collection and Disposal, Soil Deposit, Air Quality, Insect Control, Weed Control
<b>Transportation</b>	Transit, Travel Demand Management, Airport
<b>Parks</b>	Sports Fields, Community Parks, Regional Parks
<b>Recreation</b>	Recreation Facilities and Programs, Community Halls
<b>Culture and Heritage</b>	Cultural Facilities and Programs, Heritage Conservation, Library Services
<b>Regulatory</b>	Animal Control, Building Inspection, Noise Control, House Numbering
<b>Emergency</b>	Emergency 911, Fire Protection, Search and Rescue, Emergency Preparedness
<b>Planning</b>	Land Use Planning for Electoral Areas, Regional Growth Strategies
<b>Other</b>	Economic Development, Cemeteries, Victim Services, Television Re-broadcasting, Film Industry Development, Feasibility Studies, Grants-in-Aid

Source: Government of British Columbia. Ministry of Municipal Affairs, "Guide to Regional Service Arrangements and Service Reviews", Appendix 3.

## 2.6 Cost-Recovery and Financing

The *Local Government Act* provides for greater flexibility to recover the costs of services through a variety of measures, including fees, taxes and charges. Whereas in the past relations between municipalities and electoral areas were fraught with tension, recent legislation has responded to these concerns by granting the regional districts the authorization to establish an electoral area administration to facilitate cost recovery in electoral areas. In addition, legislative changes have provided regional districts with general authority to impose fees and charges in relation to services.

Regional districts have the ability to tax to recover the costs of the provision (and administration) of a service. British Columbia's property tax collection system is integrated: taxes are collected by municipalities and transferred to the district. Upon adoption of their financial plan, regional districts will prepare a "requisition" which sets out the taxes to be collected for each of the services it delivers. For electoral areas, the requisition is sent to the Provincial Surveyor of

Taxes (which levies its own taxes and collects taxes for other agencies from areas outside municipalities). The Surveyor of Taxes transfers the requisitioned moneys to the regional district. For municipalities, the requisition is forwarded to the municipalities that again collect and transfer the taxes required to the regional district.

## **2.7 Regulatory Powers**

In conjunction with the broad service powers granted by the *Local Government Act*, regional districts have obtained regulatory powers in relation to the services they provide. The *Local Government Act* defines different levels of services provided by regional districts, including a regulatory service, which is separate from the authority to regulate in relation to a service. Regulatory authority extends automatically to a municipality that is part of the service area. But authority is not exclusive, unless otherwise stated in Letters Patent or legislation. A municipality may have concurrent authority to regulate.

If both a regional district and municipality exercise their rights to regulate, both sets of regulation are valid – each jurisdiction would be responsible to enforce its own regulations. Thus, when a municipality agrees to participate in a regional district service, it is also aware that regulatory authority will go with the establishment of a service. Similarly, a service that is provided by a municipality outside its borders, or by a regional district outside its borders, regulatory authority will also follow across boundaries. For example, where the regional district supplies water to a municipality, but the municipality owns and operates the distribution system, both jurisdictions can regulate sprinkling. Similarly, a regional district that provides fire protection service to a municipality also acquires power to regulate aspects of fire protection as part of the service. This may potentially overlap with municipalities' authority over building regulations.

In cases where such overlaps occur, there may be a need for the municipal council and regional board to work together to define regulatory arrangements that are complementary and in the public interest.

## **2.8 Accountability and Public Participation**

As regional districts balance representation by population with representation by community, they are accountable to both constituencies. Some directors are accountable to the municipal councils that appointed them, while members from electoral areas are directly responsible to the citizens who elected them. A municipal council appoints one or more of its members to the board of directors of the regional district for a three-year term. Residents of each electoral area elect a director for a three-year term.

The public has a regional governance role to play to ensure that decision-making is sufficiently transparent and that citizens have a say in what happens in and to their region. For example, the *Local Government Act* requires that most board and committee meetings be open to the public. Citizens must be informed of the intended use of the regional district's new corporate powers. As examples, notice must be given prior to the disposal of land or improvements; counter-petition opportunities must be provided prior to granting long-term property tax exemptions; elector assent is required on matters such as the disposal of water or sewer works. The *Local Government Act* also stipulates that regional districts engage local governments, adjacent

municipalities and First Nations at early stages in policy making (e.g. development of a regional growth strategy).

### **3.0 FIRST NATION GOVERNANCE**

#### **3.1 First Nation Government**

There are a number of urban reserves or reserves adjacent to urban municipalities, already in existence in the Lower Mainland. First Nations can have a wide range of authority to manage local affairs on the lands they have been allocated as Indian Reserves under the federal *Indian Act*. In many cases, these powers are quite similar to powers of local governments in British Columbia. However, a band council has some powers under the *Indian Act* that are much different than those of local government in British Columbia. This includes: regulation of band membership, cultural matters, Aboriginal medicine, the right of residence on a reserve, the rights of spouses and children of band members, and the regulation of intoxicants.

The essential aspect of reserve government in urban areas is that, within its sphere of responsibilities, it will exercise exclusive jurisdiction over a specified land base. It will also exercise significant jurisdiction over the people who occupy that land base, including non-Aboriginal people. Reserve-based First Nation governments would assume responsibility for the development and delivery of a wide range of government services related to property and people on the reserve.

It has been suggested that self-governance includes the development of institutions and structures associated with meeting the collective needs of the First Nation community. Viewing urban governance from this perspective means that some law-making capacity should be included in the governance structures, as well as policy-development and service-delivery capacities. A key goal is to make urban environments places where Aboriginal people can experience a satisfactory quality of life in their interactions with the non-Aboriginal community and in the affirmation of Aboriginal cultures, identities, and rights.

#### **3.2 Jurisdiction and Powers**

The powers of First Nation government will likely be circumscribed, at least to some degree, either directly within the constitution or by negotiation with other governments. This will delimit a range of areas in which First Nation government will have the potential to exercise power. Within this range of powers, urban communities may be unable to exercise jurisdiction in some areas. In others, they may find it unnecessary to have powers. In the Union of BC Municipalities (UBCM) sponsored discussion paper, entitled *Approaches and Options for Treaties in Urban Areas*, which included local government representation and input, it was acknowledged that First Nations post-treaty will likely have many, if not all, of the powers typically exercised by local governments in British Columbia.

In relation to reserves, informal and formal self-government arrangements are developing, ranging from the Sechelt municipal-style model implemented in federal and provincial legislation, to local band bylaws that may be approved under the *Indian Act* by Canada. *Indian Act* bylaws that can be enacted include the power to regulate traffic, land use, construction, power to regulate animal trespass, businesses and licensing of them, construction and

maintenance of roads and other local works. These functions can be supported by a range of measures including property taxation of land within the reserve.

It is important to conceive of First Nation government powers evolving over time. During the transitional and early stages of self-government, urban communities may lack the capacity to govern in certain areas. As institutions, skills, and resources develop, a wider range of powers may be possible. Communities will have to first identify the sectors that are considered to be a priority. Then, they can determine what level of jurisdiction they want to exercise in those areas. Powers may involve both the regulation of citizens and the provision of services. Urban communities may want to exercise some level of jurisdiction on some or all of the following areas:

- Membership
- Education
- Economic development
- Cultural development, including language, religion and other traditions
- Local administration of justice, e.g., policing, probation, sentencing, etc.
- Social services, including child welfare
- Local health services
- A form of local taxation
- Recreation

Depending on the characteristics of the community, other options can be added to this base list. Aboriginal communities located on traditional territories or treaty lands in urban areas may have special or additional rights and jurisdiction over natural resources, land use, buildings, and the administration and management of property. Communities with interests in lands outside the urban area may have input into natural resource management, the environment, hunting, fishing, trapping and wildlife protection on those lands.

As well, First Nations and local governments will need to develop a variety of intergovernmental links, for the post-treaty era, to deal with shared areas of jurisdiction, issues of local, provincial and national concern, and disputes over jurisdiction.

