



UBCM COMPARATIVE ANALYSIS OF 2003 AGREEMENTS IN PRINCIPLE AND LOCAL GOVERNMENT INTERESTS

January 2004 - Final

EXECUTIVE SUMMARY

This analysis examines the five Agreements in Principle (AIPs) negotiated with First Nations in 2003, to determine the degree to which the general interests of local government (regional districts and municipalities) defined in UBCM policy have been met. The conclusions are intended to inform the provincial and federal governments and provide them with recommendations for approaches to future AIPs. The analysis complements the work of some local governments and their Treaty Advisory Committees on identifying how the AIP in their area affects their specific interests.

Conclusions and recommendations have been provided throughout the paper in relation to specific topic areas and are compiled in Appendix 2. The results of this comparative analysis can be summarized as follows:

<i>Areas in which local government interests are addressed in AIPs – all or in part</i>	<i>Areas in which local government interests are not met in AIPs – areas of concern</i>	<i>Areas in which impact on local government interests is still uncertain</i>
<ul style="list-style-type: none"> • Canadian Constitution and Charter of Rights • Application of provincial laws and standards • Consultation • Non-member representation • Local government – First Nations relations • Jurisdiction & management of resources 	<ul style="list-style-type: none"> • Certainty and finality • Selection of treaty settlement lands pre-treaty • Additions to treaty settlement lands post-treaty • Overlapping land claims • Harmonization of property taxation 	<ul style="list-style-type: none"> • Adjustment funding for local governments and third party compensation • Resource allocations and impacts on community stability • First Nations law making authorities and conflict of laws provisions, particular in relation to land

UBCM is concerned about development of AIP provisions on lands and resources without the same emphasis being placed on negotiating governance provisions. Many local government concerns and issues can only be resolved in the process of negotiating First Nations government powers, authorities and responsibilities.

Local governments also have concerns about the lack of public communication and access to information on “fast track” treaty negotiations leading up to finalization of AIPs and on their ratification status. Finally, based on the results of the analysis, we conclude that some AIPs address local government interests better than others and recommend that local government interests be addressed equitably throughout the province.

1. INTRODUCTION

Negotiation of an Agreement in Principle (AIP) represents a significant landmark in the BC treaty process. An Agreement in Principle is a non-legally binding document that outlines the major points of agreement between the parties for provisions that will form a final treaty. To date in 2003, AIPs have been developed at five treaty tables by the Governments of Canada, British Columbia and the following First Nations:

- Snuneymuxw (Nanaimo area, February 19, 2003)
- Lheidli T'enneh (Prince George area, May 2, 2003)
- Maa-Nulth (Nuu Chah Nulth members, west coast Vancouver Island, May 29, 2003)
- Sliammon (Powell River area, June 10, 2003)
- Tsawwassen (Lower Mainland, July 9, 2003)¹

UBCM has been actively defining the treaty related interests common to local governments² and advising the provincial and federal governments since the early 1990s. These general treaty related interests have been defined in several UBCM policy papers endorsed by the membership and at policy making forums³. As well, UBCM has sought to ensure that local governments are actively engaged in representing their specific interests at treaty negotiation tables with the provincial negotiating team through Treaty Advisory Committees (TACs).

The purpose of this analysis of the AIPs is to:

- gain an understanding of AIP content and how it differs from one to the other;
- draw conclusions about whether and how the general interests of local governments are being addressed and identify any inconsistencies in approaches that are of concern;
- relay conclusions to the provincial and federal governments and provide recommendations for approaches to future AIPs.

This draft report does not cover all chapters nor all provisions in each chapter. The focus is on topics of key interest to local governments generally: general provisions (including certainty, public information and communication), lands, governance, jurisdiction and management of resources, standards and property taxation.⁴ In each case, the analysis sets out the UBCM interest, a discussion of the comparative content of the five AIPs, followed by conclusions and recommendations. Summary conclusions and recommendations are found on pages 19-21.

Appendix 1 provides a chapter comparison, which shows a high degree of commonality among issues addressed, although not necessarily in the same level of detail. It is important to note that the Snuneymuxw is the only table of these five to have produced a draft Governance AIP in addition to an AIP similar to the other four, which deal mainly with lands, resource and fiscal issues.

¹ To date all but the Snuneymuxw AIP have been ratified.

² The term 'local government' used in this paper is intended to include all UBCM members, (municipalities, regional districts and the Islands Trust) unless otherwise specified.

³ A list of policy papers on treaty related issues is available on the UBCM website at: www.civicnet.bc.ca.

⁴ Comparisons of wording from the five AIPs on many of these topics are available from the UBCM office.

2. GENERAL PROVISIONS

The first chapter following preambles and definitions in all the AIPs is the “General Provisions” chapter. Topics of key interest to UBCM in this chapter relate to: certainty, consultation, Constitution and Charter of Rights and application of federal and provincial laws, rights of other aboriginal people and amendment. Also in this section UBCM’s interest in public communication and information is discussed.

2.1 CERTAINTY

UBCM Interests and Discussion

Achieving treaty settlements that provide certainty and finality with respect to a First Nation’s rights and entitlements has been a longstanding UBCM interest in the outcome of treaty negotiations. Both the legal mechanisms used to ensure treaty certainty as well as other provisions contributing to the overall certainty and finality of the agreement, such as rights of other Aboriginal people and overlaps, consultation and amendment, are of interest to local governments. Given the importance of this issue to local governments, UBCM has sought an independent legal opinion from the law firm of Singleton Urquhart and their report is available from UBCM⁵. The major conclusions and recommendations from this report are excerpted below.

Conclusions

UBCM and local government interests in certainty and finality might yet be satisfied by the Final Agreements and related non-constitutional agreements. At this stage, it remains to be seen. At present, as in July 1996 with regard to the Nisga’a AIP, it appears that the recent AIPs assert that the Parties seek certainty and finality, but do not contain complete answers as to how those objectives will be realized. There is inherent uncertainty and lack of finality in the absence of an Nisga’a Final Agreement-model release of future aboriginal rights, and arising out of provisions for review of Governance Agreements, overlapping claims, amendment provisions and potential future reviews of fiscal and taxation agreements.

Recommendations

It is recommended that the federal and provincial governments strive to achieve certainty and finality through inclusion of appropriate back-up techniques to the modification provisions in the AIP and Final Agreements. Specifically, there should be a technique included in the Final Agreements for dealing effectively and with certainty in regard to future recognized aboriginal rights.

It is recommended that UBCM seek assurances from both governments that future AIPs and Final Agreements will include provisions reflecting to the maximum extent achievable, those features of certainty and finality sought by BC local governments and reflected in existing UBCM policies.

2.2 CONSULTATION

UBCM Interests

⁵ *Certainty and Finality in Recent First Nations Agreements-in-Principle*, September 2003.

Consultation with First Nations has become a major issue in recent years since the *Delgamuukw* and *Haida* court decisions. Currently, there is no certainty around the subject and local governments are directly impacted by this uncertainty. Treaties should be a primary vehicle for providing certainty through clear definition of consultation obligations.

