

**LOCAL GOVERNMENT AND
ABORIGINAL TREATY
NEGOTIATIONS:**

**DEFINING THE MUNICIPAL
INTEREST**

A POLICY PAPER

OF

THE UNION OF BC MUNICIPALITIES

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- B. Recommendations of the UBCM Policy Paper, “Local Government and Native Land Claims”, 1991.
- C. Mayo and Saskatoon: Two Brief Case Studies.

EXECUTIVE SUMMARY

These are important and changing times for local governments in British Columbia. The provincial and federal governments, under the auspices of the new BC Treaty Commission, are about to begin negotiating treaties with the First Nations of BC, the settlement of which will have significant implications for all of the province. The UBCM believes that local government has a vital role to play in the successful conclusion and implementation of those treaties.

There is much history to be overcome, and local governments must be prepared to participate in the Treaty Commission's six-stage process in a manner that clearly identifies and articulates their interests and ensures that they are fairly dealt with in the final treaty settlements.

This policy paper is a "first statement" of municipal interests in the treaty process and is intended to be the beginning of a comprehensive and on-going process of interest definition for local governments. Both general and specific interests are dealt with and the proposition is put forward that developing "interests" rather than "positions" will provide a better outcome in the long run for local governments.

Several general interests are put forward: certainty and finality; affordability; community stability; the Constitution and Charter of Rights; standards; fee simple and other interests; jurisdiction and management of resources; communication and information; and, dispute avoidance and resolution. In addition, a number of specific interests are identified under: revenue and taxation; planning; infrastructure and services; and, governance and jurisdiction.

The UBCM believes that successful treaty settlements will come about only if they are acceptable at the community level, which implies a process which is open, inclusive and transparent. Treaty settlements (and perhaps as importantly, the process that leads to them) must leave a legacy for future generations wherein all the peoples and communities of BC can live together in harmony and mutual trust, with respect and understanding for each other.

LOCAL GOVERNMENT AND ABORIGINAL TREATY NEGOTIATIONS:

DEFINING THE MUNICIPAL INTEREST

1. INTRODUCTION

These are historic and changing times in British Columbia, as the provincial and federal governments enter into negotiations with the First Nations peoples of the province to establish modern day treaties which will settle aboriginal land claims and self government issues. The potential impact on the social, economic and political fabric of both native and non-native communities and on our province as a whole will likely be profound.

Local governments have a variety of interests at stake in this process, and the settlement of treaties with First Nations therefore is a matter of great concern to them. There are 196 First Nations or Indian Bands in BC, and approximately 1600 Indian reserves. Forty-five of these reserves are located within municipal boundaries and 30 others are immediately adjacent. There are 181 local governments (meaning municipalities and regional districts) in the province and their boundaries encompass the entire province with the exception of part of the northwest.¹ Eighty-three percent of BC's population reside within a city, town, village or district. All of the lands within the province are likely to be the subject of treaty negotiations.

The Union of BC Municipalities believes that local government has a vital role to play in the successful conclusion and implementation of treaties with First Nations. Local government is the closest and most direct level of government for the great majority of the people of BC, and openness is a fundamental principle at the municipal level. The expectation on the part of local government officials and the citizens they directly represent is that they will be heard on issues that affect the social and economic viability and quality of life in their communities. They expect their concerns and interests to be acknowledged and taken into account during the treaty negotiation process.

The legacy of the past 150 years of history is a significant factor, for both aboriginal and settler communities. The perceptions, attitudes and experiences on both sides have often been and still are in many cases tentative, poorly informed, and sometimes hostile.

For treaty settlements to provide workable solutions and the basis for new cultural and community relationships amongst all parties, it must, in the end,

¹ For the purposes of this paper, "municipal" is taken to mean (and is inter-changeable with) all forms of local government including cities, towns, districts, villages and regional districts.

be acceptable at the community level where we all live, work and play together, as well as at the legal and political levels.

The UBCM, in consultation with various local governments, has undertaken the preparation of this policy paper as part of the process of identifying and articulating these interests. This paper is intended as a first statement of the municipal interest in treaty negotiations and as part of a long-term and ongoing process which will ensure that local government interests are accounted for in every treaty negotiation.

This first statement of interests is, by necessity, rather general in nature and it is recognized that while there are issues common to all treaty negotiations across the province, there will also be regional differences in issues, priorities and concerns about which local governments will expect to have input into the negotiation process in their respective areas.

Further, the paper sets out some general interests that may be shared not only by local governments but by all non-aboriginal communities. As well, by addressing and tending to more specific interests and practical, day-to-day issues relating to treaty settlements, it is hoped that local governments can facilitate the development of a new relationship between the two communities based on mutual respect, trust and understanding.

2. BACKGROUND

Historical contact between new settlers on the lands now known as British Columbia and the indigenous aboriginal peoples dates back to the 1700s. However, it was not until the 1850s that significant numbers began to arrive in the southern areas of the territory. The fur trade, the gold rush and increasing numbers of settlers began to create land use pressures as farming and grazing lands were required to support the growing population.

This led to conflicts between the two communities and to aboriginal peoples being active in the pursuit of their perceived rights, trying to attain recognition of their title to the land and right to self government. These activities have, over the last hundred years, included several trips to England to talk with the British Crown, petitions to Ottawa and more recently the United Nations, the creation of several different political associations within the province to pursue their claims and the undertaking of a number of court cases.

The negotiation of treaties with aboriginal people is not new. The British Crown negotiated treaties with aboriginal peoples on many different continents over the past several hundred years. In 1763, the British Royal

Proclamation recognized aboriginal rights in Canada and over the next 150 years numerous treaties were negotiated with aboriginal peoples covering almost all of Canada with the exception, until recently, of most of BC and all of the territories.

The first official recognition of aboriginal rights to the land in BC came when James Douglas, the Hudson Bay Company factor and later Governor of the new Colony of Vancouver Island, negotiated 14 treaties known as the Douglas Treaties between 1850 and 1854, for lands in the southern portion of Vancouver Island.

The only other treaty with aboriginal peoples in BC is Treaty 8, which was extended into the Peace River area in 1898 from a treaty settlement with the Athabasca Indians in northern Alberta.

In 1973 the decision of the Supreme Court of Canada in the Calder case led to new federal policy initiatives and the beginning, in 1976, of comprehensive treaty negotiations between the federal government and the Nisga'a peoples of the northwest, negotiations which continue to this day. It was around that time as well that the federal "land claims" process was initiated, with numerous claims being filed by aboriginal groups in British Columbia.