### **3.3 Comparison of Local Government Versus First Nation Governance**

Many of the authorities held by local governments – to deliver local services, to regulate various matters, and to collect certain types of taxes and fees – are currently held by band councils (see Table 3). Indian Bands, it is assumed, will want to retain these authorities in a post-treaty self-government model.

For such authorities, many of the required processes and structures of local governments could be easily applied to a post-treaty, First Nation governance model. Local government requirements for financial management and accountability to residents/members, for example, are reasonable and consistent with Aboriginal community values.

**Table 3: Comparison of Local Government Versus First Nation Governance**

	<b>LOCAL GOVERNMENTS</b>	<b>FIRST NATIONS</b>
<b>SOURCE OF AUTHORITY</b>	Created by provincial statute.	Authority derives from both the federal government and constitutionally-protected rights.
<b>SERVICE DELIVERY</b>	Broad powers to deliver local services and some specific, but important, regulatory powers, particularly in relation to land use.	Authorized to provide similar services and regulate matters as local governments but, in practice, delivers few local government-type services directly and regulates no local government-type matters. However, First Nation government delivers other, broader services and regulates other, broader matters than are delivered or regulated by virtually any local government.
<b>ELECTIONS</b>	A Council is elected locally, and elections are well structured for procedural fairness and predictability. The respective Councils nominate their representatives to the regional district.	First Nation government is elected by its members and there are modest procedural safeguards for elections. However, First Nations have broad discretion to restructure the entire process for choosing leaders.  Band members, including the Chief or Council Members, can take on staff positions such as those of the Chief Administrative Officer within the Indian Band's Administration Office.
<b>STRUCTURE AND PROCESS</b>	Political and administrative functions are well separated, and there are some important administrative structures and processes required by the <i>Local Government Act</i> .	There are few required structures or procedures for the operation of First Nation government except in the delivery of programs funded by the federal and provincial governments.
<b>FINANCE AND FINANCIAL MANAGEMENT</b>	There is a single, comprehensive set of rules to support good financial management, which is needed because municipalities generate most of their revenue directly and with few conditions on how it must be spent.	Most funding is by way of conditional transfers from the federal government. There are only nominal prescriptions for financial management.
<b>ACCOUNTABILITY</b>	Accountable primarily to its citizens for policy decisions and financial management. Accountability is achieved through a general presumption of open government, with transparent decision-making processes, and several tools of redress beyond elections. Provincial supervision exists primarily as a safeguard.	Indian Bands are moderately accountable to the federal government for financial administration and program delivery. First Nation government is moderately accountable to its members as a general principle through tradition, but there are few standard mechanisms for openness, transparency or redress for members.
<b>LIABILITY</b>	Given some significant protection from liability, which is useful if a Council or Board is to exercise its authorities with any real vigor.	First Nation government has significant exposure to liability if it exercises its authority in several key areas.
<b>ECONOMIC DEVELOPMENT</b>	Plays a minor role as facilitator in economic development.	There is significant expectation, and some requirement, for First Nation government to play a major role in directly stimulating economic development to raise revenue and generate employment for its members.

Adapted from "The Local Government Model", a draft report provided to the Katzie First Nation by Chris Roine, LLB, MA. , February 25, 2002.

Financial constraints, due to the small size of Indian Bands and limited own source revenue, could make it difficult to assume some of the responsibilities, structures and processes required of local governments. At present, some First Nations do not exercise some important authorities available under the *Indian Act* partly because of a lack of resources. Certain protections from liability that are available to local governments would also facilitate First Nations' assuming authority to regulate building standards.

The prime reason for First Nations' limited potential to generate their own source revenue at present is the lack of development on many reserves. There is significant pressure on First Nation governments to assume a greater role in economic development than that of local governments. Given that pressure some of the constraints on local governments' ability to support economic development may not be practical for a post-treaty First Nation government trying to "level the field" with its neighbours.

Beyond economic development, a post-treaty First Nation government will likely look for broader authorities than currently held by local governments. Some examples include mechanisms for regulating communal rights such as hunting and fishing, and dealing with the federal and provincial governments on resource management. The local government model has much to recommend as far as it goes, but likely does not apply to some of the issues that a post-treaty First Nation government is expected to address. Some First Nations are keen to move beyond the *Indian Act*, but likely will have some concerns about exercising their governance rights under the provincial government (i.e. the provincial government has no history of protecting the special needs of First Nation communities). Beyond this general concern, there is a risk that the province could alter local government powers, increase the ability of regional governments to "harmonize" local government policies, or even amalgamate municipal governments. First Nations will likely seek some form of constitutional protection from such actions. On a more operational level, as a consequence of moving from federal to provincial jurisdiction, First Nations would find themselves subject to a broad range of provincial laws and regulations.

### **3.4 Shared First Nation and Local Government Interests**

First Nations and local governments often share similar interests and desire similar outcomes from the treaty process and from their ongoing relationship with neighbouring communities. Both governments want healthy, sustainable, economically viable communities. Many First Nations have stated a desire to want increased autonomy, free from the constraints of the *Indian Act*. While local governments have a wide degree of local autonomy, they also want greater freedom from the provincial constraints of the *Local Government Act*.

In their future relations with one another and with First Nations, local governments by and large want to ensure the affordable continuation of services, both "hard" (i.e. water and solid waste disposal) and "soft" (i.e. recreation and community planning), to the community. An obvious key to affordable services is reliable revenue tied to predictable demands upon the services. Both local governments and First Nations want input into decision-making processes of neighbouring governments and, to this end, will benefit from effective communications and consultation mechanism to make sure that their voices are heard.

#### **4.0 EXAMPLES OF INTERGOVERNMENTAL MODELS AND CORRESPONDING CHALLENGES FOR LOCAL GOVERNMENTS**

This section will outline four current examples of intergovernmental linkages that refer to First Nation representation on regional district boards in British Columbia. The examples include the Sunshine Coast Regional District, the Kitimat Stikine Regional District, the Central Coast Regional District, and the Regional District of Nanaimo. Also included in this section are a description of models for First Nation participation on regional district boards and an identification of corresponding policy implications and challenges for local governments.

##### **4.1 Sunshine Coast Regional District**

The Sechelt Indian Government District operates as a municipality and is a full member of the regional district with all the same rights and responsibilities as any other municipal member. Federal and provincial legislation passed in 1986 and 1987 enable this arrangement. While First Nation and regional district representatives describe the arrangement as effective and productive, it has been reported that the Sechelt Indian Government representatives rarely attend regional district meetings. Additionally, it has been reported that the Sechelt Band did not initially consider that local government representation also entailed school board administration issues.

As is common in all urban areas of the province, a variety of service arrangements are in place to provide basic local services to the Sechelt Band and its lands. These service arrangements effectively integrate the First Nation with the surrounding communities and local governments.

##### **4.2 Kitimat Stikine Regional District**

The Nisga'a Nation is neither a municipality nor an electoral area. However, Nisga'a lands and the Nisga'a communities are located in Electoral Area A of the regional district. The process for electing the representative is identical to the process for any other electoral area. In practice, a Nisga'a person has been elected as director for approximately twenty years and sits on the regional district board with the same rights and responsibilities of any other rural director. That director is and has been the representative for Nisga'a interests.

The Kitimat Stikine Regional District does not contemplate changes to the existing structure as a result of the *Nisga'a Final Agreement*. The status quo is adopted as the model that Nisga'a people will continue to use. Given that a significant majority of the voters of Electoral Area A are Nisga'a people, it seems likely that they will continue to elect a Nisga'a person as their director.

The Kitimat Stikine Regional District has, in the past, adopted a position that any status similar to municipal membership on the Board will require the same funding commitments that are required of municipalities.

The *Nisga'a Final Agreement* includes provisions for the Nisga'a Nation and the regional district to enter into agreements to coordinate activities in areas of common responsibility, such as planning, health and infrastructure development.

#### **4.3 Central Coast Regional District**

There are no municipal members of the Central Coast Regional District (CCRD); the Board consists of five electoral area directors.