Discussion

In all of the AIPs, the final agreement will release the federal and provincial governments from any additional consultation obligations if those in the treaty and any applicable federal and provincial legislation are met. In all but the Snuneymuxw AIP, it appears that the consultation obligations will be detailed in the Final Agreement in relation to a range of topics (e.g. resource development or extraction activities referenced in Lheidli T'enneh AIP) however in the Snuneymuxw AIP, the consultation provision mentions obligations in the Wildlife chapter only. And it is not clear whether the final treaty will define other obligations.

Conclusions and Recommendations

To increase certainty in relation to resource development and Crown land use, final agreements should be clear on what the consultation obligations of each party are in relation to a defined land area and no consultation obligations should remain undefined. We believe the current practice in these five AIPs should be continued, that is, to release the federal and provincial governments from any other consultation obligations, once those specified in the treaty and in any applicable federal or provincial legislation are met.

2.3 CONSTITUTION AND CHARTER OF RIGHTS & APPLICATION OF FEDERAL AND PROVINCIAL LAWS

UBCM Interests

Local governments are interested that treaty settlements be within the framework of the Canadian Constitution. It is important to local governments that the Charter of Rights and Freedoms applies to all citizens and residents of the province, and that equity and fairness to all will be a fundamental premise in these negotiations.

With respect to application of federal and provincial laws on First Nations lands, 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.) apply on settlement lands within or adjacent to local government boundaries.

Discussion

All AIPs guarantee that the treaty will not alter the Canadian Constitution and that the Charter of Rights and Freedoms will apply to First Nation's governments and all matters within their authority. Most of the AIPs state the intent to provide for the application of federal and provincial laws in respect of human rights and consistency with Canada's international legal obligations in the final treaty.

All AIPs state that federal and provincial laws will apply to the First Nations government and its public institutions, First Nations citizens and Treaty Settlement

Lands. The Snuneymuxw and Sliammon AIPs explicitly state that federal and provincial laws will be concurrent with First Nation's laws.

Conclusions and Recommendations

There is a high level of consistency and clarity in all AIPs that the treaties will not alter the Canadian Constitution and that the Charter of Rights & Freedoms will apply to First Nations governments and all matters within their authority. We prefer an explicit statement that that federal and provincial laws will apply concurrently with First Nations laws (subject to rules relating to which laws are paramount in the event of a conflict) as a way of providing greater clarity on this subject.

2.4 PUBLIC COMMUNICATION AND INFORMATION

UBCM Interests

Local governments are interested that the public 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.

Local governments are the level of government closest to the public, which can mean literally face to face accountability. Given this fact, they have a strong interest in effective public communications programs (pre and post-AIP) being developed for each of the treaty tables and coordinated among the three Principals, in cooperation with local government.

The province's commitment with respect to public information and education in the 2003 Memorandum of Understanding on Local Government Participation in the Negotiation of Treaties and Other Agreements with UBCM is: *where the province is undertaking public information and education related to a treaty negotiation table, it will advise local governments of its plans and wherever possible, work collaboratively with local governments on implementation.*

Discussion

Based on the information provided to UBCM by our members, it is evident that the nature and extent of communication with and information provided to the public has varied widely among these five treaty tables. At the Tsawwassen treaty table, 15 of 21 chapters were made public in draft form prior to formal AIP draft finalization, a situation not replicated at other tables. At the Lheidli T'enneh table, the provincial negotiating team has advised that communication has been intentionally "low key". At the Maa-Nulth table, local government representatives were not effectively engaged in the negotiations and were therefore not involved in public communications.

Even where members of the public may be motivated to search for information, a centralized, "one-window" source of information on-line concerning AIPs, such as summaries and complete text, was slow to emerge. Accurate information about the status of AIPs and the ratification process in each case was difficult to access.

Conclusions and Recommendations

The approach to public communications and information by the provincial and federal governments appears somewhat ad hoc and variable in terms of quantity and quality at different lead treaty tables.

UBCM recommends that:

- Effective and comprehensive pre and post-AIP public communications programs with similar standards be developed for each of the treaty table and coordinated among the three Principals, coordinating with local government wherever possible.
- A centralized, “one-window” source of information be maintained for the public to access electronically, and that this source provide information concerning AIPs around the province, such as summaries, complete text and status updates, information about public information meetings, staff contacts within the federal and provincial governments and other sources of treaty related information.

2.5 OTHER ISSUES

For a discussion of “Rights of Other Aboriginal People” provisions and Overlaps, see Section 3 below. These issues are also addressed in the paper prepared for UBCM by Singleton Urquhart, as are provisions related to amendments, outside agreements and addition of future aboriginal rights.

3. LANDS

In the majority of the AIPs, this chapter provides details on the amount and composition of Treaty Settlement Lands, nature of First Nations ownership, as well as provisions on additions to Treaty Settlements Lands, subsurface resources, expropriation and Agricultural Land Reserve application.

Topics of key interest to UBCM dealt with in this chapter are: selection of fee simple lands for Treaty Settlement Lands, additions to Treaty Settlement Lands post-treaty, Agricultural Land Reserve and overlaps.

3.1 SELECTION OF FEE SIMPLE LAND FOR TREATY SETTLEMENT LANDS

UBCM Interests

The 1994 UBCM policy paper *Defining the Municipal Interest in Treaty Negotiations* stated that “local governments are interested that those lands owned in fee simple not be ‘on the table’ for negotiation (e.g., not subject to expropriation).” Since then, UBCM members have discussed the fact that there has been an identified need to include private land acquired on a willing seller, willing buyer basis in treaty settlement where Crown land is scarce. When this occurs, including local governments in the selection process for the purpose of identifying and considering any of their affected interests is essential to a successful land selection process.

Another primary interest of local governments is in budgetary stability. If non-reserve settlement lands are removed from the municipal assessment rolls and then taxed by the First Nation, the loss of tax revenues may be significant in some cases. A process must be in place for compensating municipalities for loss of tax revenues. The potential

cumulative impact of changed revenue/taxation regimes on the local taxpayer is significant and local governments are interested that the total impact be measured and taken into account as part of the negotiation process.

Discussion

Most of the AIPs specify an amount of private/fee simple lands to be acquired for Treaty Settlement Land prior to the Final Agreement, (although in the Lheidli T'enneh AIP, the land could become either TSL or First Nation fee simple lands). Only the Maa-Nulth does not specify the number of hectares. At present, the Tsawwassen AIP land settlement does not involve any private lands.

The Snuneymuxw AIP is the only one with conditions attached to the acquisition of the private land for TSL. These include agreement on jurisdictional arrangements such as land use planning, provision of information to local governments and the public on the acquisitions of private land for TSL. Only two of the AIPs reference the need for local government notification or consultation in the selection process.

Conclusions and Recommendations

In cases where there is a scarcity of Crown land and a resulting need to include private land acquired on a willing seller, willing buyer basis in a treaty settlement, AIPs negotiations must involve local governments in the selection process early on, for the purpose of identifying and considering any of their affected interests.