Canada has concluded several modern day treaty settlements since that time. They include:

- 1975 - The James Bay and Northern Quebec Agreement
- 1978 - The Northeastern Quebec Agreement
- 1984 - The Inuvialuit Final Agreement
- 1992 - The Gwich'in Final Agreement in the NWT-Yukon
- 1993 - The Tungavik Federation of Nunavut Final Agreement
- 1993 - The Council for Yukon Indians Umbrella Final Agreement and four Yukon First Nations Final Agreements

For many years British Columbia remained the only province in Canada where treaties had not been negotiated, with the few exceptions noted above. That began to change in 1990 when the province, along with Canada and the First Nations Summit (which represents the majority of First Nations in BC), established the **BC Claims Task Force**. The Report of the Task Force in 1991 recommended the establishment of a BC Treaty Commission to facilitate the settlement of land claims in the province, and proposed a process for treaty negotiations.

The Report's recommendations were adopted by all three parties in 1991, including the then Social Credit government, and led to the province joining the federal government in negotiations with the Nisga'a Tribal Council, the

only treaty negotiations currently underway under the "old" federal treaty process.

British Columbia has now embarked upon a new "Made in BC" treaty process to deal with outstanding aboriginal land claims, treaty and self government issues that have never been addressed or resolved. The new treaty process, under the auspices of the BC Treaty Commission, began in late 1993.

3. THE TREATY NEGOTIATION PROCESS

(A) Introduction

The BC Treaty Commission was established in 1993. Two Commissioners were chosen by the First Nations Summit, the umbrella organization for all First Nations in BC participating in the Treaty Commission negotiation process. These commissioners are currently Mr. Art Sterritt from the Tsimshian Nation in the northwest and Ms. Carole Corcoran from the Dene Nation at Fort Nelson. One commissioner, Dr. Lorne Greenaway, was appointed by Canada, and one by BC, Ms. Barbara Fisher. The three parties to the negotiations chose Mr. Chuck Connaghan as Chief Commissioner. There are three parties to the negotiations - the federal and provincial Crowns and the First Nations. The role of the Treaty Commission is to coordinate, facilitate and monitor the negotiation process and generally act as "keeper of the process".

(B) The Process

The BC Treaty Commission process sets out six stages for the negotiation of treaties:

1. First Nations submit a **Statement of Intent to Negotiate** a treaty - The Statements of Intent are brief submissions outlining the First Nation's traditional territory, their mandate to negotiate and administrative details.²

2. **Preparation and Assessment of Readiness** - The Commission must respond within 45 days of receiving the Statement of Intent by meeting with all parties (federal, provincial and First Nations). The parties undertake a process to reach a state of "readiness" for negotiations, including identification by the provincial and federal governments of all interests which may be affected.

² As of 15 July, 1994 the Treaty Commission had "accepted" 46 Statements of Intent to negotiate a treaty.

3. Negotiation of Framework Agreement - The Framework Agreement is a negotiated agenda which identifies subjects for and objectives of the negotiations and establishes a timetable and any special procedural arrangements. It also identifies ratification (by First Nation members) and implementation procedures. Dispute resolution procedures and a program for public information are also adopted.

4. Negotiation of an Agreement in Principle - Major agreements which will form the basis of the treaty will be reached in this stage as well as confirmation of ratification and implementation procedures.

5. Negotiation of a Final Agreement - This stage formally embodies the principles underpinning the new relationship and the agreements reached in Stage 4. An implementation plan is provided and the Treaty is to be formally ratified and signed.

6. Implementation of the Treaty - Implementation legislation or authorities may be required by each party to implement the Treaty.

It is important to note that the Treaty Commission's *Policies and Procedures* call for the federal and provincial governments, at the Readiness stage, to ensure that they have:

- (a) clearly identified all interests which may be affected;
- (b) completed profiles on the communities, people and interests likely to be affected by the negotiations; and,
- (c) successfully implemented their mechanisms for consultation with non-aboriginal interests.

These tasks must be completed before the Treaty Commission will declare the two governments "ready" to commence negotiations.

This is a key part of the process for local government, and a fundamental reason for the preparation of this paper. Local governments want to ensure that the federal and provincial governments have met their obligations to identify all interests at stake in the negotiations. Local governments will assist in that process to ensure that the governments have those interests in mind as their negotiators set out to develop their treaty negotiation mandates. (Their "mandate" is essentially a list of all the interests and issues that the government has authorized them to put on the table). While local governments have an obligation to ensure their interests are clearly identified, the provincial and federal governments, as parties to the negotiations, bear the ultimate responsibility for the completeness of their mandates.

(C) The Consultation Process

The federal and provincial governments have committed to an extensive process of third party consultation in the treaty process. To this end they formed the **Treaty Negotiation Advisory Committee** or "TNAC". This committee, with 31 members consisting of resource industries (fish, energy, petroleum, mining, forestry), business, labour, local governments and environmental and recreation groups, advises governments in the treaty process and in treaty talks with First Nations. The Committee provides members with the opportunity to exchange information on a range of issues and ensures the interests and expertise of these groups are passed on to government negotiators to be considered during the negotiations.

There will also be an extensive process of local consultation in relation to each specific treaty negotiation, which in most cases will probably reflect the province-wide TNAC structure. This consultation process will be worked out in each treaty area between the local interests and the federal and provincial governments. The role that TNAC will play in that process is currently under consideration.

UBCM is actively assisting local governments to organize themselves to identify and articulate their interests. To date, several Local Government Treaty Advisory Committees ("TACs") have been established in treaty areas to provide for local government input into the treaty process. However, it is important to note that, ultimately, it is each local government's own responsibility to identify their interests and decide how they will organize themselves to participate in the process.

There are numerous issues related to the treaty process that are of interest to local government. Two of the most important are costs and interim measures.

(D) Costs

In relation to costs, there are four elements that will be considered as part of each treaty settlement. Canada assumes primary responsibility for the cash component, while BC bears the primary responsibility for providing land. BC's contribution of cash will range from 10 to 25 percent, depending on the land quantum. Where it is necessary to purchase third party interests to conclude a treaty, the two levels of government have agreed to share costs on a 50-50 basis. Where it is necessary to provide additional assistance to communities and individuals adversely affected by treaty settlements, Canada will provide up to \$40 million to BC to assist with adjustment. In addition, the issue of resource management and control will be dealt with by BC, while aboriginal self-government will be negotiated by both governments.

