

**LEGISLATIVE WORKING GROUP
TREATY RELATED MEASURE**

SNUNEYMUXW TREATY

FINAL REPORT

OCTOBER 1, 2002

TABLE OF CONTENTS

	PAGE
1.0 Introduction	1
1.1 The Local Government Context	2
1.2 The Process	2
1.3 Structure of the Report	3
2.0 Political Framework.....	4
2.1 Snuneymuxw First Nation.....	4
2.2 The Regional District System and the RDN	5
3.0 Parameters for SFN on RDN Board	7
3.1 What the Committee Looked At	7
3.2 Key Considerations	7
(a) How Members Are Chosen/Appointed	7
(b) How the Number of Members is Determined	7
(c) Weighted Votes	7
(d) Who Gets to Vote and When	8
3.3 Conclusions.....	8
4.0 Services and Service Delivery	9
4.1 What the Committee Looked At	9
4.2 Key Considerations	9
(a) Establishing, Reviewing and Withdrawing From Services	9
(b) Dispute Resolution	9
(c) Opting Into Existing Services	9
(d) Cost Apportionment	10
(e) Mandatory Service Participation	10
(f) Voluntary Service Participation	10
4.3 Conclusions	11
5.0 Regional District Finances	12
5.1 What the Committee Looked At	12
5.2 Key Considerations	12
(a) Cost Recovery	12
(b) Cost Apportionment	13
(c) Agreements	14
(d) RDN - Sample Services and Costs	14
5.3 Conclusions	16
6.0 Planning	17
6.1 The Snuneymuxw Land Use Planning Context	17
6.2 The Regional District of Nanaimo Context	17
6.3 SFN Participation on the Board	18
6.4 Conclusions	18
7.0 Dispute Resolution	19
7.1 Conclusion	19
8.0 Creating Membership on the Board	20
9.0 Agreement in Principal and Final Agreement References	22
9.1 Membership	22
9.2 Land Use Planning	22
10.0 Conclusions / Recommendations	24

APPENDICES

1. Presentation - Snuneymuxw First Nation Governance
2. Map - Regional District of Nanaimo Boundaries
3. Regional District of Nanaimo Procedure Bylaw
4. Presentation - Regional District of Nanaimo Governance
5. Presentation - Service Delivery & Regional Districts
6. Vancouver Island Regional Library - Funding
7. Regional District of Nanaimo Services
8. Regional District of Nanaimo Finance Presentation

ADDITIONAL RESOURCES

9. Part 24 - *Local Government Act* (Regional Districts)
http://www.qp.gov.bc.ca/stratreg/stat/L/96323_24tm#part24
10. Part 25 - *Local Government Act* (Regional Growth Strategies)
http://www.qp.gov.bc.ca/stratreg/stat/L/96323_25htm#part25
11. Part 26 - *Local Government Act* (Planning)
http://www.qp.gov.bc.ca/stratreg/stat/L/96323_26htm#part26
12. Treaty Related Measures Agreement
14. Regional Growth Management Plan Summary
15. Regional District of Nanaimo Position Papers
16. Peter Adams Report – Local Government Interjurisdictional Issues Study – Snuneymuxw First Nation Treaty Process
17. Sechelt Legislation
http://www.qp.gov.bc.ca/stratreg/stat/S/96416_01.htm

1.0 Introduction

The provincial and federal governments funded a Treaty Related Measure for governance-related activities in March of 2001 to do three things:

- (i) Develop a process which will bring the Snuneymuxw First Nation (SFN) in as a participant in the Regional District of Nanaimo (RDN);
- (ii) Develop a land-use and servicing model for the RDN and SFN; and
- (iii) Strengthen the general understanding of the regional growth management process by having a SFN member work with the senior planner of the RDN on the regional growth management plan update.

This report is concerned with the first task.

A legislative review working group was struck to:

- (i) Discuss and review the legislation pertaining to membership on a Regional Board;
- (ii) Identify any legislative obstacles for participating on the Board by the SFN working from the assumption that such participation will mirror that of a municipality wherever possible;
- (iii) Recommend structural or legislative changes that will reasonably accommodate issues identified; and
- (iv) Discuss SFN's role and responsibilities in the review of the Regional Growth Strategy update planned for 2001.

The working group was a technical group comprised of individuals representing the following organizations:

- Ü Snuneymuxw First Nation
- Ü Regional District of Nanaimo
- Ü Union of BC Municipalities (UBCM)
- Ü Central Okanagan Regional District (CORD)
- Ü Ministry of Community, Aboriginal and Women's Services
- Ü Lidstone, Young, Anderson, Barristers and Solicitors

Post-treaty the SFN will be a self-governing First Nation with a greater scope of powers within its jurisdiction than a local government. For the purpose of this exercise, however, the working group considered only the narrow scope of the SFN as a member of the RDN for the purpose of local service delivery and land use planning.

Membership will formalize the relationship between the SFN as a government within the region, and the RDN as the regional local government with authority for land use planning in unincorporated areas (excluding reserve or treaty settlement land). The Islands Trust is the land use planning authority for Gabriola Island. Although the working group received a verbal presentation about the Islands Trust (no paper available), the Trust has not been a member of the working group. It is, however, a party to the side-table negotiations underway.