UBCM recommends that before the land can become part of the Treaty Settlement Land package, conditions that must be met be specified in the AIP, such as those included in the Snuneymuxw AIP. These conditions should be used to ensure that critical issues for local governments such as jurisdictional arrangements, land use planning, servicing, consistent standards and public notification are addressed in a conclusive way, prior to reaching agreement on the land.

Adjustment funding needs to be provided to local governments to allow them to maintain budgetary stability through a transition period when land is transferred, (see also discussion of property taxation and compensation in section 5 below).

3.2 ADDITIONS TO TREATY SETTLEMENT LANDS POST-TREATY

UBCM Interests

UBCM members have expressed their preference for no conversion of fee simple lands to Treaty Settlement Lands post-treaty, so that where First Nations governments acquire fee simple lands, these would remain in fee simple with no change in jurisdiction.

As an exception, where there is a scarcity of Crown land and adding to Treaty Settlement Lands post-treaty is the only way to ensure an equitable land package, time and quantity limits on additions are recommended, such as those included in the former Sechelt AIP. Also, local governments are interested that conversions of land to TSL are dealt with on a case by case basis with early local government involvement. When the land to be added to TSL is within municipal boundaries, municipal consent

should be required. Outside municipal boundaries, notification and consultation with the affected regional district should be required.

Discussion

Most of the AIPs have provisions for additions of TSL post-treaty, which specify the process, criteria and considerations to be used. Criteria common to all (except Tsawwassen) are that the land is free from overlaps unless First Nation consent is obtained, that the First Nation owns it in fee simple and that there is agreement of all three parties. In the Tsawwassen AIP, the goal appears to be to identify before the final treaty, specific parcels that if acquired by the First Nation in fee simple, will become Treaty Settlement Lands post-treaty. If successful, this approach would appear to provide more certainty with respect to the amount of land that will be added and its location. If this attempt is not successful, the parties will negotiate provisions in the Final Agreement for a process to add lands post-treaty.

With respect to location, the Snuneymuxw and Lheidli T'enneh AIPs are the only ones to specify that the lands to be added must be within the area designated by a First Nation in their Statement of Intent (traditional territory). Only in the Maa Nulth AIP is the land required to be contiguous to existing TSL (in others this is a consideration) and are quantum limits included for additions.

All have municipal consent as a requirement where the land is to be added is within municipal boundaries, except the Tsawwassen AIP, where the parties agree to *attempt* to obtain the consent of the municipality as a consideration (and state that the consent must not be unreasonably withheld). The Lheidli T'enneh AIP is the only one with a provision stating that regional district interests are to be considered where the land is within their electoral area boundaries.

Conclusions and Recommendations

In order to achieve treaties that are certain and final, UBCM's interest is that additions to Treaty Settlement Lands be the exception rather than the rule. This is not currently the case as demonstrated by these five AIPs. Time and quantum limits for additional lands, such as those provided by earlier AIPs (e.g. former Sechelt AIP), provide greater certainty and predictability to post-treaty TSL expansion, but are largely unused in these AIPs. UBCM recommends that the province consider negotiating these provisions in all treaty agreements.

With respect to local government involvement, local governments should be included in the discussion early on by the province, as part of considerations (the province's consent in addition to federal and First Nation is required). Municipal consent for land added to TSL that is within municipal boundaries should be a consistent requirement in all (not just some) AIPs and final treaties, as should a provision stating that regional district interests must be sought and considered when the land is outside municipal boundaries.

Finally, treaties should require that before lands are added, there is clarity as to jurisdictional arrangements, including land use planning, servicing arrangements, dispute resolution process and public notice is provided.

3.3 AGRICULTURAL LAND RESERVE

UBCM Interests

Local governments are also concerned that treaties preserve agricultural lands and the status of the Agricultural Land Reserve (ALR). Agricultural land is of great importance to many BC local governments and communities. Also, 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.

Discussion

There are a range of approaches taken to this issue in the five AIPs. Snuneymuxw is the only one with no provision, presumably it is not applicable to the lands selected. The Maa Nulth and Sliammon AIPs state that First Nation Treaty Settlement Lands will be subject to ALR designation, in the Sliammon case noting changes to these designations could be negotiated prior to final agreement.

The question then becomes, if removal of lands from the ALR is to be considered, what process will be used? The Lheidli T'enneh and Tsawwassen AIPs discuss this issue in the greatest detail, but take different approaches. In the Lheidli T'enneh AIP, the province will make application to the ALC to seek removal of the ALC designation from specified Treaty Settlement Land areas. The Tsawwassen AIP details a process to be engaged in by the three parties and the ALC that includes information exchange on interests, identification of specific parcels and assessing prospects for successful exclusion.

Conclusions and Recommendations

UBCM's view is that the ALR should be managed in the same way on and off Treaty Settlement Lands. First Nations governments that wish to seek exclusion of their lands from the ALR, should be able to apply to the ALC as a municipal-like applicant, as proposed in the Tsawwassen AIP. Where a First Nation is seeking exclusion of lands that are owned as conventional fee simple lands, the application process should be the same as for any other landowner. UBCM recommends that the same approach to this issue be taken by the provincial government at all treaty negotiation tables to ensure consistency and fairness.

3.4 OVERLAPPING LAND CLAIMS⁶

UBCM Interests

UBCM concurs with the principles set out by the provincial government in their 1996 paper describing their approach to treaty settlements and overlapping land claims:

- As set out in the BC 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.

⁶ This issue is also addressed in the Singleton Urquhart paper in relation to certainty and finality.

- The province may agree to non-exclusive arrangements, such as provisions for hunting or fishing, in the area of an overlap dispute.

Discussion

Other than in the Maa Nulth AIP, resolution of overlapping land claims are not mentioned explicitly in the Lands chapter of the AIPs. Each of the five AIPs have the same provisions on the “Rights of Other Aboriginal People” in their general provisions chapter, however these provisions are not adequate to ensure resolution of overlapping claims.

Conclusions and Recommendations

It is recommended that the three Principals adhere to the principle established by the BC Claims Task Force that First Nations should resolve issues of overlaps and that treaties not be finalized until overlap disputes are resolved. UBCM recommends that this be stated explicitly in all AIPs where overlaps apply and that the AIP clearly state that final settlements will not be made until overlapping claims are resolved.

3.5 LAW MAKING AUTHORITIES PERTAINING TO SETTLEMENT LANDS

UBCM Interests

UBCM interests in First Nations law making authorities pertaining to Treaty Settlement Lands relate to coordination and harmonization of land use planning and development with adjacent lands. They also relate to consistency in the standards that must be met, determined in part by conflict of law rules (i.e. what law prevails in the event of a conflict between two laws). Local governments are interested that there be compatibility between the local standards determined by First Nations and those of local governments (e.g., land-use, sub-division development, etc.).

Discussion

In the Snuneymuxw and Sliammon AIPs, it appears that the full set of First Nation’s law making authorities over Treaty Settlement Lands have not yet been determined, nor in all cases, have rules for which law prevails in the event of a conflict. In the Sliammon AIP, areas where law making authorities may be negotiated are listed.