(E) Interim Measures Agreements

The provincial government, pursuant to the recommendations of the Claims Task Force Report, has entered into a number of interim agreements with First Nations prior to beginning treaty negotiations. The Clayoquot Agreement is perhaps the best known. These agreements are meant to provide for consultation on resource management with First Nations and, in some cases to protect aboriginal interests pending treaty settlement.

These agreements have created apprehension on the part of some local governments and communities, particularly in regard to a perceived lack of consultation with municipal governments prior to their signing. There is also some fear that the agreements will not, in fact, be interim but simply rolled into the final treaty. While there is recognition of the need to deal with certain issues pending treaty settlements, due process will be better served through full consultation with local governments on all interim measures, which the provincial government has now committed to.

4. LOCAL GOVERNMENT AND TREATY NEGOTIATIONS: THE MUNICIPAL INTEREST

(A) Introduction

Local governments have long recognized that treaty settlements will have a variety of implications for them. This concern led the UBCM to produce two policy papers: "Local Government and Native Land Claims" in 1991 and "Local Government and Aboriginal Treaty Negotiations" in 1992. These papers are now available together under the title "Local Government and Aboriginal Affairs".

A key recommendation of the 1991 paper was that UBCM should seek an agreement with the provincial government as to the province's responsibility to local government in the treaty process. This resulted in a **Memorandum of Understanding** being signed in 1993 between the UBCM and the Minister of Aboriginal Affairs for the province which "recognizes that local government constitutes a unique and special government interest in the negotiations"(see Appendix "A").

The Province further "commits to ensuring that BC local governments are represented in the process of negotiating treaties as respected advisors of the provincial negotiating team in a manner to be determined for negotiation of each claim". The province shall consult on any item that may affect a local government and seek its advice on a number of issues including but not limited to: any proposed changes to legislation, fiscal arrangements, land selections, new institutions of governance, infrastructure, service delivery, planning and zoning, emergency services and bylaw enforcement. The MOU also ensures that public information, education and consultation processes are dealt with.

Pursuant to the MOU, the province and the UBCM are working to establish a **Protocol** which sets out the manner in which the MOU will be implemented and a process for local government involvement in the treaty process.

The 1991 UBCM policy also set out several basic principles and criteria for the successful resolution of land claims. The suggested basic principles for the negotiation process are that it must be **fair, open, principled and community based**.

As well, the paper set out three basic criteria against which the success of process may be measured (that is it must be **democratic, efficient and acceptable**) and four basic mechanisms to ensure the process reflects those principles and criteria - **public information and education; public consultation; a dispute resolution process and pro-activity on the part**

of local governments. The paper went on to recommend that local governments observe the negotiations as part of the provincial negotiating team or caucus. (The recommendations are set out in full in Appendix "B"). Treaty settlements have many implications for local governments, both for those 75 with reserve lands within or adjacent to their boundaries and for those dependent on resources in traditional aboriginal territories. A first statement of the interests of local government in the treaty process is set out below.

(B) General and Specific Interests

This policy paper puts forward two categories of interests - general and specific. It is not intended that this categorization of interests be final, in any sense. This paper is in the nature of a "first statement" of interests in a process that will see the further elaboration and definition of local government interests both generally and in specific treaty negotiations.

The **General Interests** are those which are common to all negotiations and could be best characterized as being in the interests of all communities and/or local governments. These "community" interests are sometimes hard to distinguish from local government interests, as they are often the same. (The TNAC Governance Committee will produce an interests paper that will reflect many of these larger community interests).

The **Specific Interests** are more focused and directly related to specific local government concerns.

As with First Nations, the priority of interests specific to local governments in each treaty negotiation area may vary (e.g., rural or resource-dependent areas vs. urbanized areas). It is expected that the relevance, importance and priority of these treaty-specific interests will be clarified during each individual negotiation process. It should also be noted that the interests are also applicable to and should be addressed in the pre-negotiation and implementation phases, as well as during the treaty negotiation process itself.

(C) "Interests" vs. "Positions"

The UBCM believes that developing and presenting **interests** rather than taking **positions** will provide a better outcome for local government in treaty negotiations. For example, local governments have an **interest** in maintaining a stable tax base, but might first take the **position** that there should be no settlement lands within municipal boundaries. Although it may be that interests will in some cases lead, in the end, to a **position** on a certain issue, the danger of starting with a position is that if the position is rejected prior to or during negotiations, the actual interests behind it may never be heard.

UBCM policy therefore, is based on the development and articulation of definable **interests**, rather than positions, and local governments are encouraged to adopt the same process, so that definable and clear interests are behind any positions that may be adopted.

5. THE GENERAL INTERESTS

Some General Interests of local government in treaty settlements are:

(A) Certainty and Finality - Local governments want treaty settlements to be certain and final, meaning that the final outcome of treaty negotiations will be a completion of the process of addressing outstanding First Nations claims and that, in relation to the question of aboriginal right and title, the treaties will bring finality and certainty to the greatest extent possible, recognizing that "self-government" for aboriginals may be a dynamic, evolving form of government as it is for local governments. This will enable all citizens of British Columbia to move toward economic, social and community sustainability.

(B) Affordability - Local governments have an interest in settlements being affordable, meaning that they will not impose any extraordinary financial burden on the people of British Columbia. The value of the settlement package (in terms of land, resources and cash) is of great interest to local governments.

(C) Community Stability - Local governments are vitally concerned for the future of their communities and want treaty settlements that will not derogate from the social and economic stability of those communities, particularly those which are currently resource-dependent.

(D) Constitution and Charter of Rights - Local governments are interested that treaty settlements will be within the framework of the Canadian Constitution and that the Charter of Rights and Freedoms will apply to all citizens and residents of this province, and that equity and fairness to all will be a fundamental premise in these negotiations.

(E) Standards - Local governments are interested that general provincial and federal standards (e.g. environmental protection, land and resource planning, consumer protection, employment standards, workers compensation, health and safety, etc.) will apply on settlement lands³ within or adjacent to local government boundaries. Local governments are interested that there be compatibility and harmonization between the standards determined by First Nations and those of local governments (e.g., land-use, sub-division development, etc.).