The working group recognized that for the purpose of Board business the most efficient way for the SFN to function on the Board was as if it were a municipality (versus an electoral area), so continued with an examination of the requirements and obligations of a municipal member on a regional district board.

1.1 The Local Government Context

The constitution gives provinces the power to create local governments. In BC there are municipal and regional district governments. Regional Boards govern regional districts and are made up of appointed representatives from member municipalities and directly elected representatives from unincorporated areas.

The SFN, while functioning at present under the *Indian Act*, upon completion of the treaty under negotiation will become a self-governing nation governed by its treaty, subject to provincial law only where agreed.

1.2 The Process

The working group met several times in 2001-2002. The meetings often followed the format of receiving a presentation on an area of the legislation, then discussing the area fully and identifying issues that arose from that discussion. The areas of discussion were:

- (i) general administration of the RDN
- (ii) general administration of the SFN
- (iii) RDN services and financing
- (iv) Municipal Finance Authority
- (v) regional district planning

Where there were paper or powerpoint presentations made, the presentation material appears as an appendix to this report.

1.3 Structure of the Report

An interim report was provided to the federal and provincial negotiators on March 13, 2002.

The more substantial of these subjects are discussed in greater detail later in this report. Where appropriate, each section may identify recommendations for further action at either the governance side-table negotiations or at Agreement in Principle (AIP) negotiations.

As a result of this report, the working group hopes the SFN and the RDN will gain a good general understanding of how the other functions, and in particular, the SFN understands the obligations, restraints and advantages of membership on the regional district board.

The report is a technical report that represents the deliberations and findings of the working group and does not necessarily express the position of the organizations the members represent. Further, the Regional District of Nanaimo's involvement with this TRM in no way should suggest that the RDN has jurisdiction over local government matters or decision-making within the City of Nanaimo's boundary, nor do they represent the City in discussions related to the Snuneymuxw First Nation's Treaty process.

2.0 Political Framework

2.1 Snuneymuxw First Nation

The SFN gave a presentation to the working group, a copy of which is attached as Appendix 1. The SFN has governed itself since time immemorial. This includes the governance of its members, lands, resources, waters, and relations with other nations. The SFN firmly adheres to the principle of inherent right-based power to self-governance.

SFN governance is comprised of a complex legal, social, and cultural environment. The SFN has approximately 1400 members. Of these, 700 live on reserve, while the rest live elsewhere in British Columbia and North America.

The SFN has a core Traditional Territory of approximately 98,000 hectares located primarily in the Nanaimo River watershed and including islands on the coast off of Nanaimo. A further 100,000 hectares of land comprises territory shared with other First Nations. Of this Traditional Territory, the SFN has 266 hectares of Indian Reserve land. It is comprised of four Indian Reserves on Vancouver Island and two on Gabriola Island.

As a nation, the SFN possesses aboriginal and treaty rights that are recognized and affirmed by section 35 of the Constitution Act, 1982. On December 24th, 1854, the SFN entered into a treaty with the British Crown through the colonial government of Vancouver's Island. This treaty was a direct outcome of the policy created by the Royal Proclamation of 1763.

The Constitution Act, 1867, through section 91(24), grants the federal government of Canada jurisdiction over "Indians, and lands reserved for Indians." The federal government has implemented this power through the enactment of the Indian Act, and the creation of the department of Indian Affairs. The Indian Act confers certain powers on the band council, the minister, and the Governor in Council that together establish a system of government.

Post-treaty the SFN will have law making powers in a range of areas including the administration of justice, social services, health services, education, culture and language, and land use planning among other items.

The SFN adopted a new leadership selection process in 2001 through the creation of the SFN Electoral Code that was ratified through a membership referendum in the summer of 2001. It was first used in the February 2002 Chief and Council elections. The new system, among other improvements:

- (a) allows off-reserve members to participate in the elections;
- (b) increases the terms of office from two years to four years;
- (c) strengthens the relationship between Chief and Council and the SFN membership; and,
- (d) sets the number of Councillors at 10.

The SFN Electoral Code also empowers the SFN Chief and Council to make regulations in relation to the Code. SFN Chief and Council Procedure Regulations are being drafted.

The SFN Chief and Council hold regular Council meetings every two weeks, and hold committee meetings on an as needed basis. The SFN has comprehensive internal membership consultation processes in place to address important decisions of the nation. This includes General Assemblies, and regular special community meetings.

Consultation processes with the Elders and Youth of the Nation are undertaken in respect to major initiatives of the Nation. Members that live away from reserve communities are also consulted on a regular basis. Ratification of major legislation or initiatives includes all members that are 18 years of age or older, and is conducted by referendum.

2.2 The Regional District System and the RDN

Regional districts were created in 1965 to provide, on a regional basis, services that would benefit from economies of scale, or that were more reasonably provided to a greater area than a municipality. Regional districts were also created to provide local government to people living outside municipal boundaries. There are 27 regional districts covering most of BC and varying greatly in geographic size and population. When incorporated, regional districts have letters patent which include the name, boundaries, constituent municipalities, constituent electoral areas, and the boundaries of the electoral areas.

