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# UBCM'S Response to Provincial Government

## Mandates: "BC's Approach to Treaty Settlements"

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### 1.0 INTRODUCTION

Over the past few years, the provincial government has been actively developing a set of province-wide mandates for treaty negotiations. Treaty mandates are developed by the Ministry of Aboriginal Affairs in conjunction with other provincial government ministries and agencies, and are reviewed and approved by Cabinet.

Mandates are the instructions that provide provincial negotiators with general directions and/or a range of policy options to be used in the course of finalizing treaties. It is the responsibility of the Minister of Aboriginal Affairs to ensure that the province's overall objectives are implemented during all treaty negotiations.

To date, the provincial government has developed four broad mandate or "context" papers<sup>1</sup>:

- B.C.'s Approach to Treaty Settlements: *Self-Government* (March 19, 1996);
- B.C.'s Approach to Treaty Settlements: *Lands and Resources* (June 12, 1996);
- B.C.'s Approach to Treaty Settlements: *Fiscal Arrangements* (March 28, 1996);
- B.C.'s Approach to Treaty Settlements, [*General Policies*] (October 8, 1996).

UBCM supports the need for treaties in British Columbia and, in general, endorses many of the principles and interests articulated in the provincial mandate papers.<sup>2</sup> The purpose of this paper is to advise the provincial government of areas where local governments disagree with the provincial mandates and where we require clarification or greater detail from the province on their policies. It is important that clarity is obtained now, to avoid waiting until Agreement in Principle (AIP) negotiations to discover just how the mandates will be applied.

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<sup>1</sup> The province has also developed more detailed mandates relating to specific negotiation topics. However, given the foundational nature of the "context" papers, and the fact that they are publicly available, they are the chosen focus of this response. Note that they are listed in the same order that they are examined in the paper.

<sup>2</sup> In this paper we have tried to capture the essence of each of the four provincial treaty mandates discussed. The complete text of the four papers can be obtained from the B.C. Ministry of Aboriginal Affairs and is also available on their web site (<http://www.aaf.gov.bc.ca>).

The areas or issues which are addressed in this policy paper can be classified into the following categories:

1. **Agreement** with the provincial mandate, but concern as to how the articulated principles and interests will be achieved. In these areas, we request that the province provide greater clarity as to how the interests/principles will be applied in practice. We believe that local governments should be provided with enhanced opportunities to explore with the province how the mandate principles can be translated into practical applications.
2. **Uncertainty** as to the provincial mandate, either because of vague wording in the mandate papers or conflicting statements between mandate papers. In these instances, we are seeking clarification of the provincial perspective.
3. **Disagreement** with the provincial mandate papers. These are issues which UBCM believes the province needs to re-visit. This policy paper describes local governments' interests and demonstrates how the provincial perspective fails to accommodate these interests.

This policy paper is based on UBCM's previous policy development and related work on interest development, in addition to survey responses and other direct input from members (Appendix A contains a list of documents and members consulted in the development this paper and Appendix B provides a flow chart showing the evolution of UBCM's aboriginal policy development process). Therefore, the advice we are providing to the provincial government is based on experience with the treaty process that local governments did not have when the mandates first became available. For this reason, the UBCM has waited until now to produce a fully developed response.

In the same way that the province's mandates are evolving documents, being constantly reviewed and refined, local governments' interests and perspectives are being refined as they become more familiar with treaty issues. This paper should be viewed as part of local governments' on-going response to treaty issues.

Finally, it should be noted that the views and recommendations put forward in this paper should not in any way prejudice other interests articulated or documents prepared by individual local governments or their Treaty Advisory Committees (TACs). Each TAC and local government has specific issues and concerns which need to be addressed at each of the treaty tables. It is the responsibility of the provincial government, in working with TACs, to ensure that their specific interests are understood and represented in the process.

## 2.0 SELF-GOVERNMENT MANDATE

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*British Columbia's Approach to Treaty Settlements: Self-government* (March 19, 1996) outlines the issues associated with negotiating aboriginal self-government through the treaty process.

The provincial mandate defines self-government as the “right of First Nations to manage their own affairs and exercise authority within the limits of their jurisdiction.”

The fundamental objective of aboriginal self-government, according to the mandate paper, is to increase aboriginal government authority without creating a myriad of new government structures and institutions throughout the province.

The mandate paper outlines the provincial approach in terms of:

- Provincial Interests in Self-Government;
- Structure of Aboriginal Government;
- Nature of Aboriginal Government Authority;
- Extent of Aboriginal Authority; and
- Intergovernmental Relations.

Provided below are the perspectives of local governments in each of these areas.

### 2.1 PROVINCIAL INTERESTS IN SELF-GOVERNMENT

The self-government mandate paper identifies eleven principles which will shape the province's negotiations on self-government. UBCM supports many of the provincial interests in self-government, as outlined in the mandate paper. The following interests are of particular importance to local governments:

- Clear and consistent standards will continue to apply throughout the province;
- Treaties will ensure clear, equitable and compatible policies among all governments;
- Treaties will result in clear jurisdictions with effective intergovernmental linkages and efficient administrative and management procedures; and
- All parties will have a clear understanding of their rights, responsibilities and accountabilities.

Local governments also agree with the province that treaties should result in a consistent and equitable approach to self-government throughout the province. UBCM has noted in the past and confirms here, that a variety of aboriginal government models with different standards and structures would be cumbersome and inefficient to deal with.

In general, UBCM believes the following to be important pre-requisites for ensuring that First Nations self-government can effectively regulate and deliver services and thus avoid any reduction of provincial standards:

- legal accountability;
- fiscal capacity;
- management capacity; and
- accountability to their constituents and non-aboriginal people affected by aboriginal self-government.

## **2.2 STRUCTURE OF ABORIGINAL GOVERNMENT**

A key issue relating to the structure of aboriginal government is how self-government will affect non-aboriginal people.

The provincial mandate notes that aboriginal governments will develop structures which will allow them to deal effectively with residents of Settlement Lands to the extent of their jurisdiction. It also states that the provincial interest is to see a means of representation for all those who are affected by decisions of aboriginal governments. Because of the province's stated interest, local governments believe that it should not be solely the responsibility of aboriginal governments to develop these structures.

In addition, the province indicates that its objective is to ensure that non-aboriginal residents living on, or moving on to Settlement Lands, will have a clear understanding of how the laws affect them. Here again, local governments strongly support the province's emphasis on clarity.

However, it is the UBCM's view that the provincial mandate fails to provide clear direction with respect to the following:

1. Which non-aboriginal interests will be represented in aboriginal government structures?
2. How vigorously is the province prepared to support representation by non-aboriginal people?
3. How, in practical terms, will these interests be represented?