(F) Fee Simple and Other Interests - Local governments are interested that those lands owned in fee simple not be “on the table” for negotiation (e.g., not subject to expropriation) and that all other forms of interest in land or resources will be adequately compensated for if they are part of a treaty settlement.

(G) Jurisdiction and Management of Resources - Many non-aboriginal communities are totally or significantly dependent upon resource industries, particularly the forest sector, for their existence. Some municipalities hold Tree Farm Licenses while others have developed plans for Community Forests. Control and use of the province’s natural resources is a significant interest and there is concern that treaty settlements will threaten the survival or well being of many resource dependent communities.

Water interests are also substantial and numerous. Many local governments hold water licenses to serve their communities. A lack of clarity on such issues as ownership of bodies of water under common law, (e.g., to the midpoint of a body of water adjacent to reserve lands), historic rights to water use, water licenses, rights of access to shorelines, status of water lots, access and easements for servicing and enforcement of quality control standards are issues of concern to local government. These interests should be addressed specifically during negotiations.

³ “Settlement lands” refers to those lands that will be under the jurisdiction of or owned by First Nations following a treaty settlement.

Agricultural land is also of great importance to many local governments and communities. The process of identifying and dealing with agricultural and range leases and licenses needs to be dealt with in an equitable manner, meaning that no economic hardship should result for the holders of those interests. The preservation of agricultural lands and the status of the Agricultural Land Reserve is also a matter of concern .

(H) Communication and Information - Local governments are interested that the public should have opportunities to be well informed about the issues, the process and the expected outcomes and impacts of treaty negotiations. The process should be as transparent as possible. A process of public information and communication between local and aboriginal governments should be encouraged and supported during the negotiation process for the purpose of sharing information, skills and expertise and to develop positive working relationships between neighbouring communities which will extend into the post-settlement period. Post-settlement structures for communication and consultation (e.g., joint council meetings) should be established early in the process.

Under the auspices of the Treaty Commission, and with the support of the provincial and federal governments, this process should be implemented immediately with significant input and direction from local communities and First Nations.

(I) Dispute Avoidance and Resolution - Local governments are concerned that treaty negotiations and settlements focus on mechanisms for dispute avoidance and that there be a formalized process for dispute resolution following the final settlement. The process should pay particular attention to issues related to "cross-border" impacts and the impacts of treaty rights which apply outside of settlement lands. Issues are bound to arise, as they do now between local governments, and a process for resolving differences should be an outcome of the treaty process.

6. THE SPECIFIC INTERESTS

Local government has specific interests in a number of areas including revenue and taxation, planning, infrastructure and servicing, and governance and jurisdiction.

(A) REVENUE AND TAXATION

i) General

Municipal and regional district revenues are derived from property taxes, grants-in-lieu of taxes, transfers from other governments, user fees and service charges. Capital financing and service provision commitments are based upon expectations of a relatively predictable population/assessment base. Significant and unanticipated changes to any of the above-noted revenue sources may result in revenue shortfalls and tax increases, unless there is a corresponding decrease in expenditures.

As a number of Bands have entered the property taxation field, local governments have been challenged to address reductions in anticipated income. Municipal and regional district taxpayers have seen or will see increased taxes or charges to offset the loss of revenue previously calculated into shared capital and operating expenditure budgets.

Treaty settlements could cause similar impacts on local governments, as any assessable property lost from regional district or municipal tax bases will affect those local governments. While recognizing the need for aboriginal governments to finance themselves, these financial interests need to be identified and addressed at the Framework Stage of the treaty negotiation process.

Therefore, a primary interest of local government is in budgetary stability. In regard to issues related to revenue and taxation, the principles of fairness and equity should apply to aboriginal and local governments equally.

A number of other financial interests arise:

ii) Taxation and Downloading - Local governments are interested that they will not be required to increase tax burdens on property owners as a result of treaty settlements; that there will be equity and fairness in the taxation field; and, that there should not be a downloading of responsibilities or obligations from the federal or provincial governments without adequate resources to implement and manage such changes.

iii) Property Tax Exemptions - Under the current assessment system, property tax exemptions can be constitutional exemptions, assessment exemptions or tax exemptions. If First Nations negotiate any of these exemptions, it will reduce the tax base of affected municipalities and regional districts thereby diminishing the local capacity to fund existing and future capital and operating expenditures.

iv) Grants-In Lieu - Federal and provincial governments and Crown corporations pay local governments grants in lieu of property taxes. If settlement lands are included within existing municipal boundaries and senior governments and Crown corporations undertake to develop property in the settlement area, then the grants-in-lieu may be lost as a source of municipal revenue unless they are replaced by other sources of revenue.

v) Loss of Tax Base - If non-reserve settlement lands are removed from the municipal assessment rolls and then taxed by the First Nation, the loss of existing tax revenues may be significant in some cases. A process must be in place for compensating municipalities for loss of tax revenues.

vi) Local Government Grants - Grants based in part on population numbers (e.g., Municipal General Grants) could be impacted if First Nations request the pro-rata portion of the grant related to the First Nation population. For example, under the current allocation process for the unconditional grant, the population living on reserve lands within a municipality is counted as part of the municipal population. Smaller municipalities with relatively large reserve populations could experience a drastic loss of revenue as a result of changes to the current system of counting population.

These smaller municipalities also rely more heavily on these grants to augment their budgets than do larger local governments, so loss of a substantial portion of the grants could cripple the local government's ability to provide services to residents.

vii) Provincial Grant Programs - First Nations may negotiate access to existing provincial grant programs. Unless the province increases the overall grant money available, the local government portion will be reduced, which would cause financial hardship for many communities.

viii) Financing Commitments - Municipal financing commitments are usually a 10-20 year repayment obligation and agreements to provide services and infrastructure to settlement lands must reflect the financial time line. Local governments must receive assurances that these critical time lines will be respected.

ix) Accessing New Industrial Tax Base - Local governments often access new industrial tax revenue through boundary extensions. This opportunity may be reduced or made more difficult after treaties are negotiated, if First Nations become a party to future industrial property tax sharing agreements. The potential for communities to assess new industrial tax bases in the future should be provided for in treaty settlements.

x) Future Development on Settlement Lands - Unless there is a level playing field with respect to environmental regulation, income tax, sales tax and labour legislation, new or existing development may prefer to locate on settlement lands.

xi) Economic Development - Local government is interested that there be equity in taxation so that a "level playing field" is established in this crucial area. This issue must be settled in the negotiations. Mechanisms and opportunities for joint and co-ventures and partnerships between the communities must be supported and encouraged both in the negotiation process and in the post-settlement period.

xii) Cumulative Impacts - The potential cumulative impact of changed revenue/taxation regimes on the local taxpayer is significant and the total impact must be considered as an integral part of the negotiation process. Impact studies must be part of the negotiation process.