Regional districts in British Columbia are created by provincial constitutional authority and governed by the *Local Government Act* and other related legislation (such as the Waste Management Act). They are generally made up of member municipalities and electoral (unincorporated) areas, which together act as a federated regional government. Regional districts are required to provide few services, but may provide many. An example of this is the regional growth strategy legislation (Part 25 of the *Local Government Act*), which permits regional districts to do land use planning on a regional basis, but does not require it. The RDN has taken advantage of this legislation by being one of the first in BC to implement a regional growth management plan.

Regional districts in BC typically provide services like recreation, sewer and water, etc. but not those within the jurisdiction of other levels of government.

A board comprised of electoral area directors who are directly elected in the unincorporated areas and directors appointed by each member municipality council govern the regional district. The number of municipal directors depends on the population of each municipality. Local government elections in BC happen every three years.

Services are established with the intent that those who benefit from the service should pay for it. Consequently, those paying for the service must also approve its establishment or amendment. Regional districts cannot tax. They raise their revenue by requisitioning funds from member municipalities for the services they participate in, and by requisitioning funds from the provincial Surveyor of Taxes, the taxing authority in unincorporated areas, on behalf of electoral areas.

The RDN serves a population of 125,000. It is comprised of 8 electoral areas, each of which is represented by a director on the Board, and the cities of Nanaimo, Parksville and the Town of Qualicum Beach. Parksville and Qualicum Beach each have one municipal director on the Board, while Nanaimo, with a population of over 70,000, has 6. See map attached as [Appendix 2](#).

Regional districts function according to their procedure bylaws, which set out everything from when regular meetings will be held to how notice for special meetings is provided, and the committee structure. Further details on procedural matters in the RDN can be found in the RDN procedure bylaw. ([Appendix 3](#))

To provide a service, the RDN must pass a service establishment bylaw. The bylaw sets out what will be provided, to whom or to what properties, how the costs will be recovered, and a maximum requisition (funding) limit. With a few exceptions the public through a petition, counter petition, or a referendum must approve the bylaw.

The establishment bylaw may include provisions for regulating the service, for varying cost-apportionment, or a custom-designed dispute resolution process for that service. Two services, which every member is required to participate in, are general administration and planning.

The RDN Board also acts as the Regional Hospital District Board for the purpose of raising property taxes to contribute toward hospital capital funding and equipment purchases. Under provincial law the Regional Hospital District is required to contribute 40% of all capital projects and equipment purchases over \$100,000, and 100% of equipment purchases under \$100,000.

Planning for the Gulf Islands is within the jurisdiction of the Islands Trust, not the RDN. This means that while regulatory and service bylaws of the RDN apply on Gabriola Island, the regional growth strategy and other land use plans of the RDN do not.

3.0 Parameters for SFN on RDN Board

3.1 What the Committee Looked At

The Regional District of Nanaimo gave a presentation to the committee ([Appendix 4](#)) on how the Regional Board functions within the *Local Government Act*. The Committee reviewed Part 24 - Division 3 of the *Local Government Act* and discussed all the relevant aspects of SFN membership on the Regional District of Nanaimo Board.

3.2 Key Considerations

(a) How Members are Chosen/Appointed

While the voters in their respective areas elect Electoral Area Directors directly to the Board, municipalities appoint their representatives to the Board from their Councils. For the purposes of representation on the Regional District Board it was assumed that the SFN would act as a municipality and appoint a representative to the Board from their Band Council. The *Local Government Act* does not prescribe how this appointment is made so the SFN would be free to choose its representative in any fashion.

Local Government elections are held every three years with the next election scheduled to be held on November 16, 2002. SFN elections are governed by the SFN Electoral Code, which mandates staggered 4-year terms every two years. The appointment to the Board from newly elected First Nations Council on a cycle not consistent with the rest of the Board was not seen as an impediment to participation on the Board.

(b) How the Number of Members is Determined

The number of members from each jurisdiction is determined by dividing the population in the area by the voting units established by the Minister. For every 5 units the jurisdiction gets one representative on the Board.

In the case of the RDN the voting unit is 2500. The population of the SFN on reserve is approximately 700 members, making the factor .28 members. Because the factor is always rounded up to a whole number, the SFN would have one representative on the Board.

(c) Weighted Votes

One of the more complicated features of membership on a regional district board is the concept of weighted votes. While for the majority of decisions made at the board table the vote structure is a simple "one person one vote", there are those situations in the *Local Government Act* that call for a weighted vote. These votes are required primarily for financial matters or when service participants vote on the management and operation of a service. The number of votes any member receives is determined by the number of units the calculation in section (b) results in. In the case of the SFN the result was .28, which is rounded up, giving the one SFN member on the Board one vote.

(d) Who Gets to Vote and When

Not all Board members vote on every issue. Often only the participants in a service vote on a matter related to that service. In circumstances where a service is provided to only one area and therefore only one Director would be voting, the Act requires all Directors vote. This could become an issue for the SFN, if the First Nation were the only participant in a service and the rest of the Board voted against the SFN.

Local planning issues are generally only voted on by the Electoral Area Directors.

Because the Islands Trust, not the RDN, has jurisdiction over planning matters on Gabriola Island the director for Electoral Area B (Gabriola Island) does not vote in any planning matters, including the Regional Growth Plan.

3.3 Conclusions

After review of all the pertinent sections that established the parameters for membership and voting by the SFN on the Board no necessary legislative changes were identified to allow full membership and participation by the SFN on the Regional Board.