The Tsawwassen AIP is the only one to include a separate chapter on ‘Land Management and Use’. It states that the First Nation has the power to make laws in respect of the administration and management of Tsawwassen Lands, including planning and provisions of local services related to land management. It requires that when making a planning and land use management law, the First Nation must do so “on the basis of principles in respect of consultation and transparency similar to those of municipalities undertaking similar laws” and consult with residents who are not Tsawwassen members. In all cases except in relation to ALR designations, the Tsawwassen law in respect of the administration and management of their lands prevails in the event of a conflict with a federal or provincial law.

The Lheidli T’enneh AIP also itemizes the areas in which the First Nation government may make laws pertaining to land, indicating that in the event of a conflict, the Lheidli T’enneh law prevails. These areas are: management, possession and allocation of Lheidli T’enneh lands; planning, zoning and development; interests and licenses on

Lheidli T'enneh lands, land title system; and expropriation for public purposes. The Maa Nulth AIP lists law making authorities with respect to zoning and land use planning, including the management and operation of business related to lands and resources (with standards consistent with federal and provincial laws); building, structures and public works; emergency preparedness; fire protection; traffic and transportation; and regulation of nuisances. It indicates that conflict of laws rules have yet to be negotiated and that all authorities related to land and resources will be placed in the final agreement.

Notably, with respect to planning, zoning and development, the Lheidli T'enneh AIP states that the Lheidli T'enneh will invite the regional district to participate in developing laws related to lands proposed for industrial uses. This provision is unique to this AIP.

Conclusions and Recommendations

There is significant variation among AIPs in the degree to which First Nations law making authorities on their lands and related conflict of law rules have been determined. Coordination of activities on and off Treaty Settlement Lands will be important in areas where First Nations and local governments both have law making authorities. In addition, if in the event of a conflict a First Nation law prevails over a provincial or federal law creating unequal standards in areas such as planning, zoning and development, UBCM is concerned that this could create problems on the ground and put local governments at a disadvantage with respect to future economic development.

It is recommended that AIPs and final treaties include explicit provisions for consultation with local governments by First Nations in the development of administration and management laws including planning, such as currently included in the Lheidli T'enneh AIP. It is also recommended that more work be done to examine the differences between local government and First Nation land management and administration powers and conflict of law rules, to better understand and then address the implications of these differences for coordination and cooperative intergovernmental relations.

4. GOVERNANCE

In the majority of the AIPs, this chapter includes some provisions on: components of a First Nation's Constitution; law making authorities; conflict of laws rules; local government relations; and representation of people who are not First Nations members. Snuneymuxw is the only one of the five that has concluded a draft Governance AIP, in addition to the "Lands and Resources" AIP. The preamble to the Snuneymuxw draft Governance AIP provides the following explanation of the parties intention to conclude a Final Agreement (Constitutionally protected treaty) and Governance Agreement (not a treaty):

The Parties intend to conclude a Final Agreement, based on the AIP, which will be a land claims agreement and treaty for purposes of section 35 of the Constitution;

The Parties intend that the Final Agreement will provide for the Snuneymuxw Government and will set out certain authorities exercisable by the Snuneymuxw Government;

The parties wish to provide for other authorities exercisable by the Snuneymuxw Government, but which authorities will not be contained in the Final Agreement and which will not be part of a treaty or land claims agreement for the purposes of section 35.

The Snuneymuxw Governance AIP contains some of the same provisions that are in the Lands and Resources AIP.

While a Governance AIP has not been released at any of the other four tables, all of the AIPs indicate that one is to be negotiated. Existing UBCM policy acknowledges the evolving nature of governance and the need to allow for change over time, which would be facilitated by a separate Governance AIP outside the treaty. The paper prepared by Singleton Urquhart for UBCM on certainty and finality also speaks to this issue.

Some of the topics of key interest to UBCM dealt with in this chapter and discussed below are: non-First Nation member representation on Treaty Settlement Lands and First Nation - local government relations.

4.1 NON-MEMBER REPRESENTATION ON TREATY SETTLEMENT LANDS

UBCM Interests

UBCM interest is that treaties provide non-First Nation members living on TSL with mechanisms to participate in, not merely influence, decision making that affects their interests and elections on Treaty Settlement lands. Treaties should ensure that non-First Nation members living on First Nation's lands will not be subject to any First Nation government taxation unless they also have the opportunity for meaningful participation in that government.

Discussion

Most of the AIPs cover three key aspects of First Nations government responsibility to non-members living on Treaty Settlement Lands: consultation; participation in First Nations government and public institutions (e.g. school board) and access to appeal of decisions. With respect to consultation with non-members, the Tsawwassen AIP refers to planning and land use management law making only (these provisions are in the Land Management and Use chapter).

The Lheidli T'enneh is the only AIP explicit about what form the participation will take, specifying that at least one non-Lheidli T'enneh citizen will have a seat on their government.

Conclusions and Recommendations

The three key aspects covered by most AIPs in relation to First Nation government commitments to non-members are a good start and should be repeated in future AIPs. UBCM recommends that future AIPs make commitments to giving at least one elected seat on First Nations government to non-members (such as in the Lheidli T'enneh AIP) to allow them to participate in decisions that affect their interests, and that

representation on First Nations government for non-members be a condition for collecting property taxes from them.

4.2 FIRST NATION – LOCAL GOVERNMENT RELATIONS

UBCM Interests

UBCM's interests in this area primarily relate to coordination of their activities such as land use planning and servicing as neighbouring jurisdictions. UBCM advocates direct participation of First Nations and local governments in discussions and negotiations related to their post-treaty relationship, including the key issues of **planning, servicing and dispute resolution**, and provision of funding support to enable local government participation in these side tables or working groups. 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.

The planning interests of local government relate to land use within and adjacent to local government boundaries. Local governments are interested that land uses on settlement lands are compatible and harmonized with those of the local government beside or around the settlement lands. Coordinating the use of land between neighbouring communities is fundamental to maintaining harmonious relationships, providing services efficiently, and planning for compatible future development. On the one hand, successful land use coordination can create or support joint economic development opportunities and more livable communities overall. On the other hand, lack of land use coordination can be a major source of tension and spur conflicts between neighbouring communities, leading to servicing problems and to the need for dispute avoidance and resolution mechanisms.

Provision of services is another critical issue for local government – First Nations relations. Any issues regarding future provision of local and regional services and facilities should be resolved conclusively before final treaty. Where they exist, current services to both communities should be maintained at existing levels and costs. Fees and charges related to building and servicing infrastructure and providing services to residents, should be equal on and off settlement lands. Standards for infrastructure and services on settlement lands should be compatible with the adjacent local government's standards, where they exist.

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.

Discussion

In all but one of the AIPs, the provisions relating to local government relations act as place markers for work that has yet to be completed and that in most cases, the intent

appears to be to include this chapter in the Governance Agreement (rather than final treaty).