Electoral Area B consists of the Heiltsuk First Nation community of Waglisla (Bella Bella) and includes approximately 25% of the CCRD population. This structure has existed for at least the past decade, if not longer. The election process for Area B is the same as other electoral areas, (i.e. the resident voters nominate and elect the Director). However in recent practice, the Heiltsuk Band Council has nominated the candidate from the members of that council and that person has been acclaimed to the seat. Since the electoral area consists mainly of the Indian Reserve, there is very little taxation revenue to the CCRD, resulting in a situation involving “representation without taxation.”

Electoral Area D of the CCRD includes the Nuxalt First Nation Indian Reserve located in the core area of the Bella Coola community. Nuxalt people comprise approximately 75% of the population of Area D. The election process is the same as for other electoral areas. In past experience, the area director candidates have been nominated by the general electorate (the Nuxalt Band Council has not nominated candidates) and in recent memory the seat has been held by a non-Aboriginal person.

#### **4.4 Regional District of Nanaimo**

The provincial and federal governments funded a Treaty Related Measure (TRM) for governance-related activities in March 2001 for, among other objectives, developing a process that will bring the Snuneymuxw First Nation (SFN) in as a participant in the Regional District of Nanaimo (RDN).

The TRM, which was released in October 2002, sets out aspects of the relationship between the SFN and RDN. For example, with respect to the level of harmonization within the regional context, the following principles are included within the TRM

- Prior to the Governance Agreement between the SFN and RDN, that will formally establish the relationship, the SFN and the RDN will negotiate and seek terms for full SFN government membership in the RDN on a basis similar to that of a municipality
- Prior to the Governance Agreement, the parties (federal and provincial governments and SFN) will acknowledge and reach agreement on the cost implications of SFN membership in the RDN
- Prior to the Governance Agreement, the parties will negotiate funding arrangements to accommodate SFN membership on the RDN
- Settlement Legislation (from the provincial government) will give effect to SFN participation on the regional board

With respect to land use planning, the following principles are included in the TRM

- The SFN will have jurisdiction over land use planning on treaty settlement land and will exercise this jurisdiction in a manner consistent with the agreed upon RDN growth management strategy
- The Agreement in Principle and Final Agreement will recognize that the RDN and SFN will agree to a growth strategy

- The SFN will prepare an Official Community Plan (OCP) that provides a statement of objectives and policies to guide decisions on planning and land use management
- The SFN will develop the OCP using a process that ensures broad Snuneymuxw community input and provides reasonable opportunities for meaningful input from neighbouring jurisdictions and neighbouring residents
- The SFN OCP will include a 'Regional Context Statement' that identifies the relationship between the SFN OCP and the content of the RDN growth management strategy
- The SFN will work with the RDN collaboratively to resolve inconsistency between the SFN OCP and the RDN growth management strategy

Furthermore, the TRM recommends

- That the period between the Agreement in Principle and Final Agreement (2 years) be used to develop the relationship of the SFN as a member of the regional board
- That the SFN participate, as a minimum, in the following regional services: General Administration; Regional Planning; Solid Waste; Regional Hospital District; Vancouver Island Regional Library Services; Emergency 911 services; Regional Parks; Southern Community Recreation; and Port Theatre
- That discussion regarding SFN's participation in the Regional Hospital District be referred to the side-table on governance and the treaty table with the observations noted in the conclusion
- That the issue of Settlement Legislation and a contract/agreement to establish the governance relationship be referred to the local government side table for discussion, and
- That the intergovernmental relationship principles and the planning principles be referred to the local government side table for discussion of eventual inclusion in the Agreement in Principle

#### **4.5 Models for First Nation Participation in Regional Governance**

A review of literature and research indicates the following models have been considered for First Nations' participation on regional district boards.

##### Joint Meetings of Regional Board and First Nation Government

The respective governing bodies would hold joint meetings to share information and build relationships. The arrangement is voluntary and there is no shared authority except where established through agreements.

- Mainly limited to information exchange and relationship building
- Provides mechanism for exploratory discussions with no long term commitment
- May identify common interests leading to more significant participation.

##### Advisory Role

A First Nations member would sit at the regional district board and provide input on issues, but does not vote or participate in services. The First Nation member would not participate in in-camera meetings. A similar but lesser role might be observer status only with no participation in discussion.

- There are no financial implications and only minimal administrative requirements
- Provides low risk environment from which to explore more involved participation

### Contractual Relationship for Specific Services

This relationship is purely contractual and does not imply participation in regional board decision-making. The First Nation would pay for specific services at an agreed upon price.

- The parties choose the services to be provided/received
- Service agreements could be combined with other membership options

### Stakeholder Membership in Regional District

A First Nation representative would sit as a Director on the regional board but votes only on services that the First Nation participates in. The Director's weighted vote is calculated in the same way as other board members. The Director has input but does not vote on all other issues.

- Provides flexibility, allows First Nation to "opt in" to regional services
- Limits the participation and obligations of the First Nations to their own interests rather than all regional interests

### Joint Commissions

The First Nations(s) and regional district would participate in a governance structure created for joint management of shared services.

- Similar attributes per stakeholder membership above
- May be more useful where a First Nation has a closer relationship with an individual municipality rather than the regional district

### Electoral Area Created for First Nation Lands with direct election of a Director

This would provide for the First Nations people and non-Aboriginal occupiers of First Nations land to elect a representative to the board. The Director would have the same rights and responsibilities of other directors.

- Requires electoral area structure changes and amendments to the Letters Patent
- Could create "patchwork" electoral areas
- Requires agreement on First Nations participation in services and costs

### Electoral Area Created for First Nations Lands with appointment of Director by Band Council

This option is similar to above, but non-Aboriginal residents would lose direct political representation.

- Similar attributes per option above

### Full Membership

The First Nation would participate in the same way as municipal members of the regional board. They would have all the rights and responsibilities of other municipal members.

- Provides full and complete participation for First Nations
- Involves significant financial commitments by the First Nation

## **4.6 Challenges for Local Governments**

There are a number of challenges regarding any of the models for First Nation participation in regional district structures.

- The need for a fair sharing of infrastructure costs within a region
- Efficiencies in servicing costs available through cooperation among First Nations and local governments

- Issues involving land, water and air require regulations that span the boundaries of regional districts and First Nation lands
- Increasing levels of participation generally involve increasing levels of obligation and responsibility, financial and otherwise
- Any arrangement should provide equitable rights and responsibilities for all peoples of a region, Aboriginal and non-Aboriginal
- The effects on size and voting dynamics of the regional board will need to be considered especially where a regional district encompasses several First Nations' lands
- Consideration needs to be given to dealing with overlapping First Nations and regional district boundaries (e.g. where a First Nation's lands lie within more than one regional district)
- Any arrangement for a particular First Nation may create a precedent for other First Nations. Arrangements for one should be suitable to extend to others
- There may be a need to build an understanding among First Nation leaders of the roles and responsibilities of regional districts
- Relationships between First Nations and local governments are not limited to regional districts. In some situations, the more appropriate relationships may be with the municipality that borders the First Nation
- Cross-representation (i.e. periodic attendance by a regional district director at band council meetings) could also be considered
- The willingness to accept First Nations' diverse approaches to governance and membership on regional district boards, such as full integration based on capacity

For a First Nation to become eligible for regional district membership it would require local government status and the establishment of land use plans in the same fashion as a municipal government. This would include the requirement that the First Nations' OCP be consistent with the RGS. Any First Nation government that meets the eligibility requirements would become a full member of the regional board for decisions on matters of local government. This would put First Nations and local governments on a similar basis for local land use planning issues.

## **5.0 REPRESENTATION AND TAXATION OF NON-ABORIGINAL RESIDENTS ON INDIAN RESERVES**

In addition to the issues identified, local governments have specific concerns with the taxation and representation of non-Aboriginal residents or leaseholders presently living on Indian Reserves and their implication, post-treaty.

In 1988, the Canadian Parliament passed Bill C-115 amending the *Indian Act* to allow band governments to assume powers of property taxation on Indian Reserve lands occupied by leaseholders. These lessees are mostly non-Aboriginals who have no rights of voting, representation, or serving in the First Nation governments that tax them.