### **Recommendation 1: Clarify Definition of Non-aboriginal Interests**

While local governments support many of the province's principles with respect to aboriginal self-government, we are unclear as to the province's definition of non-aboriginal interests.

Local governments believe that in this regard, the province's mandate should be clarified to include:

- non-aboriginal people who reside on Settlement Lands<sup>3</sup>;
- non-aboriginal owners of fee-simple lands that lie within Settlement Lands; and

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<sup>3</sup> "Treaty Settlement Lands" are defined by the province as "areas of land that will be owned and managed by the First Nation".

- third parties whose interests are directly impacted by activities on Settlement Lands.

In summary, the mandate paper is not explicit regarding the non-aboriginal interests which will be represented on Settlement Lands. Without further clarity, it is difficult to endorse the province's approach to ensuring representation for non-aboriginal people.

### **Recommendation 2: Clarify Provincial Commitment Respecting Non-aboriginal Representation**

Local governments also seek more information on the intent of the province to ensure that non-aboriginal interests are adequately represented in aboriginal self-government structures.

In the section of the provincial mandate describing the land-based jurisdictional model for aboriginal self-government, the province states that, "non-aboriginal residents will have mechanisms available to them to be able to influence decisions that will affect them."

Clearly, the ability to "influence" through means of an "advisory councils", and the ability to vote in an election are very different means of representation. UBCM suggests that the province replace "influence" with "participate" if they wish to convey a sense of commitment to the mandate.

In addition, local governments believe that the province should demonstrate their conviction on representation of non-aboriginal people by including it as a principle of negotiations rather than an interest.

### **Recommendation 3: Clarify Practical Application of Non-aboriginal Interests and Representation**

Local governments, while endorsing with qualifications the provincial interest in ensuring representation of all those affected by decisions of aboriginal governments, require more detail on how the proposed representation of non-aboriginal interests will be achieved.

For example:

- What mechanisms within aboriginal government structures are envisioned to protect the interests of non-aboriginal people?
- What mechanisms within aboriginal government structures are envisioned to allow for representation of non-aboriginal interests?
- Will non-aboriginal residents of Settlement Land be able to vote in aboriginal government elections and in referenda?

UBCM urges the province to provide specific details of the mechanisms which they will explore to ensure effective representation for non-aboriginal people.<sup>4</sup> As stated in the introduction to this paper, details on crucial matters such as this cannot wait until AIP negotiations to clarify how the mandate will be applied.

### **2.3 NATURE OF ABORIGINAL GOVERNMENT AUTHORITY**

The B.C. approach suggests three possible mechanisms to empower aboriginal governments:

1. unconditional aboriginal government authority, within the constitutional framework;
2. limited aboriginal authority subject to conditions; and
3. delegated aboriginal government authority whereby the province would retain ultimate control over the program area.

The province does not identify which of the above models would be used to transfer what authorities. UBCM cannot endorse these provincial statements unless further clarification is provided. In the absence of clarity respecting aboriginal government authority, local governments have begun the process of reviewing their own interests and have adopted the following perspectives on self-government.

#### **Recommendation 4: Define Aboriginal Authorities and Limit Self-Government Provisions Contained in Treaties**

UBCM requests that the province clearly define the authorities which will be considered to be part of aboriginal self-government and the model proposed for transferring the authority in each case. UBCM favours the use of either the delegated authority model or limited authority subject to clearly defined conditions.

UBCM recognizes that “self-government” for aboriginal people may be a dynamic, evolving form of government as it is for local governments. We suggest therefore that careful consideration be given to which aspects of self-government should be contained in treaties and which should be contained in parallel agreements and accords. For example, the broad principles and goals related to aboriginal self-government could be entrenched in treaties, while details on particular aspects of self-government, such as policing powers, may be better suited to separate agreements. This would avoid the need for full-scale treaty amendments as aboriginal self-government evolves, and as adjustments related to particular self-government powers are needed.

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<sup>4</sup> The Sechelt Indian Government District’s Advisory Council is cited as a model for consideration of non-aboriginal interests within aboriginal government structures. Development and in-depth discussion of other models and alternatives are needed.

## **2.4 EXTENT OF ABORIGINAL AUTHORITY: LAND-BASED JURISDICTION**

The province describes the extent of aboriginal authority in terms of its relationship to land.

The mandate paper indicates that self-government will be limited to Settlement Lands but also, in relation to aboriginal culture and society, refers to the extent of First Nations authority outside Settlement Lands. The province's October 1996 mandate paper, *B.C.'s Approach to Treaty Settlements*, does not provide greater detail on the extent of aboriginal authority off Settlement Lands when it states that, "treaties will recognize the importance of including First Nations in some of the decision-making with respect to public lands and resources."

UBCM is concerned that exercise of powers off Settlement Land not result in pockets of extraterritorial jurisdiction within local government boundaries, particularly in urban areas.

### **Recommendation 5: Ensure Aboriginal Authority Limited to Settlement Lands**

Local governments seek clarification from the province of its intentions regarding aboriginal authority off Settlement Lands. UBCM believes that the certainty which all British Columbians seek can best be assured if First Nations are prepared to receive constitutionally protected treaty authority and a recognition of aboriginal rights on Settlement Lands, in exchange for their undefined aboriginal rights on other Crown and private lands.

Local governments acknowledge that both aboriginal people and non-aboriginal people will have specific cultural/heritage resources which they wish to protect and that these may be situated on or off Settlement Lands. Local governments also note that it is important to respect these sites and, as a consequence, supports the selection and designation of culturally specific sites, within very specific parameters. Therefore, local governments support First Nations, as part of their land selection process, in identifying and selecting culturally specific sites which may not be contiguous to their Settlement Lands and urges the provincial government to develop realistic parameters to guide this process.

## **2.5 EXTENT OF ABORIGINAL AUTHORITY : STANDARDS**

In the *Treaty Advisory Committee (TAC) Interest Development - Summary Report* (May 1997), local governments expressed the importance of maintaining consistent provincial standards and regulations on all lands in B.C. TACs throughout the province indicated that consistency was important from the perspective of maximizing efficiency, facilitating public safety, ensuring environmental protection and protecting public health.

UBCM therefore supports the province's overall approach to ensure the maintenance of basic provincial standards throughout the province. We acknowledge, and are pleased to see the province recognize the importance of ensuring the health, safety and well-being of all residents, ensuring comparable levels of services and providing all parties with a clear understanding of their rights,

responsibilities and accountabilities. However, and as noted below, we seek more details with respect to application of environmental standards.