The period between signing the Agreement in Principle and the Final Agreement provides an opportunity for the SFN and the RDN to develop the relationship and to establish specific arrangements for participating in services and processes. During that period, for example, participation by the SFN could be encouraged, and the appointed member, while presumably not a voting member until the Final Agreement takes effect, would have an opportunity to observe the decision-making process and other operational considerations.

Recommendation #1: That the period between the Agreement in Principle and Final Agreements be used to develop the relationship of the SFN as a member of the Board.

4.0 Services and Service Delivery

4.1 What the Committee Looked at

The RDN gave a presentation on Services and Service Delivery in the RDN, which is attached as [Appendix 5](#).

The Committee looked at the *Local Government Act*, Part 24, Divisions 4 - Services and Powers, 4.5 - Dispute Resolution in Relation to Services, and Division 4.2 - Cost Recovery for Services. The latter two Divisions were also reviewed in more detail in Chapters 6 and 8 of this report but had relevance to service delivery as well.

4.2 Key Considerations

(a) Establishing, Reviewing and Withdrawing From Services

Assent of the electors is required to establish the majority of services provided by the RDN. This is accomplished through a petition, counter-petition or through a referendum. Municipal councils, however, can give consent to a service on behalf of their electors.

The details of the service to be provided are outlined in an Establishing Bylaw and a Regulatory Bylaw. These bylaws describe in some detail the service being offered, the area to be served, the financial implications of the service and the general way the service will be regulated or offered.

Legislative changes in 2001 allow for review of, and in some cases, withdrawal from, services (section 813.04(1)). This section recognizes that disputes among participants are inevitable and it lays out a process either to renegotiate the partnership or if that is unsuccessful to withdraw under certain conditions. However, it is not possible to withdraw from general administration, regulatory services such as building inspection, or mandatory functions such as waste management.

(b) Dispute Resolution

Chapter 7 of this report addresses dispute resolution generally. However, in relation to service disputes, Division 4.5 of the *Local Government Act* lays out the default dispute resolution process. Or, participants to a service can agree on an alternate dispute resolution process and incorporate it into the establishing bylaw. With these understandings the SFN were comfortable that reasonable avenues are available to resolve differences.

(c) Opting Into Existing Services

Any member of the Board may opt in to an existing service by the Board amending the Establishing Bylaw. The amendment would need to include the new participant in the service as well as address any other necessary amendments such as cost apportionment, voting, etc. Elector consent is not required to amend an existing establishing bylaw. A Board may at its option make amendments without elector consent, however, the Minister has the authority to order elector consent if it is felt to be warranted.

(d) Cost Apportionment

Costs are apportioned among the participants typically by usage, population, or by calculating the amount of service provided, or a combination of these methods. The cost apportionment for each service is identified in the establishing bylaw but can be amended with the concurrence of all participants.

(e) Mandatory Service Participation

All members of the Regional District of Nanaimo are participants in certain statutory services. The SFN, as a member of the Board, would also participate in them. These services include:

- General Administration
- Regional Planning
- Solid Waste
- Regional Hospital District

It was understood by the working group that the treaty may provide for the financial participation in services by the SFN by methods that differ from other municipal members but it was agreed that participation is critical. A contribution from the SFN would mean redistribution of the total burden among all participants.

There are additional services that are not statutorily required, but the RDN considers participation in them by the SFN to be essential:

- Vancouver Island Regional Library Services (see [Appendix 6](#) for a fuller explanation)
- E-911
- Regional Parks
- Southern Community Recreation
- Port Theatre

The costs of these services are outlined in the financial chapter of this report.

(f) Voluntary Service Participation

The RDN manages over 70 functions. Once membership of SFN at the Board table is defined in the AIP, discussions could take place to determine the potential for future participation in other services. A list of these services is attached as [Appendix 7](#).

4.3 Conclusions

One legislative issue arose from section 805.1 of the *Local Government Act*, which requires a municipality to cover the regional district's requisition by taxing its citizens. The SFN do not want to be held to taxation as a method of cost recovery. This section is already under consideration for legislative change. If the section is not changed, an exemption from this section may need to be provided for the SFN. This would not be necessary if the relationship between the SFN and RDN is established contractually.

No impediments to the participation of the SFN as a full member on the Regional District of Nanaimo Board were identified in the review of services and service delivery. It was understood that the SFN would participate in the services outlined in section 5.2(e). It was further understood that how the SFN would pay for these services may be determined through other processes such as treaty negotiations.

Recommendation #2: That the SFN participate, as a minimum, in the services listed in section 4.2(e).

5.0 Regional District Finances

5.1 What the Committee Looked At

The RDN gave a presentation to the working group, a copy of which is attached as Appendix 8.

Financial activities for Regional Districts are outlined in the *Local Government Act* under:

- Division 4.2 - Recovery for Services,
- Division 4.3 - Requisition and Tax Collection,
- Division 4.4 - Tax Rates and Exemptions, and
- Division 5 - Financial Operations

The general principle for allocating costs to a regional district service is defined in Division 4.3, Section 803.1 as: "All costs incurred by a regional district in relation to a service, including administration attributable to the service, are part of the costs of that service". A regional district must separately account for the revenues and expenses incurred in providing a service. Additionally, surpluses or deficits incurred in providing a service must be carried forward and be included in the next year's budget. The act specifies how this is to be done in Division 5 – Financial Operations, Section 819(7), which states:

"The annual budget or a provisional budget must:

- (i) set out the anticipated expenditure for each service,
- (ii) show separately revenues obtained from requisitions and other sources, and
- (iii) show appropriated surpluses of previous years."