The fact that all of the 80 First Nations across Canada (54 of them in British Columbia) that have assumed taxing powers have exempted their own members from these taxes further compounds the situation. In addition to the issue of taxation without representation, the choice to exempt band members invokes representation without taxation. These conditions combine to reduce the accountability of First Nations governments both to their taxpayers and to their members.

Moreover, non-Aboriginals do not have a say in the administration of schools at the band level. Schools on reserves are under the control of the band councils. In some cases the school will be administered directly by the band council but in others a school board, school committee, or education committee of the band council will administer the schools. Band councils and their education committees do not come under provincial jurisdiction even for school purposes. They may operate somewhat like school boards under provincial jurisdiction but they have, in fact, considerably more autonomy.

It is anticipated that, post-treaty, land development will lead to a larger number of non-members living on treaty settlement lands. It is possible, in some circumstances, that they will form the majority of residents living on treaty settlement lands.

In fact, Table 4 conveys the Aboriginal and non-Aboriginal populations on Lower Mainland/Sunshine Coast area Indian Reserves. The data reveals that a majority of the Indian Reserve population in the Lower Mainland/Sunshine Coast area is made up of non-Aboriginals.

**Table 4: Aboriginal / Non-Aboriginal Population for the Lower Mainland / Sunshine Coast Area Indian Reserves**

GVRD-Area First Nations	No. of Reserves	On-Reserve Aboriginals (1)	Off-Reserve Aboriginals (2)	Total Aboriginal Population (1+2)	Non-Aboriginals Living on Reserves** (3)	Total Population on Reserves (1+3)	Percentage of Non-Aboriginals Living on Reserves
Katzie	5	285	173	458	15	300	5.0%
Kwantlen	6	73	100	173	10	83	12.0%
Kwikwetlem	2	31	31	62	0	31	0.0%
Matsqui	4	105	107	212	390	495	78.7%
Musqueam	3	608	484	1,092	760	1,368	55.5%
New Westminster	0	0	6	6	0	0	0.0%
Sechelt	26	576	504	1,080	380	956	39.7%
Semiahmoo	1	46	24	70	80	126	63.4%
Squamish	23	2,166	1,103	3,269	1,735	3,901	44.4%
Tsawwassen	1	160	74	234	270	430	62.7%
Tsleil-Waututh	3	224	159	383	965	1,189	81.1%
<b>TOTALS</b>	<b>74</b>	<b>4,274</b>	<b>2,765</b>	<b>7,039</b>	<b>4,605**</b>	<b>8,879</b>	<b>51.8%</b>

Source: Registered Indian Population data obtained from surveys conducted by the Department of Indian and Northern Affairs Canada and available from its web site at: [www.inac.gc.ca](http://www.inac.gc.ca) Registered Indian Population data current as of December 2002.

\*\* Non-Aboriginal population data obtained from the 2001 Census Community Profiles from Statistics Canada. Data in this table does not include incompletely enumerated Indian Reserves. These Census figures derive from the 20% data and, therefore, due to rounding conducted by Statistics Canada, the overall totals and percentages may not be numerically accurate.

In a complex urban region such as the Lower Mainland, there is the potential for multiple overlapping local government and Aboriginal authorities. In this regard, LMTAC has developed an interest statement, which reads: *Aboriginal self-government should strive to simplify this*

*structure, not add to its complexity (LMTAC Interest 4.4.2 from the Considerations paper, July 2000, page 22). Furthermore, LMTAC interest statement 4.4.3 states: Self-government arrangements and co-management regimes established in treaties should encourage cross representation. In other words, consideration should be given to non-Aboriginal representatives sitting on First Nation Councils / Boards, and First Nation representatives sitting on Local Governments Councils / Boards.*

LMTAC has also developed First Principle 27, which deals with the rights of representation, and reads as follows:

27. *Treaties must uphold the principle of “no taxation without representation” for all persons residing on treaty settlement lands. Mechanisms need to be developed to ensure that all persons who are living on treaty settlement lands and who are paying taxes or levies to the First Nation have access and a voice in First Nation governance systems.*

Several principal issues arise in the taxation of non-Aboriginal residents by First Nation governments — representation and governance, discriminatory taxation, the expenditure of tax revenues, the setting of tax rates, tax assessment methods, and the assessment appeal process. In essence, all of these issues are interrelated and linked to the central issue of voting and representation rights. Without those rights, non-Aboriginal residents lack the channels for participation, influence, and restraint that are conventional in institutions for democratic governance. While these concerns are relevant to the full range of governmental powers, they are heightened in the arena of taxation for reasons of tradition and financial impact. The issue of discriminatory taxation further aggravates the lack of representation rights. With respect to First Nations taxing under Section 83 of the *Indian Act*, one group on an Indian Reserve bears taxation without representation and is subject to governance by another group on the same Indian Reserve that enjoys representation without taxation. In essence, the non-Aboriginals become disenfranchised within their own country.

The right of individual citizens to vote and be represented in their government, particularly but not uniquely with respect to taxation matters, is well established in Canada. Section 3 of the *Canadian Charter of Rights and Freedoms* states: “Every citizen of Canada has the right to vote in an election of members of the House of Commons or of a legislative assembly and to be qualified for membership.” Section 53 of the *Constitution Act, 1867*, states: “Bills for appropriating any Part of the Public Revenue, or for imposing any Tax or Impost, shall originate in the House of Commons.” Furthermore, the Supreme Court of Canada has asserted that Section 53 of the Act codifies the principle of no taxation without representation, by requiring any bill that imposes a tax to originate within the legislature. Moreover, Section 90 of the *Constitution Act* extends this principle of representation and consent to the provincial legislatures, from which municipalities derive their authority. In the context of First Nations taxation, authority flows directly from the House of Commons. The representation issue also likely would invoke the Charter’s Section 15(1) assurance of equality rights.

All these issues — representation, discrimination, and accountability — must be considered at the forefront of any discussion with respect to First Nations’ autonomy, or the “inherent right of

self-government.” Appropriate provisions for representation and non-discrimination are needed to achieve accountability in government. At the same time, Aboriginal rights to self-government — often expressed as First Nations’ sovereignty or autonomy — must be respected.

Various approaches have previously been suggested in literature. For example, taxation of leasehold reserve lands and their occupants could be pursued by a delegated form of governance. The lessees would establish their own governing and taxing bodies. An alternative approach would be consideration of joint governance, where non-Aboriginal lessees would share in governing and taxing decisions with respect to the public government functions of a First Nation. Yet another approach may be to use a constrained form of governance, where the tax rates, assessment methods, and public services of a First Nation would be linked to those of adjacent municipalities or surrounding regions.

Perhaps one possible local approach that addresses these issues and can be considered for further debate and discussion is included in the recently released *Katzie First Nation Treaty Related Measure on Governance* (October 30, 2002) document. With respect to non-Aboriginals residing on Katzie land, the document states: “...we believe that the rights of non-members who reside on Katzie land should be constitutionally embedded... Additionally, non-members of the Katzie community residing on Katzie lands should have input into issues and decisions that affect them.” (Appendix A. page 1)

Any workable solution(s) may need to draw elements from more than one approach as various approaches to resolving the representation issue place different demands on the removal of discriminatory taxing provisions. Additionally, the objective of governmental accountability applies for Aboriginal residents as well as non-Aboriginal residents, and both populations might gain from appropriate institutional changes. Diverse value judgments will be involved in selecting the best way to resolve these issues. Additionally, any workable solution will likely require statutory amendments to various pieces of legislation.

From a local government perspective, pursuing possible methods of resolving these issues would provide the certainty and property rights needed to maximize the rental value of reserve leasehold lands. Hence, resolving these matters of lessee rights and governance may also promote the economic development interests of First Nations.

## **6.0 REGIONAL DISTRICT POLICIES AND ISSUES: THE GVRD EXAMPLE**

First Nation governance, however, may pose difficulties for regional districts in the Lower Mainland area. This section will discuss the GVRD’s policies and issues with respect to this topic.