### **Recommendation 6: Clarity Regarding Environmental Standards**

Since pollution knows no boundaries, local governments in B.C. strongly support the uniform application of federal and provincial environmental standards on all lands regardless of ownership. However, in reviewing the provincial mandates, local governments require clarification on the extent of the province's interest in ensuring environmental standards are consistently applied.

Specifically, in the mandate *British Columbia's Approach to Treaty Settlements*, it is noted that the province will "ensure the maintenance of province-wide standards in treaty settlements in areas such as education . . . environmental protection and assessment, fish and wildlife management and land-use planning and zoning." Yet in the self-government mandate paper it is stated that the "Province will ensure a minimum level of standards when provincial funding is provided to the aboriginal government for the delivery of programs."

UBCM is committed to ensuring that minimum provincial standards be maintained where they exist, regardless of funding formulas. We therefore request that the provincial government clarify its mandate and fully describe its strategy to ensure that environmental standards are harmonized throughout the province.

## **2.6 INTERGOVERNMENTAL RELATIONS**

The provincial policy states that, "treaties will clarify structures and processes that will serve as efficient forums for intergovernmental consultation and decision-making." The mandate goes on to say that linkages will be necessary between aboriginal and local governments for the coordination of:

- regional planning, zoning and growth management initiatives;
- planning and construction of infrastructure;
- local service delivery;
- property taxation; and
- standards with respect to health and safety.

UBCM agrees with the provincial objective to achieve coordination in these areas.

### **Recommendation 7: Need for Government Clarification/Analysis of Intergovernmental Relations**

Local governments agree with development of linkages and coordination with respect to the areas listed above, but requests that the province provide clarification of how this objective will be attained. For instance, local governments, which are most familiar with the critical issues which will impact their operations, are not

aware of the linkages which are proposed or how treaties will clarify structures and promote efficient forums.

Therefore, UBCM urges the province to begin a concerted effort to explore, with representatives of local governments and their Treaty Advisory Committees, how these objectives can be achieved. Once again, we emphasize that this needs to be done well before any AIPs are finalized.

### **Recommendation 8: Explore Opportunities for Developing Compatibility between Local and Aboriginal Governments**

Local governments' interests are to achieve mutual understanding and certainty for all parties through cooperation, consultation and access to dispute resolution mechanisms with First Nations governments. In terms of governance, local governments also recognize that aboriginal peoples may have different priorities as compared to local governments.

For local governments, aboriginal self-government raises a number of important and complex issues in terms of defining jurisdictions, fiscal arrangements, powers and communications as they relate to planning, infrastructure, local service delivery, property taxation and standards.

Local governments are concerned that the creation of distinct aboriginal governments has the potential of increasing jurisdictional fragmentation. Although supporting the province's objective of ensuring clearly defined relationships and mechanisms between local governments and First Nations, local governments view the provincial objectives as achievable only if both First Nations and local governments have compatible jurisdiction and authority.

UBCM therefore recommends that the province, in concert with local governments and First Nations, explore mechanisms to provide them with opportunities to develop equivalent and compatible functions as will be provided to aboriginal governments.<sup>5</sup>

### **Recommendation 9: Ensure Fairness in Payment for Services**

The strict budgetary process required by the Municipal Act ensures fiscal stability is of particular importance to local governments. In addition, local governments are particularly sensitive to increasing the tax burden for individuals or property taxpayers.

Local governments therefore wish to ensure that First Nations provide fair payment for services they receive from local governments. The provincial mandate papers suggest that this is important but they fail to provide clarity in terms of how this will be achieved.

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<sup>5</sup> The treaty process along with current initiatives to revise the Municipal Act, provide the province with a unique set of circumstances to develop a "Local Government Act" which would ensure compatibility between aboriginal self-government and local government and achieve the principles established in the mandate papers.

Therefore, UBCM recommends that the province enhance its consultation with local governments in order to design effective approaches. For instance, local governments suggest that an effective mechanism to ensure fair payment for services is for Settlement Lands and private lands to be assessed by a compatible assessment authority so that both contribute to services received on an equitable basis.

### **3.0 BC's APPROACH TO TREATY SETTLEMENTS: LANDS AND RESOURCES**

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*British Columbia's Approach to Treaty Settlements: Lands and Resources* (June 12, 1996) outlines the framework within which the province is approaching the lands and resources component of treaty negotiations. The mandate provides the province's perspectives on:

- Land Ownership;
- Amount of Land;
- Framework for the Negotiation of Settlement Lands;<sup>6</sup>
- Access To and Across Settlement Lands;
- Co-operative Management and Land Use Planning;
- Environmental Assessment and Protection;
- Compensation;
- Overlapping Traditional Territories; and
- Certainty.

Provided below are the responses of local governments to the province's mandates for each of the areas.

#### **3.1 LAND OWNERSHIP**

The province believes that most treaty agreements will include an area of land that will be owned and managed by the First Nation, to be known as "Treaty Settlement Lands." Within these Settlement Lands the province notes these general principles:

1. Ownership of Settlement Lands will remain part of the land base of B.C. and treaties will not create separate countries;
2. Treaties will define the areas of specific First Nation jurisdiction over the land;
3. Settlement Lands will likely be held communally by a First Nation, in a manner equivalent to fee-simple;
4. Ownership of Settlement Land will also include ownership of sub-surface resources by First Nations; and
5. Treaties may also include some clearly defined rights that apply on Crown lands (off Settlement Lands), such as rights to practice traditional activities and a role in some planning decisions or in the management of resources.

Local governments accept #1 and #3 above; that is, that treaty settlements will include the transfer of lands to First Nations based on the fee-simple model. With respect to point #2, in our response to the self-government mandate we have

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<sup>6</sup> Includes: Fee-simple Lands; Private Interests on Crown Lands; Land Use Planning; Parks and Protected Areas; Transportation/Utility Corridors; Representative Land; Crown Land within the Agricultural Land Reserve; Local Government.

outlined our interest in self-government arrangements being made through separate agreements outside treaties. Local governments' concerns respecting the province's approach summarized in the fourth and fifth points are discussed below.

**Recommendation 10: Re-assess Transfer of Sub-surface Ownership to First Nations**

The province states that it expects that Treaty Settlement Lands will be held in a manner equivalent to fee-simple and, just as with fee-simple lands, First Nations' ownership will not be absolute or unconditional. In keeping with this statement, local governments expect that the ownership of sub-surface resources will remain with the Crown on and off Settlement lands, as in all other cases. Local governments acknowledge that First Nations need to be provided with the ability to become economically self-sufficient, and therefore support negotiations on the transfer of sub-surface resource royalties to First Nations, as part of the overall treaty settlement. That is, where sub-surfaces resources are included in a treaty, they should be recognized as an important component of the overall financial settlement.