(B) PLANNING

i) General - The planning interests of local government relate to land use within and adjacent to local government boundaries. More specifically, local governments are interested that land uses on settlement lands are compatible or harmonized with those of the local government beside or around the settlement lands.⁴

It should be noted that not all local governments engage in planning or zoning. For example, some rural areas do not undertake planning or zoning activities. Therefore, First Nations should not be asked to undertake planning activities unless adjacent or surrounding local governments have done the same - double standards should not apply.

Further, land use planning is one obvious area where there may be potential for disputes between local and aboriginal governments. This calls for a clearly defined and widely accepted dispute resolution procedure which is easily available to all parties.

ii) Official Community Plans - Official Community Plans are an integral part of a community's land use planning process and define the type of community its citizens want to see in the future. They focus on compatible land uses, designation of land uses, and address present and future land use needs. They are also the basis for developing policies concerning the future physical, social and economic development of the community.

The Official Community Plan defines growth potential. Balancing the development priorities and potential on settlement lands with those of the neighbouring regional districts or municipalities is critical in terms of the carrying capacity of the land base and costs for appropriate infrastructure financing. This is especially relevant in relation to urban settlement lands. Local governments are interested in the role that settlement lands will play in the Official Community Planning process.

iii) Zoning - Zoning of land identifies various uses of land throughout the community. Changes in zoning or the Official Community Plan requires a public hearing before municipal council or regional board, to ensure input by

⁴ In relation to the issue of compatibility and harmonization, see the commentary on Mayo, Yukon and Saskatoon, Sask., in Appendix "C".

citizens as to the impact and suitability of the proposed changes. Local governments have a strong interest in treaty settlements that provide for dealing with land use designations that are perceived as incompatible by neighbouring communities, whether for environmental, design, safety or other reasons.

iv) Regional Growth Strategies - Many local governments are engaged in developing regional growth strategies or settlement plans. First Nations should be encouraged to participate in these strategies and plans in order to promote managed growth that benefits all communities. The issue of the potential for growth in all communities should be addressed in treaty settlements.

(C) INFRASTRUCTURE AND SERVICES

i) General - This category addresses one of the primary interests and functions of local government, the provision of "services" including, but not limited to: sewer (both storm and sanitary); water; parks; roads; recreation; waste collection and reduction initiatives; and, fire and police protection. Local government is also responsible for setting acceptable standards for servicing and planning for future service and infrastructure development requirements.

Numerous local governments have negotiated service agreements directly with bands, as a pragmatic response to servicing the needs of aboriginal communities. Examples include water, waste management, fire protection, emergency services, transit, dog control, storm and sanitary sewers and roads. A number of others are currently being negotiated. Municipal governments and many First Nations have identified their local needs and achieved, through direct negotiation, successful working relationships that facilitate living and working together. These agreements reflect the local needs of both parties and are workable solutions to issues facing both communities.

A number of municipal interests related to infrastructure and servicing will need to be addressed in treaty negotiations:

ii) Current Infrastructure Interests - Local governments have a major concern about the retention of current infrastructure interests such as landfill sites, gravel pits, watersheds, and water easements and licenses. These interests, which are in most cases essential to the community, should not be subject to negotiation.

iii) Current Services - Where they exist, current services to both communities should be maintained at existing levels and costs.

iv) Cost - Fees and charges related to building and servicing infrastructure and providing services to residents, should be equal on and off settlement lands. Common funding sources such as development cost charges, latecomer agreements and the creation of specified or local service areas, and common criteria for assessing risk, would ensure greater equity and compatibility in the provision of those services.

v) Access - Access to or through settlement lands for the purposes of infrastructure and service development is of major interest to local governments. For example, ensuring access to existing and future utilities (landfill sites, water intake pipes, pumping stations and effluent outfall pipes) and access through settlement lands for emergency and law enforcement services are some of the concerns of local government.

vi) Standards - Local governments adhere to certain standards or codes (federal, provincial or municipal) in the development of infrastructure and services. Standards for infrastructure and services on settlement lands within or adjacent to local governments should be compatible with that local government's standards, where they exist. The exception is where codes do not apply as, for example, with building codes in some regional districts, or where provincial standards apply, as with roads that are built in regional districts by the province or in relation to sewage permits that are granted by the province. As well, economies of scale and uniformity of specifications in the provision of services are important factors for local government, and should be considered in treaty settlements.

(D) GOVERNANCE AND JURISDICTION

Treaty settlements will, in most cases, include certain rights of aboriginal governance as well as jurisdiction over some lands and resources. "Self-government" for First Nations has been the topic of much debate, and the notion remains for the most part ill-defined and unclear. However, it is assumed that self-government, although it may vary from settlement to settlement, will be an amalgam of federal, provincial and municipal type powers, exercised within the unique economic, social, demographic, historical and cultural context of each First Nation.

Local governments are uncertain as to their relationship to this new form of government and the powers, jurisdiction and lines of communication that can be anticipated. Critical to ensuring the development of harmonious relationships between local and aboriginal governments will be a clear understanding of lines of authority and the separation of powers, possible areas of overlapping jurisdiction and concurrent or co-jurisdiction, and well defined mechanisms for cooperation, consultation and joint decision-making

(e.g., joint council meetings, joint operating committees, issue-specific joint committees) and clear dispute-resolution processes.

As well, local governments are interested that, where appropriate, there be a harmonization of laws and standards between the two governments. This will promote efficiency, clarity and effectiveness, and public health and safety, particularly in situations where the communities are adjacent to each other.

7. CONCLUSION

Local governments have a variety of important interests, both general and specific, in the negotiation and settlement of aboriginal treaties. This paper is the beginning of the process of local governments setting out what those interests are. The identification and articulation of specific local government interests in each particular treaty negotiation will be carried out by the local governments in that area.