The GVRD’s situation is rather unique not only within the region, but within the province as well because it is a highly urbanized area, with a population base equal to one-half of BC’s overall total, and is the most economically active regional district in the province. The other two regional districts within LMTAC, the SLRD and SCRD, are less urbanized regions and may have additional or alternative policies, interests and issues to contribute to this discussion. At the first LMTAC-sponsored workshop for the three regional districts held October 31, 2002, it was recommended that an additional workshop be held to further debate the issues prior to any larger

workshop taking place that may involve the participation of federal and provincial government officials and First Nations.

The GVRD is, first of all, unclear as to the meaning of First Nation governance. The GVRD assumes that this means that First Nations territory would be removed from municipal jurisdiction and in essence become a “First Nations municipality” (though maybe with some different powers) rather than a piece of territory with double jurisdiction – both local municipal and First Nations. The latter would be hopelessly confusing unless the two jurisdictions were strictly mutually exclusive.

Even as a new municipal-type government carved out from existing municipalities, this proposal is contrary to the *GVRD Principles for Treaty Negotiations*, which state: “The GVRD’s preference is for treaty settlement lands to become subsets of the municipalities in which they are located.” (Principle 1) If new “First Nations municipalities” were created, the question arises as to whether they would relate to regional districts in the same way as existing municipalities do. If not, again the situation becomes extremely challenging. Regular members on the Board would be subject, for example, to the Regional Growth Management Plan (the *Livable Region Strategic Plan*) while First Nations municipalities would not. The GVRD believes that it is difficult to contemplate First Nation membership on a regional board under those conditions.

Another significant concern is that First Nation membership on the Board could be seen as conflicting with the current regional governance model, which does not distinguish between individuals or communities based on their socio-cultural backgrounds. This is obviously a matter of basic political philosophy which goes to the heart of the First Nations governance debate.

First Nations governance that is different from the existing arrangements represents a departure from the GVRD’s servicing policy with respect to First Nation reserves. Within the *Policy Guidelines on the Provision of Water and Sewer Services Outside Municipal Service Areas* (1996), requests for services on First Nation reserves are considered by the applicable member of the Greater Vancouver Sewerage and Drainage District (GVS&DD) and/or the Greater Vancouver Water District (GVWD). In such cases, the municipality processes and considers the applications and informs the GVRD of its decision(s). Examples of such supply arrangements include the Katzie First Nation’s (Barnston Island) water supply through the City of Surrey, and the Musqueam Indian Band’s water and sewer services supplied through the City of Vancouver.

It is contemplated that if First Nations would be served by regional utilities directly, rather than through municipalities, the question of whether this is a right or subject to the discretion of the regional utility is critical. If the GVWD or GVS&DD were required to provide services to First Nations on request, the commissioner could be in the unenviable position of having to provide services to one user (First Nations) without regard to the policies and objectives of the municipalities that make up those districts. It is extremely difficult to see how the interests of municipalities and the community could be guaranteed in these circumstances. Thus, direct service to municipalities must be subject to the policies and conditions set by the relevant utility board or commissioner.

It is not clear what assumptions are being made about how the province will interpret and enact the recent referendum results on treaty negotiations, particularly with respect to Question 6 (“Aboriginal self-government should have the characteristics of local government, with powers delegated from Canada and British Columbia”). The *Community Charter* analysis of regional districts is yet to be initiated. Moreover, it may be too soon to know the full extent of the impacts as they relate to the revised local government protocol on treaty negotiations, between the Union of BC Municipalities and the provincial government, signed on January 15, 2003.

The GVRD believes that until the characteristics of First Nations governance are settled, it would seem pointless to reopen the question of membership on the regional district boards without clarity on what First Nations governance means. The more important point is to reaffirm with the province the concerns the region would have if First Nations governance ignored the issues raised or the principles established by both LMTAC and the GVRD Board of Directors.

## **7.0 OPTIONS FOR CONSIDERATION**

It is generally acknowledged that First Nations, post-treaty, will likely have many, if not all, the powers typically exercised by local government in BC. In this regard, local government is concerned that First Nations will end up with “superpower” status over issues that are the responsibility of local government; local government does not have any concerns with any “superpower” status that First Nations may have over issues that are the exclusive responsibility of First Nations. However, First Nations may not necessarily see themselves as local governments, nor seek a delegated form of authority as outlined in the *Local Government Act*. First Nations are also not part of the existing local government community. For this reason, local governments are concerned that they will not have the same opportunities to work in partnership with First Nation governments, post-treaty, as they have through the various existing institutions established for and by local government.

It is, therefore, the position of local government that First Nations could become municipalities, but not with more powers than any other member of a regional district if regional district membership is desired. Failing to meet these obligations, a set of contractual arrangements within existing legal requirements (i.e. rights and responsibilities) could also be established between a regional district and First Nations. This second option would respect the fact that First Nations and local governments are and operate as different entities. This could be in the form of servicing agreements between First Nations and local governments that would also permit First Nations a role on the regional district board. This would, in effect, create a consultation process with a service-delivery aspect. Such a mechanism would allow equality among members (both native and non-native).

These options (i.e. full membership and service delivery) are desired by First Nations but it may not be possible to have both. Flexibility and built-in mechanisms, therefore, may be required in order to ensure that a new governance model is developed for First Nations that also protects the fundamental principles of regional districts. A future governance model must first satisfy certain requirements, such as cooperation over development as well as economic activity. For example, regional districts want First Nations to consult with local governments as part of regional growth strategies, so that there is good, robust development throughout a region. Regional districts will

also require certainty over large financial obligations (i.e. upgrading and infrastructure development) with respect to servicing.

LMTAC's paper, *Services, Service Agreements and Treaty Negotiations: Backgrounder to First Principle #35* (January 2002) provides a list of local government issues with service agreements. These include the concern that local governments who provide services to Indian Reserves want to ensure that they are paid for by the resident First Nations. Local governments also continue to struggle with valuation and participation issues in servicing, particularly how First Nations should participate in regional programs and soft services (such as libraries or recreation centres) where local governments must bear the full costs of delivery. As a result of self-government and the additional land and funds available through treaty settlement, there is also a significant possibility that more First Nations will seek to negotiate servicing agreements with neighbouring local governments. It is unknown what the long-term effects of this trend will be on local governments, particularly if an increasing share of revenues will need to be derived from fee-for-service and other similar cost-recovery arrangements.

Local governments also continue to face obstacles in collecting outstanding revenues when there is non-payment by an Indian Band for local government services rendered. The immediate cessation of the contracted service is not possible since some services cannot be easily halted (e.g. sewerage) and since court decisions have confirmed that "reasonable notice" and a termination period must first be provided.

If existing Indian Bands become independent legal entities as a result of treaty agreements, then local governments should be more effectively able to pursue First Nations to uphold their contractual obligations whether via negotiation or in court. Until treaties are signed, however, local government representatives need to work closely with the Department of Indian and Northern Affairs Canada (INAC) to find an interim solution. There may be mechanisms whereby INAC acts as a guarantor when Indian Bands enter into contractual commitments on servicing – mechanisms to ensure that INAC becomes the equivalent of an underwriter in cases when non-payment occurs.

As identified in earlier sections of this paper, there are two key issues related to representation: (1) the representation of non-Aboriginal members in First Nation decision-making processes involving services; and (2) the representation of First Nations in existing local government decision-making processes involving services.

It is anticipated that in the post-treaty environment, First Nations will either be directly providing or contracting with another local government to provide a variety of hard and soft services to their community. In cases in the Lower Mainland where there will likely be a significant population or majority of non-Aboriginal residents living on future treaty settlement lands, residents who seek a voice in how community services are provided. It is unclear how these residents will be represented within First Nation governments. Treaties will need to clarify this issue, as residents living on an Indian Reserve currently have the right to vote in municipal elections, even though the services delivered to the on-reserve community may be provided via contract from the Indian Band. In these cases, local governments have no effective ability to

address community member concerns, only refer residents back to the Indian Band which has initiated the servicing agreement.