**Recommendation 11: Ensure Aboriginal Authority Limited to Settlement Land**

Local governments have concerns with the province's statement that treaties "may include some clearly defined rights that apply on Crown lands, such as rights to practise traditional activities, and/or a role in some planning decisions or in the management of resources."

UBCM believes that the certainty which all British Columbians are seeking can best be assured through an exchange of aboriginal rights for compensation and clearly defined treaty rights. It is important that the aboriginal rights of one First Nation outside Settlement Lands not interfere with the rights of another First Nation nor with the rights of non-aboriginal British Columbians. Therefore, local governments believe treaty rights should be limited to Settlement Land. With regard to First Nations' practice of traditional activities and participation in the management and planning of resources, this should take place within existing provincial processes and legislative frameworks.

UBCM urges the province to review its mandate and provide local governments with assurance that the certainty and equality all British Columbians seek will be provided through the provincial approach. Recommendations and comments on this issue have also been put forward during the discussion on self-government, earlier in this paper (see page 3).

### **3.2 AMOUNT OF LAND**

The province states that in principle, existing Indian Reserves will be included as part of Settlement Lands and that the total land held by First Nations, including the area of present Indian Reserve lands, will be less than 5 percent of the provincial

land base. The mandate then proceeds to identify a list of factors which will be considered in determining the quantum and location of Settlement Lands.

On the whole, local governments are comfortable with the province's comments on the factors which will be considered in determining the amount of land transferred to First Nations. However, we have as described below, local governments have two specific concerns regarding the province's approach.

Firstly, we wish to ensure that the province approaches the land quantum issue with flexibility and understanding of the interests of local governments, third parties and First Nations. Secondly, local governments seek clarification and transparency on the process by which land could be selected as Settlement Land.

### **Recommendation 12: Ensure a Flexible and Creative Approach to Issues of Land Quantum**

UBCM is supportive of interest-based negotiations and endorses the concept of finding win-win solutions which take into consideration the interests of all negotiating parties. However, in preparing mandates, we believe the province should focus on determining the interests of all British Columbians. Therefore, when the province's mandate states that negotiations with respect to the amount of land allocated to Settlement Lands will consider the objectives of the First Nation, local governments require clarification of what is intended.

Specifically, we wish to encourage the province to consider approaches recognized by local governments and third parties such as focusing on cash instead of land as the major component of the treaty. In addition, rather than focusing on the land quantum, consideration should be given to ensuring that the treaty process results in First Nations self-sufficiency, and at the same time ensuring that local governments and third parties are minimally impacted. We therefore recommend that the province approach the issue of the amount of land in a flexible and creative manner.

### **Recommendation 13: Enhance Transparency in Determining Land Selection**

Local governments also have concerns with the land selection process. Specifically, we wish to ensure that standardised formulas are not applied across the province and that our communities will be sustainable in a post-treaty environment.

We therefore recommend that local governments be provided with greater input into land selection issues, and that these issues be dealt with earlier in the negotiation process. This will ensure opportunities for regional variations in terms of the balance between land and cash; provide the flexibility required to ensure that community issues will be addressed in the land selection process; and allow for the harmonization of Settlement Land with existing land use plans. (see Recommendation 15 below).

This perspective is consistent with Recommendations 22 and 23, cited in the Fiscal Arrangements section which call for increased understanding and transparency of

the land selection model and the need for socio-economic analysis of the impacts of treaties on a region-by-region basis.

### **3.3 FRAMEWORK FOR THE NEGOTIATION OF SETTLEMENT LANDS**

In this section of the Lands and Resources Mandate, the province articulates its negotiating interests on:

- fee-simple lands;
- private interests on Crown land, (leases, licences and tenures);
- land use planning;
- parks and protected areas;
- local government;
- transportation/utility corridors;
- Crown corporation interests in Crown land;
- representative land<sup>7</sup>; and
- Crown land within the Agricultural Land Reserve.

In general, there is support among local governments for the mandates as they pertain to: fee-simple lands; parks and protected areas; local governments; transportation/utility corridors; Crown corporation interests in Crown land; representative land; and Crown land within the Agricultural Land Reserve.

Areas on which local governments wish to comment include:

- a) Negotiation of Settlement Land: Private Interests on Crown Lands; and
- b) Negotiation of Settlement Lands: Land Use Planning.

#### **a) Negotiation of Settlement Lands: Private Interests on Crown Lands**

In the section of the mandate paper dealing with private interests on Crown land, the province notes that it will respect the terms of all legal interests in Crown lands and resources, including leases and licences. The mandate indicates that disruption to existing interests will be avoided wherever possible and that treaty negotiators will consult with holders of these interests to ensure that the terms and conditions of the tenures are met.

#### **Recommendation 14: Enhance Commitment to Minimize Disruption to Third Parties**

UBCM supports the intent of this proposed framework but wishes to emphasize the need to minimize disruptions to resource-based industries. That is, given the importance of resource-based industries to communities, UBCM urges the province

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<sup>7</sup> by “representative” land, the province is referring to the principle that treaty Settlement Land should be representative of the terrain and resource values in the area. In order to ensure that settlements are fair to aboriginal and non-aboriginal British Columbians, the province states that some balancing of terrain and land values will be required.

to make a stronger commitment to avoiding disruptions to businesses, individual jobs and communities.

### **b) Negotiation of Settlement Lands: Land-Use Planning**

The mandate states that provincial land-use planning activities are undertaken without prejudice to aboriginal rights and treaty negotiations and that the province will negotiate to maintain land-use plans and to uphold the opportunities for sustainable economic development represented in these plans.

Although local governments support the province's intent, there remains significant skepticism regarding the province's ability to fulfill this commitment.

### **Recommendation 15: Use Existing Land-Use Plans as the Foundation for Land Selection**

Local governments have an interest in, and are involved in a wide range of land-use planning activities including Official Community Plans, Regional Growth Strategies and Land and Resource Management Plans. These land-use plans were adopted through extensive planning and public consultation.

Local governments urge the province to respect the extensive consultation process and consensus building which have created land-use plans. Therefore, where approved land-use plans exist, they should form the basis of the province's approach to negotiations of land and resources.

## **3.4 ACCESS TO AND ACROSS SETTLEMENT LANDS**

Local governments agree with the province's mandate regarding access to and across Settlement Lands. Provincial objectives include: free movement of people throughout the province; reasonable access to land and resources for hunting, fishing and recreational opportunities; and the ability to acquire new rights-of-way on or through Settlement Lands for public purposes.