With that said, most AIPs refer to three critical areas in their provisions on relations with local governments: servicing, land use and representation. The Maa Nulth AIP has the least detailed provisions and does not refer to land use coordination. The Lheidli T'enneh AIP includes a provision in its Lands chapter which commits the First Nation to inviting the Regional District to participate in planning, zoning and development of Lheidli T'enneh lands that are proposed for industrial use. The intent to explore First Nation membership/representation on the Regional District is referenced in all of the AIPs, with the mechanism to do so specified in only the Tsawwassen AIP (through a Treaty Related Measure and a Intergovernmental Relations Technical Working Group). Also in the Tsawwassen AIP, the province commits to ensuring that servicing arrangements are in place that will address the interests of First Nations and local government participants in the process.

Only the Snuneymuxw Governance AIP provides detail on First Nation - local government relations, since the First Nation and the regional district have already studied many of the particulars. In this AIP, with respect to representation, the parties state their intent to negotiate full First Nation membership in the regional district on a municipal-like basis. With respect to land use planning, the First Nation agree to consistency on Treaty Settlement Lands with the Regional Growth Strategy (once agreed to), with a commitment to develop an Official Community Plan and Regional Context statement. In regards to the Islands Trust and Gabriola Island, the AIP states the intent to develop a joint land use strategy, coordinated land use and consultation and dispute resolution.

With respect to process, to date, First Nations and local governments have been involved in direct discussions of their post-treaty relationship at very few of the tables.

None of the AIPs explicitly address resolution of any future disputes between First Nations and local governments. AIP chapters on dispute resolutions are very similar (with the Lheidli T'enneh AIP containing the most detailed provisions) and apply to the Parties only, since these provisions are intended to set out Dispute Resolution processes for interpretation, application, implementation and alleged breaches of the Final Agreement.

Conclusions and Recommendations

UBCM recommends that the province:

- 1) *Establish Side Table or Working Groups early in the process:* Early in AIP negotiations, establish side tables or working groups to provide an opportunity for First Nations and local governments to engage in discussion of their relationship post-treaty. At a minimum, before putting any wording in an AIP concerning the local government - First Nation relationship, the province needs to consult directly with affected local government and First Nations.
- 2) *Commit resources:* As the rule rather than exception, commit funding and staff resources to allow First Nations and local government to develop provisions

concerning their post-treaty relationships, (e.g. through Treaty Related Measures), recognizing that no templates exist in regards to this issue.

- 3) *Resolve all outstanding issues before Final Agreement:* Ensure that any outstanding issues between the First Nation and local government concerning their post-treaty relationship, especially with those relating to local and regional service provision, land use coordination and dispute resolution, are resolved prior to reaching a Final Agreement. Existing local government policies and bylaws need to be considered and respected as part of this process.
- 4) *Ensure mechanisms for resolving disputes exist:* Include in the chapter on local government relations where applicable, provisions for resolving disputes between the First Nations and local government(s), particularly where there is no First Nation representation in formal local government structures (e.g. regional district boards).

5. OTHER LOCAL GOVERNMENT INTERESTS

This section addresses some of the local government interests related to the jurisdiction and management of natural resources, environmental assessment and protection, and property taxation.

5.1 JURISDICTIONS AND MANAGEMENT OF RESOURCES

UBCM Interests

The AIPs contain provisions concerning the following natural resources: subsurface, forests, water, wildlife and migratory birds, fisheries and agricultural land (discussed in section 3 above). General interests in natural resources shared by all local governments relate to jurisdiction and management, and specifically:

1. *Maintaining 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.
2. *Continued Access:* Preservation of existing local government access to resources for public purposes (e.g. water licenses) and consideration of future needs, are of key interest to all local governments.
3. *Consistent Standards:* Local governments are interested that general provincial and federal standards (e.g. environmental protection, land and resource planning, water quality, etc.) will apply on settlement lands within or adjacent to local government boundaries.

Natural Resource Provisions in AIPs

Subsurface Resources - First Nations ownership of Treaty Settlement Lands includes ownership of subsurface resources, a fundamental difference from conventional fee simple ownership of land. While some of the AIPs including Lheidli T'enneh and Sliammon, specify that existing mineral tenures will be preserved and continue in accordance with provincial law, in general, management is an item not yet determined and remains an issue for negotiation. The language in the Tsawwassen AIP is the most

definitive with respect to provincial interests in this issue, stating that First Nations ownership of subsurface resources is subject to agreements on resource management, extraction regimes and terms of ownership, (all of which have yet to be negotiated).

Forests - Each of the five AIPs provides for First Nation ownership and management of forest resources on their lands post treaty. If a First Nations chooses to makes laws for forestry management, they must be consistent with provincial standards for private lands. Other than the Tsawwassen AIP, they all state an intent to award a forest tenure separate from the treaty, the nature of which is an outstanding issue in each AIP.

Water - Almost all of the AIPs provide a water reservation for the First Nation, with the specific terms and conditions to be negotiated, (water is not addressed in the Tsawwassen AIP). The First Nation will need to apply for a provincial water license to access the reservation in each case. A provision unique to the Snuneymuxw AIP is that the First Nation may participate in public planning processes within the Nanaimo River watershed. Unique to the Lheidli T'enneh AIP is a provision for a water reservation allowing investigation of suitability of certain streams for hydro power purposes.

Wildlife and Migratory Birds - In all the AIPs, the federal and provincial governments retain management authority of wildlife and migratory birds. First Nations will have rights to harvest wildlife and migratory birds for domestic (food, social and ceremonial) purposes within an identified area (traditional territory in most cases). In most AIPs, final allocations have not yet been determined and conservation, public health and safety will limit harvesting. The First Nation has law making authority with respect to management of the First Nation harvest, including documentation of First Nations hunters.

Harvesting must be carried out by a wildlife management plan, which must receive ministerial approval, (in some AIPs the intent is that the plan would be developed jointly by the province and the First Nation). First Nations may trade and barter wildlife harvested with other Aboriginal people in BC, (geographic scope still to be determined in Tsawwassen AIP), and sale of harvest cannot occur except where federal and provincial laws permit. The Lheidli T'enneh AIP ensures that existing guide outfitter tenures and registered traplines will be identified and protected.

Fisheries - In all AIPs, the federal and provincial governments retain authority for managing and conserving fish, aquatic plants and fish habitat. All three parties will participate in a Joint Fisheries Management Committee. Each AIP states that the First Nations will have a right to harvest fish for domestic purposes, limited by measures necessary for conservation, public health and safety. The First Nation must develop and annual fishing plan and based on this, the federal Minister will issue a harvest document each year authorizing First Nation fisheries. First Nations will have law making authority with respect to who can participate in the harvest of fish for First Nation allocations. Most of the AIPs also allow for First Nation access to a separate (outside treaty) Harvest Agreement for commercial licenses under conditions comparable to those in the regular commercial fishery. The Tsawwassen AIP does not provide for a Harvest Agreement and states instead that the parties will negotiate how Tsawwassen commercial fisheries opportunities will be achieved.