Further, there is presently no unique mechanism to provide First Nations with a voice in existing local government decision-making processes involving services. If, for example, regional districts provide a variety of services of benefit to the region, and First Nations are contributing to their share of costs for this service, then mechanisms need to be developed to ensure First Nations also have the ability to be directly represented. There are several possible mechanisms to achieve this objective that have been identified in this paper (Subsection 4.5 – Models for First Nation Participation in Regional Governance) and that need further exploration, including full, stakeholder, and First Nation membership on regional boards in an advisory capacity, preferably with one representative for several First Nation groups in order to avoid a proliferation of members on regional boards.

It must also be noted that if attempts to bring First Nations and local governments together within a new governance model fail or lead to disputes, local governments should also be comfortable with potential consequential actions. Such actions could include independent sewerage and water systems provided by the federal government for First Nations and/or critical local government utility facilities (e.g. water and sewer systems), presently existing on Indian Reserves, being reverted to First Nations as a result of land claim negotiations or future senior government enactments.

Given these concerns and risks, it is imperative for both local governments and First Nations to find solutions that will be beneficial to both parties and lead to “win-win” situations.

## **8.0 INTERGOVERNMENTAL RELATIONS SIDE TABLES**

LMTAC believes that successful treaty negotiations will come about only if they are acceptable at the community level. This means that the community and its local government representatives must be closely involved at all stages of the negotiation process. This is especially true for regional districts. If treaty settlements impact on regional governance in the future, then regional district boards must be directly involved in those treaty discussions from the outset. In fact, the GVRD has recently adopted an additional principle (Principle 8), as part of its *GVRD Principles for Treaty Negotiations* that speaks to the need for Regional Board involvement in discussions on future regional governance (see Attachment 3).

One method of involving local governments (both municipal and regional) in treaty discussions, as proposed by the provincial government, is by way of intergovernmental relations side tables. The recent Memorandum of Understanding between the Province of British Columbia and UBCM on “Local Government Participation in the Negotiation of Treaties and Agreements,” for example, states that “where the local government and First Nation agree, the provincial government will undertake to establish a side table or working group for local government and the First Nation to negotiate and come to agreement on issues related to the future local government-First Nation relationship. The province will give full and fair consideration to results produced and agreements reached by these tables.”

Furthermore, in a letter from the provincial government to the GVRD, the Attorney General states: “The Tsawwassen table has expressed a strong interest in setting up an intergovernmental relations table, with direct participation by local government and regional district representatives, to start discussions on these issues and to look for mutually satisfactory solutions. This might well be supported in due course by a treaty-related measure, such as the one undertaken in Nanaimo recently, to explore ways to resolve matters relevant to both local governments and the First Nation.”

The intergovernmental relations side table proposed for the Tsawwassen treaty negotiations would be similar to the one established for the Snuneymuxw negotiations. The side table is intended to facilitate direct discussion between, in this case, Tsawwassen First Nation and affected local governments, such as the Corporation of Delta and the GVRD, on the topics of governance, servicing and regional district membership. Other potential topics for discussions for this forum might include overlapping (or shared) territory of treaty claim areas among First Nations or the need for accountability with respect to environmental issues.

In response to the Province’s proposal, LMTAC has developed a draft Terms of Reference for the Tsawwassen Intergovernmental Relations Side Table (Attachment 4) for consideration. This document represents a reiteration of all the endorsed interest statements and information gathered to date by LMTAC, such as the *First Principles*, discussion papers, and member comments. Existing intergovernmental relations side table terms of reference from the Katzie, In-SHUCK, Snuneymuxw and Sechelt were also reviewed. The Draft Terms of Reference do not include any new interest statements and are neutral on the issue of whether local governments should engage in this process.

A possible area of concern for local governments is whether or not issues related to governance and those issues strictly seen as intergovernmental relations issues will be addressed separately and within different forums. Due to the fact that topics associated with First Nation governance, intergovernmental relations and fiscal interests are all inter-connected (i.e. non-member representation on Treaty Settlement Lands), local governments have an interest to participate directly both within an intergovernmental relations side table and any other governance discussions, such as Main Table Working Groups, that may potentially impact local jurisdictions. However, another possible concern could be differing viewpoints among LMTAC-member jurisdictions on specific governance issues that may result in some local governments not wanting to participate in the intergovernmental relations side table discussions. This is where LMTAC has an advantage in that it provides a forum for all its Lower Mainland local government members to consider and discuss potentially controversial issues towards the pursuit of reaching consensus on such matters.

## **9.0 CONCLUSION**

This discussion paper has sought to provide the necessary background information and examples for consideration on regional governance and First Nations. It is clear from the information presented in this paper that this issue will require additional discussion, debate and research. Regional governments have a variety of important interests, both general and specific, on the issue of future governance in the region. This paper is the beginning of the process for setting out those general interests.

Developing the necessary framework and protocols to facilitate discussions on governance and intergovernmental relationships will be a process of progressive successes. The degree to which the separate realities of First Nations and regional districts can be addressed depends on two factors: the extent to which standards of living on First Nation lands improve, and the extent to which the federal and provincial governments recognize that local governments (municipal and regional) play an indispensable role in making treaties with First Nations work on the ground. For the moment, it is important that First Nations and local governments talk to one another, to begin to establish the common understanding required for creating effective working relationships. The recently proposed intergovernmental relations side tables may be one way of creating such opportunities for discussion and debate.

A variety of options (i.e. full membership and service delivery) is desired by First Nations but it may not be possible to have both. Flexibility and built-in mechanisms, therefore, may be required in order to ensure that a new governance model is developed for First Nations that also protects the fundamental principles of regional districts.

**10.0 ATTACHMENTS****Attachment 1: Lower Mainland Treaty Advisory Committee Membership, 2003****Greater Vancouver Regional District\***

(Electoral Area A)

Village of Anmore  
 Village of Belcarra  
 Bowen Island Municipality  
 City of Burnaby  
 City of Coquitlam  
 Corporation of Delta\*\*\*  
 City of Langley  
 Township of Langley  
 Village of Lions Bay  
 District of Maple Ridge  
 City of New Westminster  
 City of North Vancouver  
 District of North Vancouver  
 District of Pitt Meadows  
 City of Port Coquitlam  
 City of Port Moody  
 City of Richmond  
 City of Surrey  
 City of Vancouver  
 District of West Vancouver  
 City of White Rock

**Sunshine Coast Regional District\***

Town of Gibsons\*\*  
 District of Sechelt\*\*

**Squamish-Lillooet Regional District\***

District of Squamish  
 Resort Municipality of Whistler  
 Village of Pemberton\*\*

**Fraser Valley Treaty Advisory Committee\*\***

(which includes City of Abbotsford,  
 City of Chilliwack, Village of Harrison Hot  
 Springs, District of Hope, District of Kent,  
 District of Mission)

City of Nanaimo\*\*

**Notes:**

\* Denotes regional district members of LMTAC

\*\* Denotes that these jurisdictions or organizations have an Observer Status on LMTAC

\*\*\*Denotes that the Corporation of Delta withdrew from LMTAC in March 2003.

Each local government member jurisdiction (municipal and regional) of LMTAC typically appoints one elected representative and one staff representative. LMTAC Operating Procedures permit members to appoint up to two elected and two staff representatives.

From the total LMTAC membership, LMTAC then elects representatives for each of the five treaty negotiations in which LMTAC is currently involved: Katzie, Tsawwassen, Tsleil-Waututh, Squamish and Musqueam. LMTAC representatives to the treaty tables report table activities to the wider LMTAC membership, and along with LMTAC staff, work to address issues arising from the negotiations.

The LMTAC Board meets once per month. The LMTAC Executive, including the three regional district representatives, the five local government table representatives, and some at-large members, meet twice per month (or on an as-needed basis).