### **Recommendation 16: Clarification of Access Issues**

In providing services to communities, local governments require access to watersheds, waterlines, solid-waste disposal sites and other infrastructure which may be located on Settlement Lands or may be accessible only through Settlement Lands. Access to natural areas for recreational activities including hunting, fishing and hiking is also important for residents of local communities.

Local governments understand that ownership of Settlement Lands will be in a manner equivalent to fee-simple and notes the difficulties associated with ensuring access through fee-simple lands. As a result, UBCM is seeking clarification on how the province will guarantee access on fee-simple Settlement Lands for specific government and public purposes.

### **3.5 CO-OPERATIVE MANAGEMENT AND LAND USE PLANNING**

Local governments share the provincial government's interest in ensuring that the treaty process will result in cooperative management activities between First Nations and local governments in general, and in particular ensuring that local zoning or development decisions consider the interests of adjacent communities. However, as noted below, local governments are uncertain as to how these objectives will be achieved.

#### **Recommendation 17: Need for Clarification on the Framework for Co-operative Management**

UBCM has consistently identified the need to develop clearly defined relationships and mechanisms for cooperation between local governments and First Nations through the treaty process. This would include cooperation, consultation and dispute resolution in order to achieve mutual understanding and certainty for all parties.

However, local governments are not aware of the proposed framework, mechanism or structures proposed by the province and how they will ensure that planning and management activities will be coordinated. Therefore we urge the province, as we have in Recommendation 7 in the Self-Government section, to begin a concerted effort to work with local governments and their Treaty Advisory Committees on how these objectives can be achieved. In our view, this is an item that would benefit from discussion at proposed regional negotiation tables.

### **3.6 ENVIRONMENTAL ASSESSMENT AND PLANNING**

The province makes the commitment in this mandate paper that First Nations environmental assessment requirements must be consistent with provincial requirements, participation by the affected public and stakeholders will be guaranteed, and the province will retain the ability to prevent a project or stop an operation that could have significant adverse impacts for conservation, safety or public interest.

Environmental issues also are addressed in other mandate papers including *British Columbia's Approach to Treaty Settlements: self-government* (March 19, 1996) and *British Columbia's Approach to Treaty Settlements*: (October 8, 1996). In our response to the Self-Government mandate (Recommendation 6: Need For Clarification Regarding Environmental Standards), we noted that local governments are seeking clarification on the province's approach. These concerns are reiterated below.

#### **Recommendation 18: Consolidate and Harmonize Approach to Environmental Regulations, Standards, Assessments and Planning**

We recommend that the province review its mandates on environmental issues and consolidate a response which ensures that each of the mandate papers are consistent. It is our hope and understanding that the treaty process will result in harmonization between Settlement Lands and non-Settlement Lands thereby creating a seamless border between First Nations and local governments in terms of environmental regulations, standards, assessments and planning.

Local governments seek assurances that if First Nations are provided with jurisdiction in this area that they will be required to “meet or beat” applicable provincial and federal regulations.

### **3.7 COMPENSATION**

The province notes that disruption of existing interests will be avoided wherever possible and that where adverse impacts are unavoidable, consistent provincial guidelines will be applied to ensure fair and timely compensation.

UBCM agrees with the province on the need to minimize wherever possible, the disruption to existing interests. Of particular concern to local governments are the potential impacts to resource industries which rely on access to the lands and resources. It is for this reason that our Recommendation 12 suggested that, wherever possible, the province examine opportunities to reduce the quantum of land transferred to Settlement Lands and increase the amount of cash.

However, local governments wish to emphasize the importance of ensuring fair compensation values for third parties and local communities impacted by treaties.

#### **Recommendation 19: Adopt a Fair and Transparent Policy for Compensation to Local Communities and Third Parties**

If industries and communities impacted by treaty settlements are expected to survive, they must be provided with fair compensation which will allow them to adjust to change.<sup>8</sup>

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. Budgetary stability is a primary interest of local governments.

To this end, we suggest that the province develop a transparent policy rather than guidelines to address this issue, and in doing so ensure that opportunities are afforded for local government and third-party input into its development.

### **3.8 OVERLAPPING TRADITIONAL TERRITORIES**

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<sup>8</sup> Local governments expect that any interim measures agreements that have been reached between government and First Nations with respect to management or use of lands or resources, will not be included within treaties “as is”, but that they will be replaced by the agreements on lands and resources negotiated through the treaty process.

The provincial mandate states that their approach will be based on the following principles:

- As set out in the B.C. Claims Task Force report, First Nations should resolve issues of overlaps between themselves.
- The province will not agree to a Treaty Settlement Land package that includes land subject to an overlap dispute, unless an accord has been reached among the First Nations concerned.
- The province may agree to non-exclusive arrangements, such as provisions for hunting or fishing, in the area of an overlap dispute.

Local governments concur with this approach. If a treaty effectively recognizes aboriginal rights to an area, instead of a surrender of those rights as the legal method of achieving certainty, then it will be more critical than ever to resolve overlapping claims prior to settling any treaty, to avoid having more than one First Nation with recognized but undefined aboriginal rights to the same territory. Such multiple rights leads to significant inter-jurisdictional friction, and significant uncertainty.

#### **Recommendation 20: Maintain Current Provincial Approach to Overlaps**

UBCM request that the provincial government resolve overlaps or develop a process to resolve overlaps before final treaty.

### **3.9 CERTAINTY**

The province indicates that its primary objective in treaty negotiations is to resolve current legal uncertainties regarding rights to lands and resources. Specifically, the mandate indicates that treaties will replace the existing legal requirements set out in Sparrow and Delgamuukw with a more workable, efficient and effective system.

In 1995, the UBCM's policy paper, *Achieving Certainty in Treaty Negotiations* established that certainty is a primary UBCM interest. The paper recommended that the most acceptable model for achieving certainty is through the current policy which involves an exchange of aboriginal rights for compensation and clearly defined treaty rights. The 1996 *UBCM Response to The Federal Proposed Principles For The Achievement of Certainty* further advanced this view. Treaty certainty should also be encouraged through clarity of treaty terms and efficient procedures to resolve disputes concerning treaty interpretation. Local governments believe that British Columbians should not be expected to accept a level of certainty that is less than what exists in treaties elsewhere in Canada.

#### **Recommendation 21: Adopt a Certainty Policy Which Achieves Certainty**

It is recommended that certainty of rights and obligations be an over-riding principle in treaty negotiations and that this be achieved by ensuring that the province's mandate require the exchange of unspecified aboriginal rights as has been the case in other Canadian treaties.