Discussion of Local Government Interests

The interests of local governments in relation to each natural resources varies, depending on their regional circumstances. Many communities are totally or significantly dependent upon resource industries, particularly the forest sector, for their existence. Local governments are actively identifying and representing their interests related to natural resource at individual negotiation tables⁷. Individual local governments are therefore in the best position to evaluate the impact of the AIPs on the stability of their community and access to resources for present and future needs. Based on on-going discussions with the affected TACs, it appears that most are satisfied that in negotiations leading up to AIP, their resource related interests are either being addressed or they will have the opportunity to see that they are addressed in future negotiations.

With respect to continuation of existing third party interests on Treaty Settlement lands, each of the five AIPs states that First Nation ownership of the Treaty Settlement lands is subject to continuation of any interests existing on the effective date. In each case, these interests are listed in the appendices. This ensures that existing third party rights and interests are maintained in the short term. The details related compensation of displaced third party interests and workers will need to be known in order for local governments to assess the full impacts on their community stability.

Conclusions and Recommendations

There is a high level of consistency in the natural resource chapters among the five AIPs. In general, the AIP provisions concerning the jurisdiction and management of natural resources provide some indications that local government interests will be met in the final treaty. In many cases, resource allocations have yet to be finalized (e.g., water reservations, commercial fisheries, proposed area based forest tenures) and therefore the impact on community stability is not yet clear.

It is recommended that in relation to the negotiation of natural resources in treaty agreements:

- Local governments be fully consulted on their specific access needs and other community interests on an early and on-going basis;
- Provincial and federal resource management standards serve as the minimum applicable to Treaty Settlement Lands; and
- Where First Nations have law making authority, federal or provincial laws prevail in the event of a conflict with a First Nation law, where there is an impact within or adjacent to local government boundaries.

5.2 ENVIRONMENTAL ASSESSMENT AND PROTECTION

UBCM interests

For UBCM members, consistency in standards that apply on and off Treaty Settlement Lands is important for maximizing efficiency, facilitating public safety, ensuring environmental protection and protecting public health. UBCM supports the provincial government's mandate commitment to: ensuring First Nations environmental

⁷ Some local government Treaty Advisory Committees (TACs) have developed detailed statements of their resource related interests, such as forestry (e.g. Prince George TAC) and fisheries (e.g. Lower Mainland TAC).

assessment requirements are consistent with provincial requirements, participation by the affected public and stakeholders is guaranteed, and retaining the province's ability to prevent a project or stop an operation that could have significant adverse impacts for conservation, safety or public interest.

Regional environmental standards also need to be considered. Local governments are interested that regional environmental standards or requirements (e.g. pertaining to air quality and liquid waste management), be consistently applied across an entire region.

Discussion

Most of the AIPs state that the First Nation may participate in established environmental assessment (EA) processes that may have adverse effects on their lands or interests. In the Tsawwassen and Lheidli T'enneh AIPs, harmonization of First Nation EA regimes with other regimes is the stated intent. In the Snuneymuxw and Tsawwassen AIPs, projects on Treaty Settlement Lands subject to federal or provincial EA will require First Nation approval. All AIPs allow First Nations to make Environmental Protection (EP) laws applicable on Treaty Settlement Land and where there is a conflict with a provincial or federal law, the latter prevails.

In the Tsawwassen AIP, there are two unique provisions:

- Tsawwassen First Nation may participate in provincial EP processes and receive referrals on same basis as local governments, in relation to their lands and that portion of their territory within the Corporation of Delta's boundaries;
- The parties will attempt to reach a common understanding of application of federal and provincial EP standards generally and to Tsawwassen lands before Final Agreement.

Conclusions and Recommendations

Local government interests in consistent laws and standards for environmental assessment and protection appear to be met based on the provisions in the five AIPs. It is recommended that harmonization of environmental assessment and protection procedures and processes on and off Treaty Settlement Lands be the stated intent in all AIPs.

5.3 PROPERTY TAXATION ISSUES

Interests

Local governments have three interrelated concerns in relation to property taxation:

- *The Impact of Land Transfer:* If, as part of a treaty, land is transferred from local government jurisdiction to First Nations jurisdiction, local government is concerned about the loss of property tax revenue (or grants in lieu of taxes) from that land. Where non-reserve settlement lands are removed from the municipal assessment rolls, a process must be in place for compensating municipalities for loss of tax revenues, to help them adjust to the impacts on their overall budgetary stability.
- *Equity in Taxation and Services Between Neighbouring Jurisdictions:* Local governments are interested that they will not be required to increase tax burdens on property owners as a result of treaty settlements and that there will be equity and fairness in

the taxation field. Local governments wish to see equity in the property tax treatment of land and improvements under First Nations jurisdiction compared to similar property under the jurisdiction of local government.

- *Equity for Non-Members Living on Treaty Settlement Lands:* Local government is concerned that non-members will be paying property taxes to First Nation governments but may not have the right to vote in elections for First Nations governments.

Discussion

In the majority of the AIPs, the provincial government agrees not to impose property taxation on persons living on treaty settlement land, if before the final agreement they can reach agreement on terms and conditions to tax non-members and arrangements to provide services to all persons on Treaty Settlement Lands. The Tsawwassen AIP is worded differently and does not include a reference to servicing. All AIPs have the same wording allowing the First Nation to make laws regarding direct taxation of First Nations citizens on Treaty Settlement Lands to raise revenue. While the AIPs contemplate harmonization of First Nation taxation systems with federal and provisional systems, harmonization is not mentioned in reference to local government property taxation.

Conclusions and Recommendations

The AIPs do not address the interests and concerns of municipalities and regional district electoral areas in relation to harmonization of property taxation regimes, nor adjustment funding for local governments where land will be withdrawn from their taxation base.

It is recommended that:

- AIPs make reference to harmonization of property tax regimes on and off Treaty Settlements Lands;
- the provincial and federal governments negotiate with local governments on a province-wide basis needs and criteria for adjustment funding provided when lands are removed from local tax bases; and that
- representation on First Nations government for non-members be a condition for collecting property taxes from them.

6. SUMMARY CONCLUSIONS AND GENERAL RECOMMENDATIONS

This analysis has examined the five Agreements in Principle negotiated to date in 2003, to determine the degree to which the general interests of local government, (those common to all negotiations and being in the interests of all local governments), have been met. Some individual local governments and their Treaty Advisory Committees have already or are in the process of developing their response to how the AIP addresses their specific interests, and are providing this information directly to provincial negotiating teams.