And finally, Section 814(3), Division 5, states: "a deficit incurred in providing a service must be carried forward as an expenditure against that service in the next year."

What this means in practice is that each service provided by a Regional District is treated as a separate "fund" or "business". Those who receive the benefit of that business bear all of the costs. This functional financial accounting model reflects the principle of user pay cost recovery.

5.2 Key Considerations

(a) Cost Recovery

For most services, there are typically three steps involved in achieving cost recovery. The first step occurs when a Regional Board adopts a service establishing bylaw. As outlined earlier in this report, affected property owners must first agree that they are willing to pay for a service. The service establishing bylaw states who the participants will be – that is, the boundary may include all or only a part of an area or multiple areas.

The second step occurs within the bylaw, which must include a statement of how the costs will be recovered from the affected taxpayers. Division 4.2, Section 803(1) of the *Local Government Act* lists the methods available to recover the costs of providing a service from property owners. Included in the list are:

- (i) assessment based property taxes,
- (ii) parcel or frontage taxes,
- (iii) fees and charges set by other bylaws,

- (iv) revenues from agreements, enterprises, gifts, grants or otherwise, and
- (v) revenues raised by other authorized means under the *Local Government Act* or any other Act.

Any combination of the above methods is permitted, but at a minimum the service establishing bylaw must state which of the taxation methods will be used. If the establishing bylaw is silent on the method of cost recovery, assessment based tax is assumed to be the default cost recovery method.

Finally, an establishing bylaw must set out the method for apportioning costs – that is, the participants in the service must agree on a formula that attributes some portion of the taxes to be collected to their area.

(b) Cost Apportionment

Division 4.2, Section 804 of the *Local Government Act* describes in great detail how costs may be apportioned among service participants. The basic rules are:

- (i) Section 804(1) - the method described in the bylaw must be followed.
- (ii) Section 804(2) - if the bylaw is silent, apportionment is based on the assessed value of land and improvements in the service area.

Section 804(2) has a number of clarifying subsections dealing with electoral area administration, feasibility studies, approving officer services, regional growth strategies, referendums and community commissions. For these kinds of activities there may be no bylaw requirement, however, the benefit of the activity may be primarily for one or more portions of the regional district. In the subsections to Section 804(2), the Board is authorized to provide (usually by resolution) that the costs can be recovered from the area or areas that benefit from the activity.

For example, a feasibility study recommends that a new service be established for vicious dog control in one or more areas of the regional district, but if the service is not established for one reason or another the Board can direct that the costs of the study be recovered in a subsequent year from the areas that benefited from the study.

Cost apportionment formulas are not prescribed within the *Local Government Act*, but are free to be negotiated among the participants to suit their circumstances. The following list suggests some example of apportionment methods that have been used:

- (i) property assessments
- (ii) population
- (iii) distance (i.e. transit)
- (iv) service hours
- (v) usage (i.e. attendance at public recreation centers)
- (vi) water/sewer flows
- (vii) separate formulas for operating versus capital

(c) Agreements

Regional districts may also enter into agreements under Division 2 – General Corporate Powers, Section 176 of the *Local Government Act*. Agreements may be entered into with private operators and with other public authorities for the undertaking, provision and operation of a service. The regional board cannot delegate the ability to establish regulations under an agreement, however, the

enforcement of regulatory bylaws may be done by another body by agreement. The connection between agreements and establishing bylaws is that the establishing bylaw gives a regional district the authority to raise taxes to cover the costs of its obligations under an agreement. The agreement provisions permit alternative service delivery methods to be utilized by the local government.

(d) Regional District of Nanaimo - Sample Services and Costs

At present the following services include all member jurisdictions:

Service Name	Authority	Cost Recovery /Apportionment	Amount Recovered by Tax Requisition	2002 Tax Rate Per Thousand
General Administration	<i>Local Govt Act</i> Section 800(2)(a) - No bylaw required	By property taxes apportioned under Section 804(2)(b) - Assessed values (land and improvements) – all members share proportionately	\$630,000	.052
Regional Development (Growth Management Planning)	<i>Local Govt Act</i> Part 25, Division 1 – no bylaw required under Section 800(2)(a)	By property taxes apportioned under Section 804(2)(b) - Assessed values (land and improvements) – all members share proportionately	\$210,000	.017
Solid Waste Management – operates Regional Landfill (Cedar Rd.) and Transfer Station (Church Rd, Parksville)	Regional District Bylaw No. 792	By property taxes apportioned on the basis of 50% population and 50% assessments	\$436,450	.041
Vancouver Island Regional Library	Library Act	By property taxes apportioned on the basis of 50% population and 50% assessment	\$1,218,690	Varies by area – average is .300
Hospital District –capital equipment and debt for capital construction (40% local share for major projects)	Hospital District Act	By property taxes on the basis of assessment	\$4,605,000	.3774

The following services are provided to a sub-set of member jurisdictions:

Service Name	Authority	Cost Recovery /Apportionment	Amount Recovered by Tax Requisition	2002 Tax Rate Per Thousand
Animal Control – Electoral Areas A,B,C,D–pick up and impoundment of dogs at large and vicious dogs (no licensing)	Regional District of Nanaimo Bylaw No. 1066	Property taxes on the basis of assessment	\$55,000	.30
Southern Community Recreation – Electoral Areas A,B,C,D	Regional District of Nanaimo Bylaw No. 1059	Property taxes on the basis of surveyed usage of recreation and sportsfield facilities	\$651,045	Varies by usage – low usage .052
Garbage Collection and Recycling – residential properties only in Parksville, Qualicum Beach (recycling only), Lantzville Improvement District (recycling only), all Electoral Areas	Regional District of Nanaimo Bylaw No. 1009	All by user fees – presently \$90 per year for weekly service including recycling		N/A
Transit – City of Nanaimo, Electoral Area D and a portion of Electoral Area A	Regional District of Nanaimo Bylaw No. 1230	Property taxes apportioned on the basis of percentage of kilometers and hours of service in the area	\$2,161,135	.135
Southern Community Wastewater Treatment – City of Nanaimo, Electoral Areas A and D	Regional District of Nanaimo Bylaw No.888	Benefiting areas charged on the basis of flow Septage fees paid by Electoral Areas (currently .16 cents per gallon)	\$4,176,085 (City of Nanaimo taxpayers only)	N/A in Electoral Areas
Regional Parks – Electoral Areas and municipalities by agreement	Regional Park Act	Operating costs on per capita basis for all members Capital costs Electoral Areas only – 50% population/50% assessment	\$200,000 \$200,000	Varies by area – average .042
Emergency 911 – fire dispatch costs only for Electoral Areas A,B,C and D	Regional District of Nanaimo Bylaw No. 887	Property taxes on the basis of assessments	\$49,000	.027
Emergency Planning – all Electoral Areas	Regional District of Nanaimo Bylaw No.953	Property taxes on the basis of assessments	\$35,120	.009

Estimation of Potential Costs for SFN

Gross Assessments - \$100,000,000 Population - 700	Allocated Cost
Mandatory Services	
Administration	\$ 5,125
Regional Development	1,710
Solid Waste Management	3,020
Regional Hospital District	37,450
Total for Mandatory Services	\$47,305
Essential Services	
Vancouver Island Regional Library	26,340
Emergency 911	7,980
Regional Parks	1,145
Southern Community Recreation	7,690
Port Theater	2,900
Total for Essential Services	\$46,055
Other Services	
Transit (1% service allocation)	21,610
Building Inspection	6,120
Animal Control A,B,C,D	2,830
Total for Other Services	\$30,560

Assumptions:

- (i) Assessment base is assumed to be residential for these calculations. The costs will be somewhat higher when actual class values are known.
- (ii) Southern Community Recreation – assumes .15% participation (compared to .4% for Electoral Area C)
- (iii) Regional Parks – assumes participation in operating costs only (i.e. municipalities do not participate in capital acquisitions)

5.3 Conclusions

The working group identified that the Regional District raises local taxes for certain capital costs, but does not fund or participate in operational decisions for the Provincially appointed Health Authority. In addition, with respect to the Regional Hospital District, the question arose of federal health transfers to the province on behalf of aboriginal people on reserve and whether those transfers offset the cost of the Hospital District to the SFN. While resolution of that question was beyond the scope of the working group it was understood that as a member of the regional district the SFN's contribution would be redistributed among all participants. It was decided that discussions about the SFN's participation in this service should be referred to the side-table on governance.

Recommendation #3: That discussions about the 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.

6.0 Planning

The RDN gave a verbal presentation to the working group (no material available). In addition, Part 26 of the *Local Government Act* was reviewed by the working group. Land use planning was also the subject of another component of this treaty-related measure, and is covered in greater detail in a separate report.

6.1 The Snuneymuxw Land Use Planning Context

Lands reserved for Indians are under the jurisdiction of Indian and Northern Affairs Canada (INAC). INAC requires a Physical Development Plan (PDP) for any development on reserve. The PDP may be comprehensive in nature and include policy development similar to the Official Community Planning process under the *Local Government Act*, or a PDP may be site specific to facilitate development on a single parcel of property within a reserve. A PDP is required for any change or alteration to reserve lands.

For the SFN, once the treaty takes effect, the First Nations will no longer be under the authority of the Indian Act and the requirement for land use planning will be one that is imposed by the SFN on itself. SFN has identified the need to be a full participant in community planning, land-use planning and development initiatives that impact them, their resources, their health and their culture. This includes planning on a regional basis.

Community planning is traditional in the Salish culture since major decisions require the advice and guidance of all members. The SFN have a PDP in place, which will be updated and will become the Snuneymuxw Community Plan (SCP). This plan will be completed by March 31, 2003. The SCP will address community needs, cultural needs and economic opportunities from the immediate to the long-term. The SCP will be a living document to allow for changes in social and economic needs.

In addition to planning on reserve and prospective treaty settlement lands (TSL), the Snuneymuxw have been participating in various “smart growth” initiatives to identify contemporary best management practices and planning techniques and re-invigorating and affirming relevant traditional knowledge, practices and techniques associated with community planning. Participation in the regional district illustrates the Snuneymuxw commitment to the area and the current processes. Participation will also give the SFN a voice in community and land-use planning decisions that could affect the Snuneymuxw. The SFN will reciprocate by considering the concerns of the RDN in their process.