## 4.0 FISCAL ARRANGEMENTS MANDATE

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*British Columbia's Approach to Treaty Settlements: Fiscal Arrangements* (March 28, 1996) outlines the provincial perspective on financial envelopes (land, cash and resources), funding arrangements between governments and compensation arrangements with third parties. The mandate paper addresses these issues by covering the following topic areas:

- Financial Controls;
- Fiscal Arrangements Among Governments;
- First Nations Revenue Sources;
- Economic Development Opportunities; and
- Financial Arrangements With Third Parties.

In general, we note that the overall vagueness of the paper, especially in regards to financial controls, makes it difficult to endorse the province's current mandate.

### 4.1 FINANCIAL CONTROLS

The majority of the province's mandate deals with fiscal arrangements among governments, and very little is said regarding "financial controls", or the methods the province will use to stay within its overall financial planning envelope for treaties. The province confirms that treaties must be affordable to British Columbians, but notes that it has not yet defined the specifics of the "financial planning envelope." The mandate paper indicates that the province will be developing guidelines which will set out the method of allocating benefits across treaties, and how the province will address the manner in which the components of treaty settlements (land, cash and resources) may be interchanged.

UBCM understands and supports the concept of a formula which will require treaties across the province to fall within a funding envelope. We acknowledge and accept the province's approach that treaties should be flexible and incorporate a number of factors and options, including terms of land quantum, cash and resources. However, and as recommended below, local governments are seeking a greater degree of firmness in terms of the costs associated with treaty settlements.

#### **Recommendation 22: Clarify Proposed Financial Controls and Guidelines**

It is not evident in the mandate paper how the provincial government will achieve its objective of affordable treaties. As noted in the mandate, guidelines on financial controls will be developed. Local governments are concerned that provincial negotiators are moving to the completion of the Agreement in Principle stage in many treaties without the benefit of either a clear provincial mandate on financial controls or one which has been subject to review by local governments or other British Columbians.

UBCM therefore urges the province to provide greater detail and transparency in general, and clarification on the guidelines and financial controls it will use for

individual treaty settlements, and provide this information before more Agreements in Principle are concluded.

We also urge the province to indicate the process by which it will designate economic value to parcels of land being considered for treaty settlements. We believe that it is appropriate to apply real market values to land and believe that the process of land assessment should be dealt with in a transparent manner.

### **Recommendation 23: Need for Treaty Specific Socio-Economic Analyses**

UBCM also wishes to ensure that the treaty process and treaty settlements do not result in undue impacts on any one region. To this end, we urge the province, as part of the treaty negotiation process, to undertake independent socio-economic impact assessments during the AIP stage of negotiations for each of the proposed treaties. The assessments would review the potential local, regional and provincial level impacts of various land, resources and cash scenarios. These assessments should be made available to local governments as part of the province's commitment to transparency.

## **4.2 FISCAL ARRANGEMENTS AMONG GOVERNMENTS**

This section of the fiscal arrangements mandate focuses on funding provided to First Nations governments for their operation. In the introduction to this section, the province states that the level of funding will depend on the responsibilities and costs of a First Nations government. In addition, "the First Nation's own ability to fund its operations will be considered before any funding is provided by the senior governments." The mandate also notes that the fiscal arrangements will not create future obligations to the province and that they will be adjustable in the future.

As explained in Recommendation 8 in the Self-Government section, UBCM believes that aboriginal governments and local governments should be compatible with respect to jurisdiction and authority. As a result, it is expected that there will be compatibility and equivalency in funding levels received by both local and aboriginal governments.

### **Recommendation 24: Need for Clarity, Compatibility and Equivalency in Funding**

The province suggests that First Nations funding will depend on the revenue-generating *capacity* of the First Nation, and the services it provides. Local governments expect that the same funding principles which apply to local governments will apply to aboriginal governments.

It is our view that the negotiation of self-government powers should not create an obligation to fund First Nation governments. UBCM recommends that the province not provide levels of funding beyond those which it would provide for any other community.

### **4.3 FIRST NATIONS REVENUE SOURCES**

In this section of the Fiscal Arrangements Mandate, the province articulates its negotiating interests on:

- a) Taxation Revenues;
- b) Resource Revenue Sharing; and
- c) Program Funding Transfers.

#### **a) Taxation Revenues**

The province indicates in its mandate that any First Nation's tax system which affects non-members must be comparable to provincial tax system, and apply equally to First Nations members and non-members. They also state that "tax havens" that attract investment away from other parts of the province will not be acceptable. Finally, the province intends that Indian Act tax exemptions for aboriginal people will be phased out. Local governments support these approaches to taxation issues.

Local governments disagree with the province's statement in the mandate paper that those revenues collected as the Indian Act tax exemptions are phased out, should be applied directly to help fund First Nation governments.

#### **Recommendation 25: Clarify Funding Sources for Aboriginal Governments**

We understand from the provincial mandate that the revenues collected from Settlement Lands by federal and provincial governments will be specifically designated to support First Nation governments and will not be included as part of general revenues. UBCM is interested that taxes collected as a result of the phase out of Indian Act provisions be treated in a similar manner as taxes collected off Settlement Lands.

#### **b) Resource Revenue Sharing**

The Resource Revenue Sharing section reiterates the province's position that First Nations will own the resources on and under treaty Settlement Lands and the royalties from those resources will belong to the First Nation. As discussed earlier in reference to the Lands and Resources mandate paper, local governments do not endorse the provision of ownership rights to sub-surface resources for aboriginal governments (see Recommendation 10). Therefore local governments disagree with the province's position on providing First Nations with blanket ownership of sub-surface resources.

#### **c) Program Funding Transfers**

On Program Funding Transfers the province indicates that program transfers must:

- Maintain the principle that the Government of Canada has primary responsibility for programs and services for Indian people;
- Ensure that basic standards can be maintained for the program and service powers being transferred; and
- Occur only where funding is sufficient to make it practical, there is delivery capacity and there are no significant diseconomies of scale.

Local governments' response to the provincial perspective on Program Funding Transfers is reflected in our comments provided during our discussion on Self-Government. That is, local governments wish to ensure, among other interests, that aboriginal government does not result in duplication of services, difficulties in harmonizing standards and regulations and complexities in arranging servicing and infrastructure agreements.

For these reasons we have recommended in previous sections and reiterate here, that aboriginal self-government and local governments be provided with compatible jurisdictions and authorities.

The other comment we have on the Program Funding Transfers, as noted below, relates to the continuation of the federal responsibility for programs and services to First Nations.

### **Recommendation 26: Clarification of Responsibility for First Nations Programs and Services**

In the discussion on Program Funding Transfers, the province refers to the continuation of the federal government's primary responsibility for programs and services for aboriginal peoples. UBCM is seeking clarification of what is intended by the province in this instance.