Conclusions and recommendations have been provided throughout the paper in relation to specific topic areas and are compiled in Appendix 2. The results of this analysis can be summarized as follows:

<i>Areas in which local government interests are addressed in AIPs – all or in part</i>	<i>Areas in which local government interests are not met in AIPs – areas of concern</i>	<i>Areas in which impact on local government interests is still uncertain</i>
<ul style="list-style-type: none"> • Canadian Constitution and Charter of Rights • Application of provincial laws and standards • Consultation • Non-member representation • Local government – First Nations relations • Jurisdiction & management of resources 	<ul style="list-style-type: none"> • Certainty and finality • Selection of treaty settlement lands pre-treaty • Additions to treaty settlement lands post-treaty • Overlapping land claims • Harmonization of property taxation 	<ul style="list-style-type: none"> • Adjustment funding for local governments and third party compensation • Resource allocations and impacts on community stability • First Nations law making authorities and conflict of laws provisions, particular in relation to land

UBCM is concerned about development of AIP provisions on lands and resources without the same emphasis being placed on negotiating governance provisions. Many local government concerns and issues can only be resolved in the process of negotiating First Nations government powers, authorities and responsibilities. Local governments also have concerns about the lack of public communication and access to information for “fast track” treaty negotiations leading up to finalization of the AIP and on the ratification status of AIPs. Finally, the following general conclusions and recommendations are based on the specific ones contained in this paper:

1. Some AIPs address local government interests better than others; local government interests should be addressed equitably throughout the province.

UBCM strongly urges that a consistent approach be taken to provisions on: certainty and finality; conditions that must be met for land to be selected for or added to Treaty Settlement Lands; overlapping land claims (where they exist); and the process for First Nations governments to exclude land from the Agricultural Land Reserve.

AIPs must address local government interests equitably in areas of key importance to them, such as municipal consent for additions to Treaty Settlement Lands within their boundaries and the coordination of land use planning and taxation regimes.

2. Some AIPs are “slimmer” than others, but agreement and/or substantive progress on certain key issues should be required by the AIP stage of the treaty process.

We recognize that AIPs are by definition preliminary documents. However, certainty and governance are two areas of priority interest for UBCM and therefore ones in which we seek more agreement and/or substantive progress made and included in an AIP.

Local government – First Nations post-treaty relations is one priority area where UBCM recommends future AIPs include more detail than most of the five AIPs have done to date, to reflect substantive work completed on this subject by the First Nation and local governments involved in the pre-AIP stage.

APPENDIX 1: CHAPTER COMPARISON

1(a) Snuneymuxw AIP	1(b) Snuneymuxw Governance AIP	2 Lheidli T'enneh AIP	3 Maa Nulth AIP	4 Sliammon AIP	5 Tsawwassen AIP
96 pages	31 pages	175 pages	115 pages	114 pages	117 pages
<ol style="list-style-type: none"> 1. Preamble 2. Definitions 3. General Provisions 4. Land 5. Access 6. Roads and Crown Corridors 7. Water 8. Forest Resources 9. Wildlife and Migratory Birds 10. Fisheries (and Ocean Management) 11. Parks and Protected Areas 12. Heritage, Culture and Artifacts 13. Environmental Assessment and Protection (Federal Public Advisory Process) 15. Governance 16. Capital Transfer and Neg. Loan Repayment 17. Taxation 18. <i>Indian Act</i> Transition 19. Eligibility and Enrolment 20. Implementation 21. Approval of AIP 22. Ratification of the Final Agreement 23. Dispute Resolution 24. Appendices <ul style="list-style-type: none"> • Maps • Description of legal interests, etc. 	<ol style="list-style-type: none"> 1. Preamble 2. Definitions 3. General Provisions 4. Structures & Procedures 5. Authorities 6. Local & Regional Gov't Relations 7. Fiscal Relations 8. Taxation 9. Dispute Resolution 10. Implementation 11. Approval of Governance AIP 12. Ratification of Governance Agreement 	<p>Same as (1a) without text in brackets, except:</p> <ul style="list-style-type: none"> • Crown Corridors not in title • Environmental Assessment not in title <p>Also includes:</p> <ul style="list-style-type: none"> • Fiscal Relations • Local and Regional Government Relationships • Subsurface and Mineral Resources 	<p>Same as (1a) without text in brackets</p> <p>Also includes:</p> <ul style="list-style-type: none"> • Municipal and Regional Government Relationships • fiscal relations 	<p>Same as (1a) without text in brackets</p> <p>Also includes:</p> <ul style="list-style-type: none"> • Sliammon role outside Sliammon lands • Local and regional government relations • fiscal relations • Ancient Human remains • Place names • Ratification of the Governance Agreement 	<p>Same as (1a) without text in brackets, except:</p> <ul style="list-style-type: none"> • no preamble <p>Also includes:</p> <ul style="list-style-type: none"> • Land management and use • “and Gathering” with Parks and Protected Areas • fiscal relations

APPENDIX 2 - LIST OF CONCLUSIONS & RECOMMENDATIONS

<u>TOPIC</u>	<u>RECOMMENDATIONS</u>
2.1 Certainty	<ul style="list-style-type: none"> • It is recommended that the federal and provincial governments strive to achieve certainty and finality through inclusion of appropriate back-up techniques to the modification provisions in the AIP and Final Agreements. Specifically, there should be a technique included in the Final Agreements for dealing effectively and with certainty in regard to future recognized aboriginal rights. • It is recommended that UBCM seek assurances from both governments that future AIPs and Final Agreements will include provisions reflecting to the maximum extent achievable, those features of certainty and finality sought by BC local governments and reflected in existing UBCM policies.
2.2. Consultation	<ul style="list-style-type: none"> • To increase certainty in relation to resource development and Crown land use, final agreements should be clear on what the consultation obligations of each party are in relation to a defined land area and no consultation obligations should remain undefined. We believe the current practice in AIPs should be continued, that is, to release the federal and provincial governments from any other consultation obligations, once those specified in the treaty and in any applicable federal or provincial legislation are met.
2.3 Constitution and Charter of Rights, Application of Federal and Provincial laws	<ul style="list-style-type: none"> • There is a high level of consistency and clarity in all AIPs that the treaties will not alter the Canadian Constitution and that the Charter of Rights & Freedoms will apply to First Nations governments and all matters within their authority. An explicit statement that that Federal and Provincial laws will apply concurrently with First Nations laws (subject to rules relating to which laws are paramount in the event of a conflict) provides greater clarity.
2.4 Public Communication and Information	<p>UBCM recommends that:</p> <ul style="list-style-type: none"> • Effective and comprehensive pre and post-AIP public communications programs with similar standards be developed for each of the treaty table and coordinated among the three Principals, in cooperation with local government. • A centralized, “one-window” source of information be established for the public to access electronically, and that this source provide information concerning AIPs around the province, such as summaries, complete text and status updates, information about public information meetings, staff contacts within the federal and provincial governments and other sources of treaty related information.
3.1 Selection of Fee Simple Lands for TSL	<ul style="list-style-type: none"> • In cases where there is a scarcity of Crown land and a resulting need to include private land acquired on a willing seller, willing buyer basis in a treaty settlement, AIPs negotiations must involve local governments in the selection process early on, for the purpose of identifying and considering any of their affected interests. • UBCM recommends that before the land can become part of the Treaty Settlement Land package, conditions that must be met be specified in the AIPs, such as those included in the Snuneymuxw AIP. These conditions should be used to ensure that critical issues for local governments such as jurisdictional arrangements, land use planning, servicing and public notification are addressed in a conclusive way, prior to reaching agreement on the land. • Adjustment funding needs to be provided to local governments to allow them to maintain budgetary stability through a transition period when land is transferred.