## Attachment 2: Related LMTAC First Principles and Interests

(Source: *Considerations: A Guide for Lower Mainland Area Local Government Interests in Treaty Negotiations*. LMTAC Interest Paper. July 2000. This document can be accessed via the Internet: [www.lmtac.bc.ca](http://www.lmtac.bc.ca))

### LMTAC First Principles

#### **1. Uniqueness of Urban Treaties**

*Treaty agreements in other regions of the Province should not be used as a precedent or template for urban treaty settlements. Provisions in Lower Mainland area treaties should reflect the complex realities of the urban environment specific to each treaty.*

#### **8. Role of LMTAC**

*LMTAC is the voice of Lower Mainland area Local Governments on all issues relating to the treaty process.*

#### **28. Delivery of Local Programs/Services**

*Aboriginal self-government provisions must provide for First Nation participation in, or partnerships with, Local Governments for more effective and efficient delivery of programs and services.*

#### **33. Participation in and Delivery of Regional Programs/Services**

*Treaties must identify regional programs and services (such as, but not limited to, air quality, solid waste management and Regional Growth Strategies) in which First Nations must participate, either through direct involvement in existing program/service or indirectly through a contract with Local Governments. This principle recognizes that some programs/services affect all area residents and that regional delivery enhances economies of scale. This principle also emphasizes the importance of the various interconnections between urban communities in the Lower Mainland area.*

### Underlying Interests

#### **4.4 Governance and Jurisdiction**

Consistency between First Nation and local government jurisdictions must be a key objective of treaty settlements in urban areas.

##### **4.4.2 Structure and Scope of Aboriginal Government**

###### Simplify Government:

In complex urban regions like the Lower Mainland, there is the potential for multiple overlapping local government and Aboriginal authorities. Aboriginal self-government should strive to simplify this structure, not add to its complexity.

###### Linkage Between Participation and Responsibilities:

First Nations who become members of a regional district should accept all of the associated responsibilities and costs of membership.

##### **4.4.3 Intergovernmental Relations**

Since local governments exercise substantial jurisdiction at the local level, and it is at the local or community level at which the de facto, day-to-day relationships between self-governing First Nations and other governments will take shape, treaties should create mechanisms and processes to open meaningful dialogue between First Nations and local governments.

Treaties must recognize and specifically provide for intergovernmental relations between local and First Nation governments, particularly on issues such as education, health, transportation, land use planning, air quality, and zoning which require substantial interaction between various levels of government.

Self-government arrangements and co-management regimes established in treaties should encourage cross representation. In other words, consideration should be given to non-Aboriginal representatives sitting on First Nation Councils/Boards, and First Nation representatives sitting on local governments Councils/Boards.

#### **4.4.4 Program and Service Delivery**

Treaties should acknowledge the importance of economies of scale in program and service delivery. For some policy fields, some consideration should be given to establishing a 'Lower Mainland Coast Salish region' to help rationalize program and service delivery, rather than have each individual First Nation responsible for its own programs and services.

Lower Mainland area treaties, as well as the reformed *Municipal Act*, should encourage the development of new partnerships between First Nations and local governments to work together on implementing cost-effective community programs and services.

Treaties should stipulate which mandatory programs, services, and infrastructure must be delivered by First Nation governments or purchased from neighboring municipalities.

Treaties should also articulate a specific mechanism or principles for determining the fiscal value of local programs and services and use of existing infrastructure. Numerous case studies in Canada and the United States indicate that First Nations and local government often disagree on appropriate costing formulas and valuation techniques.

### **Attachment 3: GVRD Principles for Treaty Negotiations (Amended July 2002)**

#### PREAMBLE

WHEREAS the Greater Vancouver Regional District (GVRD) is a municipal federation comprising 21 municipalities and one electoral area, including its affiliates (the Greater Vancouver Water District, the Greater Vancouver Sewerage and Drainage District, and the Greater Vancouver Housing Corporation), and delivers regional services including, but not limited to, wastewater collection and treatment, drainage management, water supply, solid waste management, air quality management, regional parks, affordable rental housing, growth management, electoral areas administration, and public communications;

AND WHEREAS treaty negotiations in the Lower Mainland are being expedited by the provincial government and may impact on the interests of, and services provided by, the GVRD;

AND WHEREAS the GVRD is a member jurisdiction of the Lower Mainland Treaty Advisory Committee, which is responsible for communicating the interests of its stakeholders at the treaty negotiation tables;

NOW, THEREFORE, BE IT RESOLVED THAT:

#### GOVERNANCE

1. The GVRD's preference is for treaty settlement lands to become subsets of the municipalities in which they are located.
2. Where a First Nation has been granted powers over treaty settlement lands within the GVRD, the relationship between the GVRD and First Nations should be consistent with the current relationships between the GVRD and its member municipalities.
3. Land use, environmental and financial implications, as well as compliance with established policies and standards, are the major considerations in the evaluation of extensions of water and sewer services. Properly carried out, there should not be any negative impacts to member municipalities.
4. Treaty settlement lands must be subject to the same federal and provincial enactments as they are to the GVRD and all other local governments including, but not limited to, the *Local Government Act*.
5. Lands designated within the Agricultural Land Reserve, in the selection of lands for First Nations, continue to be dedicated for agricultural use in the future and remain in the Agricultural Land Reserve and under the jurisdiction of the Land Reserve Commission, post-treaty.
6. Where applicable, there be an orderly transition in authority and application of laws in the post-treaty era, and that there be an acceptable dispute resolution process involving the GVRD, other than the courts, in cases of future disagreement or conflict over interests in land and / or issues of jurisdiction and compliance.
7. The Constitution of Canada be expeditiously amended to provide, protect and prescribe the powers of local government.
8. If treaty settlements are to recognize and respect the authority and jurisdiction of the federal, provincial, First Nation and local governments, and if the development of a regional governance model through treaty negotiations has any potential or specific implications on the authority of the regional district, then a process must be established among all parties involved, including the regional district, in order to promote cooperation, provide effective and necessary regional services, and resolve future conflicts. Any such discussions must involve the direct participation of the GVRD Board of Directors from the very outset.

LANDS AND ASSETS

9. Lands and assets held and designated by the GVRD including, but not limited to, leased lands, rights-of-way, and Crown reserves must be excluded from any treaty settlement.
10. The interests in non-Crown land owned in fee simple, including lands owned by the GVRD, other governments, or private individuals and corporations, be protected in future treaties.
11. The process to negotiate and acquire future tenure over land for GVRD purposes be clear, timely and practical, and based on current market value of the interest being obtained. Should expropriation be necessary, any expropriation powers of the GVRD or First Nations must be clearly specified in any future treaties and be consistent with the provincial *Expropriation Act*.
12. GVRD-held water licenses, as well as those held by private interests within the GVRD administrated areas, must be unaffected and protected in future treaties.
13. The interests in land within the boundaries of Indian Arm Provincial Park, which were formerly held by individuals through Crown land leases requiring conversion to park use permits, must be protected.

FISCAL

14. All costs associated with treaty settlements must be the responsibility of the provincial and federal governments in terms of lands and assets that are being negotiated.
15. The GVRD should have the right to recover costs for services provided so that taxation on treaty settlement lands is administered, according to GVRD Board policy, on the same basis as on other lands for regional services.

ENVIRONMENT

16. In the post-treaty era, federal, provincial and regional government environmental standards and requirements must be consistently applied across the entire GVRD region, including treaty settlement lands.
17. Responsibility for hazard management and emergency response should be addressed in treaty settlements.

ACCESS

18. Access to GVRD lands, facilities, services and infrastructure, on or off treaty settlement lands, must be available at all times to GVRD authorities for purposes including, but not limited to, service provision, infrastructure development, operations and maintenance, resource protection, and public safety.
19. Public access across treaty settlement lands to GVRD lands and facilities must be maintained.

CONSULTATION

20. Consultation requirements of First Nations and the GVRD must be defined through the treaty process. Furthermore, the time necessary for responding to environmental assessment processes must be established.
21. When draft Agreements-in-Principle or draft Interim Agreements potentially affect the GVRD's corporate interests or the interests of Electoral Area A residents and property owners, provincial and federal governments must consult with the GVRD Board of Directors and/or the residents and property owners in Electoral Area A before concluding such agreements with First Nations.