6.2 The Regional District of Nanaimo Context

Land use planning in the RDN falls under the jurisdiction of the *Local Government Act* (Part 26), which the working group reviewed. Not only is the RDN required to develop Official Community Plans for specific areas within the RDN, but it has also taken advantage of the permissive legislation to develop a Regional Growth Management Plan for the area. The Plan was developed in 1997 and is under review in 2002, consistent with the 5 year review required under the legislation.

The full participation of the SFN in the Regional Growth Management Plan (RGMP) is seen as critical to the successful harmonization of land use interests throughout the district. The SFN also recognizes the importance of participation in the Plan in protecting their land-use interests as well as for fostering a positive working relationship between neighbouring jurisdictions.

The RGMP establishes the broad uses of resource lands and open space, rural residential lands, industrial areas, urban areas (as defined by an urban containment boundary) and village centres. Municipality signatories to the Plan must have a context statement adopted within two years of signing the Plan that illustrates how their Official Community Plan will work towards the goals and objectives of the Plan. They are also obliged to abide by the Plan.

It is anticipated that the Agreement in Principle (AIP) will identify the requirement for participation in the RGMP and the period between AIP and the final Treaty will be used to come to agreement on changes to the RGMP that would be acceptable to all jurisdictions. The dispute resolution process in the growth strategies legislation will be used if necessary.

6.3 SFN Participation on the Board

Post-treaty the SFN will be self-governing and will determine its own land use planning processes on TSL. However, when the SFN operates as a member of the Regional Board it is anticipated that they will do so as if they were a municipality. This means that to participate in the Regional Growth Management Plan process the SFN will need to function under the *Local Government Act*. The local planning process that it undertakes on TSL will need to dovetail with the RGMP. How they dovetail will be explained through a contractual arrangement consistent with the *Local Government Act*.

6.4 Conclusions

The SFN have a land use planning heritage and culture that allows for consultation with community members and neighbouring jurisdictions beyond that required in the *Local Government Act*. As a result, no legislative impediments were identified that would prohibit SFN participation on the regional board. The SFN will complete their Official Community Plan in the spring of 2003 with consideration of SFN involvement in the RGMP. The period between AIP and final treaty will be used to negotiate full participation and consent to the growth strategy.

7.0 Dispute Resolution

Under the *Local Government Act*, when a service is established participants have the opportunity to design a dispute resolution process and include it in the service establishing bylaw. For those cases where a custom process is not designed, a default method for service review and withdrawal is legislated in Division 4.5 of Part 24. In addition, Part 25 contains a legislated dispute resolution process for regional growth strategies.

7.1 Conclusion

Staff participating in the working group from the SFN and the RDN are comfortable with the choices under the *Local Government Act*, that allow for dispute resolution.

8.0 Creating Membership on the Board

Both the SFN and the RDN are interested in a formal relationship under which the SFN becomes a member of the RDN Board. Given this, the legislative working group considered the legislative framework applicable to RDN membership to see if there were any legislative impediments to the SFN membership. Because the Local Government Act restricts membership on regional district boards to municipalities and electoral areas, if another type of government is to become a member of the RDN Board some form of legislation needs to provide an exception.

There is more than one way to give effect to the relationship between the SFN and RDN. Examples exist in the Nisga'a Final Agreement, and in the legislation that created the Sechelt Indian Government District as a member of the Sunshine Coast Regional District.

The Nisga'a Final Agreement identifies Nisga'a Lands as part of Electoral Area A within the regional district. Furthermore, it recognizes and facilitates the relationship between the Nisga'a and the Regional District of Kitimat-Stikine. Although it does not prescribe the relationship, the treaty stipulates that the parties may enter into agreements respecting services and common areas of responsibilities. . Given the remote location of the Nisga'a territory, and the fact that the regional district provides virtually no direct service in the area, no other relationship is necessary. However, given the urban nature of the Nanaimo area and the fact that SFN lands are adjacent to or within the boundaries of other local governments, a more structured relationship is necessary.

In the case of the Sechelt First Nation, provincial legislation created a municipal government called the Sechelt Indian Government District (the SIGD). The Chief and Council make up the Council of the SIGD and appoint a member to the Board. However, under this legislation, the SIGD is, to all intents and purposes, a local government under the jurisdiction of the Province. The Sechelt model is unsuitable for the SFN-RDN relationship because the SFN does not wish to become a municipality subject to provincial jurisdiction.

What is needed then is a new model, which would allow for participation of SFN on the RDN Board without the need for SFN to become a municipality subject to provincial jurisdiction. The SFN Final Agreement could be brought into effect by the federal and provincial governments each passing an enabling statute, with the Final Agreement attached as a schedule. This is also called settlement legislation. The settlement legislation could be used in two ways to establish the relationship. The treaty would recognize the relationship between the RDN and the SFN, which would ensure that it is supported by the federal government, while the provincial statute would provide the exception to the Local Government Act that permits the RDN to have a member that is not a municipality or an electoral area.