We would suggest that in keeping with the desire of First Nations for control of their lands, affairs and communities, that they have primary responsibility for delivering their programs and services. In an emergency situation, where a First Nation is unable to continue to provide the programs and services, the federal government should assume primary funding responsibility until the First Nation's service delivery capacity is restored.

## **4.4 ECONOMIC DEVELOPMENT OPPORTUNITIES**

The mandate paper notes that the "land, cash and natural resources component of treaty settlements will provide First Nations with economic opportunities . . ." and "where they are lacking, or when a First Nation requests it, economic opportunities may be negotiated separately." The mandate also notes that the province "recognizes that excessively high levels of economic development funding for aboriginal communities could have the same effect as tax havens -- that is, they could create adverse effects on adjacent communities."

As noted below, although local governments hope that treaties will assist aboriginal communities to become more economically self-sufficient, it is important to maintain equivalency between local governments and self-government.

**Recommendation 27: Ensure Congruency between Aboriginal and Local Governments for Economic Development Funding**

Long-term sustainable economic health must be achieved through actions to support the development of aboriginal self-sufficiency. Local governments do not support the entrenchment of economic development funding for aboriginal governments through treaties or in separate agreements. Funding for economic development should be made available to local and aboriginal governments on an equal basis, and to non-aboriginal and aboriginal people alike, whether they reside on Settlement Lands or not.

**4.5 FINANCIAL ARRANGEMENTS WITH THIRD PARTIES**

The mandate paper explains that private lands are not on the negotiating table, and that disruption of private interests in Crown land will be avoided wherever possible. These objectives will be achieved by:

- transferring the interest along with the land to the First Nation;
- providing additional cash to allow the First Nation to purchase resource interests; and/or
- providing compensation to third parties.

The province also notes that "where an existing interest will be affected, consistent province-wide principles for compensation will apply." UBCM supports the province's perspective regarding private lands and the need to avoid the disruption of private interests in Crown lands wherever possible.

As stated in Recommendation 19, and reiterated below, UBCM emphasizes the importance of adopting fair and transparent third-party compensation policies.

**Recommendation 28: Ensure That Third Parties are Provided with Fair Compensation**

Many communities, particularly those in rural areas, are dependent upon resource-based industries. Without access to resources, many communities will not be able to remain economically viable. Therefore it is imperative to local governments and their constituents that treaty settlements not jeopardize the economic viability of their communities. As recommended earlier in this section (Recommendation 23), independent socio-economic assessments of the impacts of treaty settlements are important considerations which will allow communities to better understand the impacts on their communities.

In addition, the province indicates in the *Lands and Resources Mandate* that it will be developing guidelines on third-party compensation, and in the *Fiscal Arrangements Mandate* it is stated that province-wide principles will apply.

As noted in Recommendation 19, we suggest that the province develop a transparent policy rather than guidelines or principles to address this issue, and in doing so ensure that opportunities are afforded for local government and third-party input into its development. We also urge the province to proceed with developing this policy in the very near future, so that resource interests will be provided with an opportunity to review and comment on compensation issues.

## **5.0 BC's APPROACH TO TREATY SETTLEMENTS: (GENERAL POLICIES)**

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*British Columbia's Approach to Treaty Settlements* (October 8, 1996) describes the province's general policies regarding the treaty process. Many aspects of this mandate are included in the other three mandate papers which were previously reviewed (Self-Government, Lands and Resources and Fiscal Arrangements). This review will therefore discuss only those issues which have not previously been addressed which include:

- Principles to Guide Treaty Negotiations; and
- Public Participation and Consultation.

Provided below are the perspectives of local governments on both of these areas.

### **5.1 PRINCIPLES TO GUIDE TREATY NEGOTIATIONS**

The province's mandate provides a broad perspective on the government's vision and in doing so, lists numerous principles which it sees as being achieved through the successful completion of modern treaties. As noted below, in general we support the guiding principles. Provided below are our comments on what these principles mean to local governments.

#### **a) Jurisdictional Certainty, Stability and Clarity**

The mandate indicates that treaties will resolve current legal uncertainties regarding rights to the use of Crown lands and resources in B.C. Local governments endorse this principle and recognizes that one of the fundamental objectives of treaty settlements is to provide certainty about aboriginal rights both on and off Settlement Lands.

#### **b) Citizenship and Balancing of Rights and Opportunities**

The mandate notes that treaties will fit within the Canadian Constitution which recognizes and protects the individual rights of all citizens. UBCM strongly endorses this concept as a guiding principle.

#### **c) Socio-Economic Sustainability**

The mandate notes that treaties will support and provide for mechanisms that will allow for First Nations to participate more fully in the economy of B.C. in a manner that is responsive to their needs and culture. Local governments support this statement and hope that treaties will assist aboriginal communities improve their economy and become fully engaged in the province's economy.

**Recommendation 29: Socio-Economic Sustainability Must Be Maintained For Local Governments and Third Parties**

It is important to recognize that First Nations socio-economic sustainability is not achieved at the expense of local governments and third parties. It is therefore critical that treaties result in funding and jurisdictional compatibility between local governments and First Nations and that impacts to third parties are minimized.

**d) Affordability**

The mandate states that negotiations will result in treaties that B.C. can afford, that enhance the province's overall economic strength and diversity and maintain the quality of programs and services offered through B.C.

**Recommendation 30: Substantiate Principle That Settlements Will Be Affordable**

Local governments share the province's aspiration that treaties will enhance the province's overall economic strength but we must expand on the government's comments by noting that affordability must also be demonstrated in an objective and transparent manner.

As discussed elsewhere in this paper, numerous issues remain undefined or require clarification. Until these issues are defined, it is impossible for local governments to predict that treaties will make the province economically stronger. For example: the province has not been able to demonstrate how it will achieve certainty on Crown lands; the extent of compensation it will provide to third parties; the amount of royalties lost as a result the transfer of lands to First Nations; or the amount of land and cash it proposes to include in settlements. Once these issues are addressed it will be possible to comment on the affordability of treaties.

**e) Equity and Fairness**

The province's mandate notes that treaties will aim to ensure fairness of opportunities for all residents to enjoy and benefit from natural resources in the province. All residents of B.C. must have access to programs and services that meet established basic standards.

**Recommendation 31: Ensure Equity and Fairness for Aboriginal and Non-Aboriginal Peoples On and Off Settlement Lands**

Local governments concur that equity and fairness are fundamental and essential guiding principles. For local governments, it is important to expand on this principle by noting that equity and fairness must apply in a reciprocal fashion to aboriginal and non-aboriginal peoples both on and off Settlement Lands.