**Attachment 4:****Tsawwassen Intergovernmental Relations Side Table (TIGRST) Terms of Reference**

(as proposed by LMTAC in consultation with staff from the GVRD and Corporation of Delta, December 2002)

**A. Purpose**

The purpose of the Tsawwassen Intergovernmental Relations Side Table (TIGRST) is to provide a forum for “the Parties”, including Lower Mainland local governments (both municipal and regional), Tsawwassen First Nation (TFN), British Columbia and Canada to discuss a variety of intergovernmental relations issues stemming from the Agreement-in-Principle (AIP) at the Tsawwassen treaty negotiation table in preparation for the Final Agreement.

**B. Objectives**

- 1) The TIGRST will work towards
  - a) Developing a better understanding of the interests and issues related to intergovernmental relations, with a focus on those relations affecting local governments and TFN. Potential post-treaty interests and issues include, but are not limited to:
    - opportunities to build stronger TFN-local government working relationships
    - provision of local government-related powers made available to TFN post-treaty should also be accessible by local governments
    - legislation, challenges and responsibilities regarding membership on a Regional Board
    - harmonization of land use planning and management
    - TFN’s role and responsibilities regarding the *Livable Region Strategic Plan*
    - identifying infrastructure and servicing requirements and / or options
    - economic development initiatives as they relate to land use planning and regional growth strategies
    - ensure that the costs of providing programs and services to off-reserve urban Aboriginals do not become the responsibility of local governments
    - consultation, communication and information-sharing procedures
    - an orderly transition in governance authority and application of laws
    - dispute resolution, other than the courts
  - b) Identifying and addressing key anticipated post-treaty issues
  - c) Providing ongoing technical advice on anticipated post-treaty utility servicing
  - d) recommending specific approaches / options for the above interests.
  - e) TIGRST will also work to identify overlapping issues related to First Nation governance, intergovernmental and fiscal relations such as
    - First Nation governance and intergovernmental relationships
    - rights of non-Aboriginal leaseholders on Treaty Settlement Lands
    - protection of lands designated in the Agricultural Land Reserve
  - f) The TIGRST would be willing to examine those issues that arise post-AIP (but prior to Final Agreement).
- 2) The Parties agree that
  - a) The discussions shall be interest-based and without prejudice
  - b) Any documents tabled shall be for discussion purposes only, contain no admissions, be subject to change and will not be tendered or relied upon in any Court proceeding
- 3) The Parties also agree that all discussions shall take place within the context and operating procedures of applicable Tsawwassen treaty table protocols.
- 4) The TIGRST discussions shall be composed of
  - a) Information gathering and exchange
  - b) Interest and issue identification
  - c) Options development (as required)
  - d) Forums, as required, involving TFN and local governments

**C. Principles**

The following governance principles reflect local government and regional approaches to negotiations and should underpin the establishment of the TIGRST and serve as guidance to all members in their work.

- 1) Treaty agreements in other regions of the Province should not be used as a precedent or template for the Tsawwassen treaty settlement. Intergovernmental provisions in the treaty should reflect the complex urban realities of Greater Vancouver.
- 2) TIGRST shall recognize local governments as an independent, responsible and accountable order of government, not as a secondary level or third party interest in the discussions.
- 3) TIGRST should respect precedents set out in municipal Civil Law in British Columbia.
- 4) Final Agreement must respect the values, heritage, culture and traditions of Aboriginal and non-Aboriginal peoples.
- 5) TIGRST meetings must provide for meaningful input by all the Parties. The cost of the TIGRST process is to be funded as an essential part of treaty-making by the tripartite negotiating parties and the Treaty Related Measure (TRM) on Governance will cover the costs of local government participation.
- 6) The work of the TIGRST cannot be deemed to be satisfactorily completed until all conflicting intergovernmental issues have been identified with recommendations forwarded to the Tsawwassen Main Table Working Group.
- 7) TIGRST members shall strive for certain and final definitions of intergovernmental responsibilities and interests.
- 8) The Lower Mainland Treaty Advisory Committee (LMTAC) is the voice of Lower Mainland local governments as per the Memorandum of Understanding (MOU) between the Union of BC Municipalities and the Province.
- 9) Aboriginal self-government should uphold the principles of democracy and accountability.
- 10) Aboriginal self-government provisions should provide for TFN participation in, or partnerships with, local governments for more effective and efficient delivery of programs and services.
- 11) Standards or regulations (including enforcement provisions) that apply to the Tsawwassen treaty settlement lands should meet or exceed established standards set by federal, provincial, and local governments for issues including, but not limited to: environmental protection, public health, safety, fire protection, building codes, and licensing.
- 12) TIGRST recommendations that pertain to local government matters, such as utility servicing or Board membership, are subject to final approval by municipal Councils and / or GVRD Board of Directors and the TFN Council and membership.

**D. Membership**

- 1) The core membership of TIGRST includes
  - Tsawwassen First Nation
  - local governments (municipal and regional district representatives)
  - British Columbia
  - CanadaOther observer agencies may include
  - Union of BC Municipalities (UBCM)
  - (BC Treaty Commission)
  - (First Nations Summit)
- 2) Designated members may assign alternates to represent their respective organization(s).

**E. Meetings**

- 1) All meetings of the TIGRST will be held In-Camera, unless determined otherwise by the Parties.
- 2) There will be no Chair for meetings of the Side Table. British Columbia will facilitate TIGRST meetings.
- 3) Quorum for a meeting will be a minimum of one designated representative from each of the core members: TFN, local governments (both municipal and regional), British Columbia and Canada.
- 4) local government representatives may invite specific municipal, regional district, or other representatives to attend meetings as observers and / or to provide technical advice and opinions, as needed.
- 5) Meetings will be held as often as needed, and may be held by teleconference.
- 6) Announcements of upcoming meetings and / or resource materials will be distributed as far in advance as possible to accommodate members' schedules.
- 7) Written records of meetings may be kept by each individual member of TIGRST.

- 8) At the beginning of each meeting, TIGRST members will agree upon the previous meetings' written Record of Decisions and commitments, including the date, time and location of the meeting, the topics reviewed, the options generated, and the recommendations to the Tsawwassen Main Table Working Group.

**F. Reporting**

- 1) The TIGRST will report and make recommendations to the Tsawwassen Main Table Working Group.
- 2) The written report from TIGRST will include
  - a) Tripartite Workplan (containing the issues chosen by the parties for discussion)
  - b) Information tracking table
  - c) Information summary of the interests / issues presented by the parties

**G. Openness and Transparency**

There will be transparency throughout the process based on open lines of communication and the provision of timely, accurate, clear and objective information, including dialogue exchange.

**H. Budget**

- 1) A specific budget for the TIGRST may be identified by the core membership in order to undertake some of the activities identified within these Terms of Reference. The activities of the TIGRST will be funded by British Columbia and Canada.
- 2) Membership numbers, meeting schedules and locations, the use of technology, and the use of experts will all be considered with the intent of keeping costs and inconvenience to a minimum while achieving effectiveness and efficiency.

**I. First Nations**

Nothing in these Terms of Reference, establishment of TIGRST, or work of the Side Table is intended to abrogate or derogate from the Aboriginal or treaty rights of TFN or give any government agency a justification for infringing on Aboriginal or treaty rights.

**J. Source Documents**

The source documents for determining the relationships, rights and responsibilities, and activities of the Parties include:

- AIP to be signed by TFN, British Columbia and Canada (2003)
- LMTAC's *First Principles* contained in its *Considerations* paper (July 2000)
- LMTAC's discussion paper, *Regional Governance and Governance in the Region* (2002)
- GVRD's *Principles for Treaty Negotiations* (2002)
- Corporation of Delta *Position Paper* (2002)
- Memorandum of Understanding between the UBCM and the Government of BC (2002)
- Tsawwassen First Nation interest papers (various)