<u>TOPIC</u>	<u>RECOMMENDATIONS</u>
3.2 Addition of Lands to TSL post-treaty	<ul style="list-style-type: none"> • In order to achieve treaties that are certain and final, UBCM's interest is that additions to Treaty Settlement Lands be the exception rather than the rule. This is not currently the case as demonstrated by these five AIPs. Time and quantum limits for additional lands, such as those provided by earlier AIPs (e.g. former Sechelt AIP), provide greater certainty and predictability to post-treaty TSL expansion, but are largely unused in these AIPs. UBCM recommends that the province consider negotiating these provisions in all treaty agreements. • With respect to local government involvement, local governments should be included in the discussion early on by the province, as part of considerations (the province's consent in addition to federal and First Nation is required). Municipal consent for land added to TSL that is within municipal boundaries should be a consistent requirement in all (not just some) AIPs and final treaties, as should a provision stating that regional district interests must be sought and considered when the land is outside municipal boundaries. • Finally, treaties should require that before lands are added, there is clarity as to jurisdictional arrangements, including land use planning, servicing arrangements, dispute resolution process and public notice is provided.
3.3 Agricultural Land Reserve	<ul style="list-style-type: none"> • UBCM's view is that the ALR should be managed in the same way on and off Treaty Settlement Lands. First Nation governments that wish to seek exclusion of their lands from the ALR, should be able to apply to the ALC as a municipal-like applicant, as proposed in the Tsawwassen AIP. Where a First Nation is seeking exclusion of lands that are owned as conventional fee simple lands, the application process should be the same as for any other landowner. UBCM recommends that the same approach to this issue be taken by the provincial government at all treaty negotiation tables to ensure consistency and fairness.
3.4 Overlapping Land Claims	<ul style="list-style-type: none"> • It is recommended that the three Principals adhere to the principle established by the BC Claims Task Force that First Nations should resolve issues of overlaps and that treaties not be finalized until overlap disputes are resolved. UBCM recommends that this be stated explicitly in all AIPs where overlaps apply and that the AIP clearly state that final settlements will not be made until overlapping claims are resolved.
3.5 Law Making Authorities Pertaining to TSL	<ul style="list-style-type: none"> • There is significant variation among AIPs in the degree to which First Nations law making authorities on their lands and related conflict of law rules have been determined. Coordination of activities on and off Treaty Settlement Lands will be important in areas where First Nations and local governments both have law making authorities. In addition, if in the event of a conflict a First Nation law prevails over a provincial or federal law creating unequal standards in areas such as planning, zoning and development, UBCM is concerned that this could create problems on the ground and put local governments at a disadvantage with respect to future economic development. • It is recommended that AIPs and final treaties include explicit provisions for consultation with local governments by First Nations in the development of administration and management laws including planning, such as currently included in the Lheidli T'enneh AIP. It is also recommended that more work be done to examine the differences between local government and First Nation land management and administration powers and conflict of law rules, to better understand and then address the implications of these differences for coordination and cooperative intergovernmental relations.

<u>TOPIC</u>	<u>RECOMMENDATIONS</u>
<p>4.1 Non-Member Representation on Treaty Settlement Land</p>	<ul style="list-style-type: none"> • The three key aspects covered by most AIPs in relation to First Nation government commitments to non-members (consultation; participation in First Nations government/public institutions and access to appeal of decisions) are a good start and should be repeated in future AIPs. UBCM recommends that future AIPs make commitments to giving at least one elected seat on First Nations government to non-members (such as in the Lheidli T'enneh AIP) to allow them to participate in decisions that affect their interests, and that representation on First Nations government for non-members be a condition for collecting property taxes from them.
<p>4.2 First Nations – Local Government Relations</p>	<p>UBCM recommends that the provincial government:</p> <ol style="list-style-type: none"> 1) <i>Establish Side Table or Working Groups early in the process:</i> Early in AIP negotiations establish side tables or working groups to provide an opportunity for First Nations and local governments to engage in discussion of their relationship post-treaty. At a minimum, before putting any wording in an AIP concerning the local government - First Nation relationship, the province needs to consult directly with affected local government and First Nations. 2) <i>Commit resources:</i> As the rule rather than exception, commit funding and staff resources to allow First Nations and local government to develop provisions concerning their post-treaty relationships, (e.g. through Treaty Related Measures), recognizing that no templates exist in regards to this issue. 3) <i>Resolve all outstanding issue before Final Agreement:</i> Ensure that any outstanding issues between the First Nation and local government concerning their post-treaty relationship, especially with those relating to local and regional service provision, land use coordination and dispute resolution, are resolved prior to reaching a Final Agreement. 4) <i>Ensure mechanisms for resolving disputes exist:</i> Include in the chapter on local government relations where applicable, provisions for resolving disputes between the First Nations and local government(s), particularly where there is no First Nation representation in formal local government structures (e.g. regional district boards).
<p>5.1 Jurisdiction and Management of Resources</p>	<p>In general, the AIP provisions concerning the jurisdiction and management of natural resources provide many indications that local government interests will be met in the final treaty. In many cases, resource allocations have yet to be finalized (e.g., water reservations, commercial fisheries, proposed area based forest tenures) and therefore the impact on community stability is not yet clear.</p> <p>It is recommended that in relation to the negotiation of natural resources in treaty agreements:</p> <ul style="list-style-type: none"> • Local governments be fully consulted on their specific access needs and other community interests on an early and on-going basis; • Provincial and federal resource management standards serve as the minimum applicable to Treaty Settlement Lands; and • Where First Nations have law making authority, federal or provincial laws prevail in the event of a conflict with a First Nation law, where there is an impact within or adjacent to local government boundaries.
<p>5.2 Environmental Assessment and Protection</p>	<ul style="list-style-type: none"> • Local government interests in consistent laws and standards for environmental assessment and protection appear to be met based on the provisions in the five AIPs. • It is recommended that harmonization of environmental assessment and protection procedures and processes on and off Treaty Settlement Lands be the stated intent in all AIPs.

<u>TOPIC</u>	<u>RECOMMENDATIONS</u>
5.3 Property Taxation Issues	<p>The AIPs do not address local governments interests and concerns in relation to harmonization of property taxation regimes, nor adjustment funding for local governments where land will be withdrawn from their taxation base. It is recommended that:</p> <ul style="list-style-type: none">• AIPs make reference to harmonization of property tax regimes on and off Treaty Settlements Lands;• the provincial and federal governments discuss with local governments on a province-wide basis needs and criteria for adjustment funding provided when lands are removed from local tax bases; and that• representation on First Nations government for non-members be a prerequisite for collecting property taxes from them.
6. Summary Conclusions and General Recom- mendations	<ol style="list-style-type: none">1. Some AIPs address local government interests better than others; local government interests should be addressed equitably throughout the province.2. Some AIPs are “slimmer” than others, but agreement and/or substantive progress on certain key issues, such as certainty and governance, should be attained by the AIP stage of the treaty process.