The UBCM believes that successful treaty settlements 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, which calls for openness and inclusiveness in the process. As in the 1991 policy paper, “Local Government and Native Land Claims”, the UBCM believes that the basic principles for success in treaty settlements are that the process must be fair, open, principled and community based. As well, democracy, efficiency and acceptability are key criteria for success. (See Appendix “B”). Transparency will be an essential element in reaching acceptable settlements. Fundamentally, there should be no surprises for anyone at the conclusion of negotiations.

Successful treaty settlements will require an understanding on everybody’s part that the interests of all the people of British Columbia, aboriginal and non-aboriginal alike, are inextricably linked. Therefore, opportunities for both communities to learn together and develop a clear understanding of each other **as people** are critical if the treaty process is to have a positive result. The treaty process must promote political stability and social harmony, rather than political polarization and social conflict, and the creative and realistic identification of the interests of all parties is essential to the success of that process.

It is vitally important that these negotiations and the treaty settlements they lead to, leave a legacy for future generations wherein aboriginal and non-aboriginal communities can live in harmony and mutual trust, with respect and understanding for each other. The realization of this vision for the province will be a major and difficult, but not impossible, task. It is a task to which local government has an obligation and a critical contribution to make.

APPENDIX “A”

Memorandum of Understanding between the Province of British Columbia and the Union of British Columbia Municipalities

General Principles:

The Province recognizes that local government constitutes a unique and special government interest in the negotiation of modern day treaties.

The Province agrees that the comprehensive land claim negotiation and settlement process must be fair, open, principled and community based and the process must be democratic, efficient, inclusive and acceptable to all parties.

The Province and the UBCM agree that:

- a) The Province commits itself to ensuring that B.C. municipalities are represented in the process of negotiating treaties as respected advisors of provincial negotiating teams in a manner to be determined for negotiation of each claim. In terms of treaty negotiations under the Treaty Commission agreement, a process for local government representation shall be established during the “readiness” phase before framework agreement negotiations commence. UBCM agrees to assist the Province in developing these processes.
- b) The provincial government shall consult on any item that may affect a local government and seek its advice, including but not limited to:
 - any proposed changes to legislation that may directly or indirectly affect local government.
 - fiscal arrangements between the Province and local governments.
 - land selections in areas within or adjacent to municipalities.
 - the creation of new institutions of governance where local government interests are affected.
 - terms of settlement related to service production and delivery.
 - issues relating to the financing, construction and maintenance of municipal infrastructure.
 - issues related to land use planning, zoning, regulation, and standards and codes.
 - emergency services within local government service boundaries.
 - bylaw enforcement.

- c) The province shall cooperate with First Nations and local governments in studying and creating mechanisms and institutions for transitional social and economic programs.
- d) The UBCM will cooperate and participate, where possible, in the implementation of a process of public information and education in each land claim area.
- e) The Province and the UBCM will cooperate in the implementation of a process of public consultation in each land claim area.
- f) The Province agrees, subject to budgeting allocations, to fund the costs beyond that contributed by local governments through the UBCM.

Any consultations between the Union of B.C. Municipalities, B.C. municipalities, and the Province of British Columbia will be subject to appropriate confidentiality requirements imposed by the provincial negotiating teams.

The Memorandum of Understanding may be reviewed in one year from the date of signing.

APPENDIX “B”

RECOMMENDATIONS OF THE UBCM POLICY PAPER “LOCAL GOVERNMENT AND NATIVE LAND CLAIMS”

1. BASIC PRINCIPLES AND CRITERIA FOR SUCCESS

a. Introduction

The Union of British Columbia Municipalities believes that land claims settlements will not be successful unless all of the interests involved can participate in the process leading to settlement. Local government must have a clear and direct role in the negotiation process.

Success, meaning a credible agreement to which all stakeholders can subscribe, will be dependent on the nature of the process leading to settlement.

The settlement of land claims may be seen as an exercise in institutional design. As Irving Fox has said, the task of institutional design is to secure a distribution of resources among groups and a set of rules governing their behavior which will produce decisions which actually reflect the desires of society.

To be successful then, land claim settlements must result in the creation of institutions which reflect the interests of all stakeholders and the securing of a system for the distribution of power and resources which satisfies those who live in the settlement area.

The UBCM believes that there are four basic principles and three criteria for the successful resolution of land claims.

b. Basic Principles

RECOMMENDATION #1:

THE BASIC PRINCIPLES FOR LAND CLAIMS NEGOTIATION PROCESS ARE THAT IT MUST BE FAIR, OPEN, PRINCIPLED AND COMMUNITY BASED.

To be credible and successful the process must conform to these basic principles:

- it must be **fair**, that is it must be equitable, impartial, free from prejudice and all parties must have their rights respected;
- it must be **open**, that is all parties must be heard, have complete information about potential impacts on their interests and have equal access to the decision-making process;
- it must be **principled**, that is it must focus on interests, not positions, and place a high value on the integrity of the relationship among the parties both during and after the negotiations;

- it must be **community-based**, that is it must be situated so that it becomes real and accessible for the people it directly affects, the native people and their neighbors at the community level.

c. Criteria for Success

RECOMMENDATION #2:

THE BASIC CRITERIA FOR SUCCESS IN LAND CLAIMS NEGOTIATIONS ARE THAT IT MUST BE DEMOCRATIC, EFFICIENT AND ACCEPTABLE.

The UBCM believes there are three basic criteria for the successful settlement and implementation of native land claims: it must be democratic, efficient and acceptable.

i) Democratic

Democracy is perhaps the primary and most essential attribute of an effective and meaningful process such as land claims negotiations, for if the process is not democratic and seen to be so it will not attract the support necessary for its successful implementation.

A democratic land claims negotiations process will be both representative and accountable. A representative process ensures that all parties affected by a particular decision have adequate opportunities to express their concerns and participate in the decision making process. The process must promote some form of representation by all interested parties and ensure that individuals and groups are able to clearly state their interests, goals and objectives.

There are several elements necessary to ensure representativeness. Adequate notice must be provided to all parties of the schedule, structure and venue of the process. All relevant information must be readily and easily accessible to the affected parties. All parties must have complete information so they are put in a position where they are able to effectively respond to the positions of others.

The goals and objectives of the various parties regarding the issues at hand must be made explicit, and provision must be made for interests not formally represented at the negotiating table to be considered.

Accountability means that the decision-makers, in this case the provincial and federal governments and the native interests, are responsible and answerable to the constituency they purport to represent.