**f) Recognition and Respect**

The mandate indicates that treaties will recognize and respect the existing legal rights of all citizens. Existing aboriginal rights will be respected and defined through treaties.

**Recommendation 32: Ensure Certainty on Crown Lands**

Achieving certainty and finality is a primary interest of local governments in B.C. Details on the UBCM approach to this issue are provided in the 1995 policy paper, *Achieving Certainty in Treaty Negotiations*.

**g) Conservation and Sound Management of Resources:**

The province's mandate indicates that treaties will ensure the province's ability to manage public lands and resources through efficient and effective processes, in accordance with principles of sustainability and environmental protection.

**Recommendation 33: Ensure Seamless Regulations On and Off Settlement Lands**

UBCM agrees with this principle and would add that it needs to apply to both Settlement and Crown lands. That is, it is important to local government that standards and regulations apply equally across the province. This will ensure that consistent and harmonized environmental and conservation standards are in place. Equally important is that all individuals will have equal opportunities for input on land use decision-making on Crown lands.

**h) Durability**

The mandate notes that treaties will endure over time and will provide for effective dispute resolution. Any amendment to a treaty would require agreement of all three parties.

**Recommendation 34: Focus on Certainty**

Local governments are less interested in durability than in achieving certainty and finality through treaties. It is our view that only those items where a high degree of certainty and finality is achievable, should be entrenched in treaties. Areas where there may be some adjustments needed over time (such as policing), should be negotiated in separate agreements or accords, thereby balancing the need for legal certainty with the practicalities of ensuring durability.

**5.2 PUBLIC PARTICIPATION AND CONSULTATION**

The mandate paper describes the means by which the province has opened up the negotiating process to local governments, third parties and the public.

In general, local governments are satisfied with the nature and intent of the consultation approach as developed by the province to allow for the participation of a wide range of interests. Local governments appreciate that opportunities are available for input. However, specific concerns relate to both the effectiveness of the province's consultation approach and the degree to which public and local government input influence the provincial position.

With respect to effectiveness, local governments question whether the public is becoming more involved and/or more aware of treaty issues as a result of the province's consultation efforts. In addition, where the public or third parties are currently consulted, there is some uncertainty regarding the extent to which their input is being used by negotiators.

**Recommendation 35: Enhance Public Awareness**

UBCM has stated first in 1991 and reiterated many times since then, that informed participation of the public is essential to successful negotiations and leads to agreements which provide the certainty and durability required by all British Columbians. The public must have complete information as regards the treaty process, its meaning, scope, its spatial boundaries and the interests of all parties at the negotiating table in order to play a meaningful role in helping to achieve sustainable agreements.

Local governments see the need for a more intense public awareness campaign to seek broader public input. This should include television round table discussions, public meetings to discuss the negotiation process, public surveys and public forums. Local governments look to the province to recommit to its responsibility to educate the public and, as such, recommends that the province enhance its commitment to supporting a comprehensive public consultation program.

**Recommendation 36: Ensure That Treaty Negotiators Demonstrate Accountability**

It is not only important that there are mechanisms for ensuring consultation during the treaty process, but also that those who provide input have assurances that their comments are duly considered. Therefore, it is recommended that the province in general, and the treaty negotiators in particular, develop mechanisms to ensure that they demonstrate to local governments, third parties and the public that they have received, heard and considered the input.

## **6.0 CONCLUSIONS**

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Within this paper, several themes and priorities have emerged in regard to the issues covered in the four provincial treaty mandates examined:

### **Support for the Treaty Process**

As stated in the introduction to this paper, UBCM supports the treaty process in principle, and also supports the aspirations of aboriginal people with respect to assuming control of their communities and their affairs.

### **Aboriginal Self-Government**

It is clear that the issue of aboriginal self-government dominates local governments' concerns and we have therefore devoted the majority of space to this issue. The themes of compatibility and equivalency between aboriginal and local governments are particularly strong across self-government related issues. Local governments want to ensure equivalency and compatibility not only in terms of authorities and jurisdiction, but also with respect to funding arrangements.

### **Lands and Resources**

Local governments are particularly concerned about obtaining certainty and finality when it comes to the application of rights on and off Settlement Lands. They are interested that outside the lands owned and managed by aboriginal governments, the same rights and freedoms apply equally to all British Columbians, and that within Settlement Lands, appropriate access for the public and other governments is negotiated. Also, many local governments are concerned about the issue of land quantum in treaty settlements. At very least, local governments are seeking clarification on the process used to determine the amount of land appropriate in any treaty settlement, and a greater role in representing their interests during land selection.

### **Fiscal Arrangements**

Sub-surface resources are viewed by local governments as a topic that should be dealt with as part of the overall financial settlement of treaties. Local governments are interested that ownership of these resources remain with the Crown as in virtually all other cases, and that transferral of resource revenues be a subject for negotiation, in recognition of the economic needs of First Nation communities.

### **Regional and Provincial Negotiation Tables**

In the paper it is recommended that certain topics may be best negotiated region-wide or province-wide. In these cases, local governments request that they be involved in these negotiations to advise governments of their interests.

### **Continuing the Provincial Mandate Development Process**

In general, UBCM supports the provincial mandate development process used to date. We acknowledge the efforts of the provincial government to create opportunities for local government and third-party representatives to review and comment on the mandates in draft form, prior to Cabinet approval.

However, local governments require greater detail and more clarification on the intent and meaning of many aspects of the mandates. In addition to the response requested to the recommendations made in this paper, local governments and their Treaty Advisory Committees require access to mandate papers on individual negotiation issues, in order to better define and subsequently advise provincial negotiators of local government interests.

**DOCUMENTS USED IN THE PREPARATION OF THIS REPORT**

**UBCM POLICY PAPERS ON TREATY-RELATED ISSUES**

- Local Government and Native Land Claims (1991)
- Local Government and Aboriginal Treaty Negotiations (1992)
- Local Government and Aboriginal Treaty Negotiations: Defining the Municipal Interest (1994)
- Achieving Certainty in Treaty Negotiations (1995)
- UBCM Response to the Federal Government's Proposed "Principles for the Achievement of Certainty Through Comprehensive Land Claims" (1996)

**TREATY ADVISORY COMMITTEE INTEREST DEVELOPMENT WORK**

- TAC Interest Development Worksessions: Summary Report (1997), [and individual Worksession reports]
- Joint TAC Workshop Reports (1996 & 1997)

**SURVEY AND WORKSHOPS TO ASSIST IN THE DEVELOPMENT OF THIS REPORT**

- Developing a UBCM Response to Provincial Mandates - Survey (July 1997)
- Policy Workshops with TAC Representatives (August-Sept. 1997)