In addition to this fundamental interest in SFN membership on the RDN Board is the interest of both parties in certainty and stability in relation to that membership. For the RDN, that means the SFN would operate on the Board in the same manner as a municipal member. For the SFN, that means ensuring that any changes the province might make to legislation affecting local governments will not have a negative effect on the SFN in its relationship on the Board.

To satisfy these two objectives, the RDN and SFN could negotiate a contractual arrangement that defines the nature of the relationship and requires participation of the SFN as if it were a municipality. This would satisfy the RDN's objective of ensuring the SFN operate under the same rules as other municipalities while protecting the SFN's interest in not becoming a municipality subject to provincial legislation (i.e., SFN will

not be subject to provincial legislation except as it agrees to be). The agreement can also customize participation, if desired.

In addition, the contract can outline a routine review process and this review process can specifically provide for a review of the agreement if the province were to contemplate changes to local government legislation. This would satisfy the SFN's objective of ensuring provincial legislative change will not negatively affect the relationship and could have an additional benefit of providing a catalyst for the SFN and RDN to discuss proposed changes with the province.

While this approach may legally work it will only be effective if the key interests of both parties can be addressed first. The key consideration for the SFN Council and the RDN Board is, whether a relationship set out by contract/agreement would be acceptable to both parties given the interests previously expressed. These are that all members of the board need to operate under the same rules, as has been expressed by the RDN Board and the need to respond to any changes to the relationship that may be imposed on the Board by the Province, as expressed by the SFN.

Recommendation #4: That the issue of settlement legislation and a contract/agreement to establish the governance relationship be referred to the Local Government Sidetable for discussion.

9.0 Agreement in Principle and Final Agreement References

9.1 Membership

The option for membership considered in chapter 8 suggests the relationship between the Snuneymuxw First Nation and the Regional District of Nanaimo be set out in an agreement outside the treaty. However, certain principles about the relationship may be set out in the Agreement-in-Principle negotiated between Canada, British Columbia and the Snuneymuxw First Nation.

Establishing the relationship outside the treaty will allow it to remain relevant and flexible over time because amendments can be made without reference to the cumbersome tri-partite treaty amendment process. A specific agreement could address issues of common interest that are within the legislative capacity of local government.

The Snuneymuxw First Nation will be a unique participant in the RDN because it will have some powers like those of a local government but will also have additional powers such as wildlife management, fisheries management, education and aspects of community justice.

Outlining the broad principles of the relationship in the AIP will demonstrate the parties' commitment to a level of harmonization within the regional context. These intergovernmental principles may include:

- 1) *Prior to the Governance Agreement, the SFN and the RDN will negotiate and seek terms for full Snuneymuxw Government membership in the RDN on a basis similar to that of a municipality.***
- 2) *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.***
- 3) *Prior to the Governance Agreement, the Parties will negotiate funding arrangements to accommodate SFN membership in the RDN.***
- 4) *Settlement legislation will give effect to SFN participation on the Regional Board.***

9.2 Land Use Planning

Existing Snuneymuxw reserves fall under the jurisdiction of the federal government and are subject to the *Indian Act*. Post treaty the Snuneymuxw First Nation will be a self-governing First Nation and will have jurisdiction over treaty settlement lands. The relationship between the Snuneymuxw First Nation lands and other lands that are within the Snuneymuxw territory but fall under another land use jurisdiction (for example, land use planning jurisdiction of the RDN) becomes a critical aspect of the relationship between local governments and the Snuneymuxw First Nation.

The following principles included in the Agreement in Principle will guide the relationship between the Snuneymuxw First Nation and the Regional District of Nanaimo with respect to land-use and regional growth planning:

- 1) *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 Strategy.***

- 2) **The Agreement in Principle and Final Agreement will recognize that the RDN and SFN will agree to a growth strategy.**
- 3) **The SFN will prepare an Official Community Plan that provides a statement of objectives and policies to guide decisions on planning and land use management.**
- 4) **The SFN will develop the SFN Official Community Plan using a process that ensures broad Snuneymuxw community input and provides reasonable opportunities for meaningful input from neighbouring jurisdictions and neighbouring residents.**
- 5) **The SFN Official Community Plan will include a 'Regional Context Statement' that identifies the relationship between the SFN Official Community Plan and the content of the RDN Growth Strategy.**
- 6) **The SFN will work with the RDN collaboratively to resolve inconsistency between the SFN Official Community Plan and the RDN Growth Strategy.**

Recommendation #5: That the intergovernmental relationship principles and the planning principles be referred to the Local Government side-table for discussion of eventual inclusion in the AIP.

10.0 Conclusions/Recommendations

Conclusion

The process undertaken through this Treaty Related Measure has given confidence and understanding to both the Regional District of Nanaimo and the Snuneymuxw First Nation working group members. It has become the basis for what can be a strong and harmonious working relationship in the future. No major legislative impediments have been identified that could not be overcome through the recommendations listed below.

Recommendations:

1. That the period between the Agreement in Principle and Final Agreements be used to develop the relationship of the SFN as a member of the Board.
2. That the SFN participate, as a minimum, in the services listed in section 4.2(e).
3. That discussions about the 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.
4. That the issue of settlement legislation and a contract/agreement to establish the governance relationship be referred to the Local Government Sidetable for discussion.
5. That the intergovernmental relationship principles and the planning principles be referred to the Local Government side-table for discussion of eventual inclusion in the AIP.