An accountable negotiating process will ensure that the decision-making process has been fully explained to the public and that the latter understand the process.

The process must ensure that when a term of the settlement will impact on a third party, all reasonable positions, options and alternatives will be considered.

ii) Efficient

An efficient process for negotiations is one where optimal decisions are reached in the least wasteful manner in regard to time and resources. Efficiency is also a ratio of cost to benefit; the concept of efficiency must include citizens' values, which calls for full citizen participation to determine those values.

An efficient process is also effective and adaptable. Effective means that the process meets the original goals and objectives of the process. Adaptive means the process can adjust to new conditions and respond quickly and effectively to unexpected developments. This means that reasonable alternatives can be explored throughout the process.

iii) Acceptable

A process which meets the criteria of democracy and efficiency will tend to produce results that are acceptable to all interested parties. This means that all interested parties must be able to affirm and endorse both the process and the end result. Settlement will not be acceptable, nor will it work properly, unless all stakeholders can claim some ownership of the process and the result.

d. Summary

In summary, the UBCM believes that local governments have a critical role to play in the successful negotiation of land claims. **The process must conform to certain basic values or principles: it must be fair, open, principled and community-based.**

As well, there are three basic criteria against which the process may be measured. **The process must be democratic, efficient and acceptable.**

2. MECHANISMS FOR SUCCESS

The UBCM believes that there are four basic instruments or mechanisms that will ensure the settlement process reflects the above principles and criteria: public information and education; public consultation; dispute resolution procedures; pro-activity.

a. Public Information and Education

RECOMMENDATION #3:

THE UBCM SHOULD WORK WITH THE THREE PRINCIPAL PARTIES TO THE NEGOTIATIONS TO IMPLEMENT AN EDUCATION AND INFORMATION PROGRAM AT THE LOCAL LEVEL IN ALL AFFECTED COMMUNITIES PRIOR TO THE COMMENCEMENT OF ANY LAND CLAIM NEGOTIATIONS.

Public information and education is absolutely key to the process, and is a vital component of the democratic process. Unless all stakeholders and interest groups are fully informed about all aspects of the claim and the negotiations, serious problems will arise, as they have in other jurisdictions.

The Report of the B.C. Claims Task Force states:

“It is essential to the success of this initiative that the negotiations be conducted in an atmosphere which will contribute to the development of a new relationship between the aboriginal and non-aboriginal people of British Columbia. In large measure the atmosphere will depend on the public awareness and the understanding of the history of British Columbia, and the dissemination of accurate information about the negotiations.”

The Task Force went on to recommend:

“17. Canada, British Columbia and the First nations jointly undertake public education and information programs”.

The Task Force also recognized the crucial role that public information will play in the process of reaching settlements:

“Negotiators for each treaty should explore creative ways to allow for aboriginal and non-aboriginal people to meet to discuss their perceptions, concerns and hopes for the future. Such meetings could do much to create understanding and to minimize fear about change or the unknown.

The Task Force recommended:

“18. The parties in each negotiation jointly undertake a public information program.”

The UBCM shares the view of the Task Force and believes that local governments and the communities they represent should be intimately involved in this process of education and informations sharing.

b. Public Consultation

RECOMMENDATION #4:

THE UBCM SHOULD WORK WITH THE THREE PRINCIPAL PARTIES TO ENSURE THAT A COMPREHENSIVE PROGRAM AND PROCESS FOR PUBLIC CONSULTATION AND PARTICIPATION AT THE LOCAL LEVEL IS IN PLACE PRIOR TO THE COMMENCEMENT OF ANY LAND CLAIM NEGOTIATIONS.

The informed participation of the public, that is those parties with a stake or an interest in the settlement, is essential to both successful negotiations and a workable agreement.

The public must have complete information as regards the land claim, its meaning and scope, its spatial boundaries and the positions of all the parties at the negotiating table.

A formalized mechanism for public consultation should be implemented so that all groups know how they can make their inputs, and are assured a measure of fairness in relation to other groups. The consultation process must be highly visible and localized in the communities.

The idea of public participation relates to the theory of direct democracy. Democracy is one of the key criteria for success in the negotiating process. Direct democracy means that those people most affected by a decisions should be allowed to participate in the decision-making process.

For public participation to be meaningful, parties with significant or meaningful interests should be recognized in the planning, implementation and conflict resolution stages of the negotiating process. Public participation should occur early in the process.

Public participation should be comprehensive, which means systematic and continuous. It should be informative and cooperative, in that the process is inter-active in nature.

c. Dispute Resolution

RECOMMENDATION #5:

A COMPREHENSIVE PROCESS FOR THE CONSENSUAL RESOLUTION OF DISPUTES SHOULD BE DESIGNED AND IN PLACE PRIOR TO THE COMMENCEMENT OF ANY LAND CLAIM NEGOTIATIONS.

Conflict resolution is a means of resolving disputes among competing or conflicting interests. A process that includes a well informed public involved in a comprehensive program of consultation and participation will demand an effective dispute resolution mechanism. This will require a mechanism outside the negotiating table for the resolution of issues that arise during negotiations.

The UBCM believes that the theory and practice of consensual dispute resolution best meets the requirements of this process. Consensual dispute resolution identifies common interests among the various parties and achieves a result to which all can subscribe. Social harmony and political consensus are the objectives.

A consensual dispute resolution process:

- is one in which self-interest, not self-sacrifice is the sustaining force;
- is a negotiated process, not an adversarial one;
- is one which ensures free communication, full disclosure and balanced participation;
- promotes the interdependence of interests;
- depends on the voluntary involvement of interests;
- calls on each party to define its objective in positive terms;

Solutions that are voluntarily entered into will be self-regulating and enduring. Consensual dispute resolution is a reasoning process rather than a coercive one.

The UBCM believes that such a dispute resolution process combined with comprehensive public consultation will lead to the best result in settlement negotiations.

d. Pro-Activity

RECOMMENDATION #6:

THE UBCM SHOULD ACTIVELY ENCOURAGE AND PARTICIPATE IN THE DEVELOPMENT OF PRO-ACTIVE MECHANISMS FOR SUCCESS PRIOR TO THE COMMENCEMENT OF ANY LAND CLAIM NEGOTIATIONS.

The UBCM believes strongly that the process for involving third party interests and stakeholders in land claims negotiations must be pro-active rather than re-active. That is, the essential elements and mechanisms of the process must be in place before the start of negotiations at the local level.

This means that public education and information programs should be well under way, the public consultation and participation process should be up and running and the dispute resolution process defined and clear to all parties.

The failure to be pro-active may produce unhappy results. The public will be uninformed and reacting on the basis of insufficient knowledge. Stakeholders will be playing catch-up throughout the process, demanding to be heard and impeding the course of negotiations. Processes will not be in place to allow for interests and stakeholders to be heard. There will be no mechanism for dispute resolution.

The UBCM believes that local government in particular must be out in front of the process, fully prepared to engage in the process when it begins.

3. UBCM POLICY FOR PARTICIPATION IN LAND CLAIM NEGOTIATIONS

The Union of British Columbia Municipalities believes that local governments are in a unique and special position among third party interests and stakeholders. Local government directly represents the population of B.C. Many local governments will be dramatically affected by the settlement of land claims - in terms of finances, revenue production, revenue sharing, service production and delivery, land-use planning and forms of governance.

The unique position of local government in the land claims negotiation process calls for the UBCM and its members to play an integral role in the process.

a. THE ROLE OF LOCAL GOVERNMENTS: OBSERVER STATUS

RECOMMENDATION #7:

THE UBCM RECOMMENDS THAT LOCAL GOVERNMENTS OBSERVE THE NEGOTIATIONS AS A MEMBER OF THE PROVINCIAL NEGOTIATING TEAM.

Local governments can reflect their unique and distinct role and best represent the interests of communities in British Columbia by participating in the negotiations as an observer.

The UBCM proposes that local governments observe the negotiations as a member of the provincial negotiating team. Local governments derive their powers from the province. The province has admitted a primary responsibility for representing the interests of local government, and other stakeholders, at the table.

The UBCM proposes that in each land claim negotiation:

- a) A local government nominee sit as an adjunct to the provincial negotiating team at the table.
- b) The nominee will maintain the confidentiality of the table where required and agreed upon.
- c) The nominee will sit as part of a working group of the negotiating table to resolve issues and disputes that arise that are of concern to local government.
- d) The purpose of local government participation will be:
 - the identification of areas of potential dispute;
 - the transmission of information, where appropriate, between the table and local government;
 - the provision of advice to all principles as to potential impacts on local government of settlement terms;
 - to participate in the consensual resolution of disputes that affect local government;
 - to act as a good-faith broker between the principles and local government.
 - to establish what role the local government will play in post-settlement arrangements for governance, resource management, planning, etc.

b. THE ROLE OF THE UBCM: PRIME CONSULTANT

RECOMMENDATION #8:

THE UBCM SHOULD PLAY THE ROLE OF PRIME CONSULTANT TO LOCAL GOVERNMENTS.

The UBCM believes it can play a vital role in assisting local governments towards the enhancement and protection of community interests and the successful conclusion of land claims settlements.

The role of “prime consultant” means that the UBCM will:

- to assist local governments in preparation for the negotiations process;
- to provide advice as to the roles and positions of the principle parties to the negotiations;
- to assist in the development where required of local policy and procedures;
- to lend any other support or assistance required by the local government.

c. MEMORANDUM OF UNDERSTANDING

RECOMMENDATION #9:

THE UBCM SHOULD SIGN A MEMORANDUM OF UNDERSTANDING WITH THE FEDERAL AND PROVINCIAL GOVERNMENTS OUTLINING THE ROLE IT WILL PLAY IN THE LAND CLAIMS PROCESS.

The UBCM proposes to develop a Memorandum of Understanding with the federal and provincial governments providing that:

- a) In cooperation with the federal and provincial governments, establish a program of public education and information in all local communities.
- b) In cooperation with the federal and provincial governments it establish a mechanism and process for full public consultation and participation in the negotiation process, outside the negotiating table.
- c) The UBCM and local government establish a process for the identification and transmission into the community from the negotiating table of issues that may affect the local community, for the purposes of discussion and feedback to the negotiating table.
- d) A comprehensive, consensual dispute resolution mechanism be established in each community with local government taking a lead role.
- e) Neither the federal nor provincial governments will negotiate an item that may affect a local government without fully consulting that local government both before and after the negotiation.
- f) The federal and provincial governments will jointly fund all of the above.

APPENDIX “C”

MAYO AND SASKATOON - TWO BRIEF CASE STUDIES

There are two examples of the integration of settlement /reserve lands within municipal boundaries, which may be helpful in terms of identifying municipal interests and solutions in treaty negotiations.

Village of Mayo, Yukon

The first is the relationship between the Village of Mayo, Yukon Territory, and the Na Cho Ny'a'k Dun First Nation. The Yukon Indian Land Claims Framework Agreement sets the stage for a new and larger role in community development for this First Nation, along with the other elements of their treaty settlement (self-government, resources, land, etc.). A significant element of the Agreement will result in the First Nation being able to act as “local government”, with all the necessary regulatory powers and rights. The First Nation will also voluntarily comply with the Villages development regulations on the settlement lands which are within municipal boundaries, and together with the Village will develop common administrative and planning structures for those lands.

A Joint Planning Board with equal representation from each party will be formed to advise and assist the Village and First Nations Councils with respect to all matters pertaining to community planning and development. There will also be joint and equal representation on all Boards and Committees struck to address issues relating to socio-economic development, education, recreation, land use (including parks and commercial/industrial/institutional development). In place of taxation of First Nations land within municipal boundaries, the Village of Mayo currently receives grants-in-lieu from the federal government. This is expected to last for 15 years, at which time the First Nation will assume responsibility for payment of municipal taxes.

The City of Saskatoon, Saskatchewan

The second example is the agreement between the City of Saskatoon and the Muskeg Lake Band, where lands within the boundaries of the City have been purchased in partial fulfillment of the Band's Treaty Land Entitlement. The City will provide all normal City services to the reserve lands in return for an annual lump sum payment by the Band. The annual lump sum paid by the Band will be equivalent to the municipal and library portion of property taxes which would normally be paid were the land not a reserve.

The Muskeg Lake Band will be the sole taxing authority on the new reserve lands. All land use and development on the reserve will be in accordance with provincial laws and City bylaws. All applicable legislation (federal, provincial and City) will be enforced on the reserve lands and the City will enforce Band bylaws on reserve lands on behalf of the Band. The City and the Band will meet at least once a year in joint session to ensure harmonious operation of the Agreement and resolve any issues that may arise.