
LOCAL GOVERNMENT TREATY RELATED INTERESTS IN LAND

UBCM Policy Digest Paper #2 - May 2003

INTRODUCTION

This paper is one in a series of papers produced by UBCM that consolidates existing UBCM policy on the named issue. It is intended for use primarily by UBCM members and their local government Treaty Advisory Committees (TACs) in the process of identifying and representing local government interests at treaty tables in their area, as part of the provincial negotiating team.

The goal is to make this information more readily available and easier to use for TACs and others interested in the collective views of BC local governments on treaty issues. It is important to note that:

- UBCM policy is based on the development and articulation of interests, rather than positions (a decision made by the membership); and
- UBCM policies describe the common interests of local governments applicable to all treaty tables. UBCM policy does not define specific local government interests relating to individual treaty tables and circumstances. These interests are defined and represented by TACs and local governments in the area.

LAND INTERESTS: A SYNOPSIS

UBCM policy on the local government treaty related interests in land has focused on the following areas:

- **Land selection**
- **Additions to Treaty Settlement Lands post-treaty**
- **Access to Land**
- **Land Use Planning**

Selection of land for treaty settlements and the related issues of access, planning and additions, are some of the most important issues in treaty negotiations for local governments in B.C. The question of which lands are to be selected and how, in addition to how access will be provided once First Nations owned or managed lands are determined, are of fundamental interest to municipalities and regional districts. In the majority of cases, lands selected for treaty settlements will affect local government interests in some way, whether it be in relation to the impact on regional planning, loss of taxation revenue or access to a public infrastructure/utility site.

UBCM policy work related to land issues in treaties is found in the following papers (note that those identified as policy papers have been endorsed by the UBCM membership):

- LOCAL GOVERNMENT AND ABORIGINAL TREATY NEGOTIATIONS: DEFINING THE MUNICIPAL INTEREST (1994)
This policy paper provides the first statement on local government interests in land in relation to treaties.
- UBCM RESPONSE TO PROVINCIAL TREATY MANDATES: “BC’S APPROACH TO TREATY SETTLEMENTS” (1997)
This policy paper responded to the provincial government’s 1996 treaty mandate (i.e. policy statements) on lands and resources.
- LOCAL GOVERNMENT CONSIDERATIONS FOR LAND SELECTION AND LAND ACCESS IN TREATY NEGOTIATIONS (1997)
The purpose of this discussion paper is to provide provincial and federal government treaty negotiators with an understanding of local government interests in land selection and land access issues. In doing so, the paper examines federal and provincial policy in order to define issues and provide a context for local government interests. Considerations and recommendations for negotiators addressing the issues of land selection and access are put forward.
- TREATY NEGOTIATIONS AND LOCAL GOVERNMENT INTERESTS IN LAND (1999)
The purpose of this discussion paper is to provide an inventory of the various types of local government legal interests and tenures in land. It is intended to assist and complement the work being done by local governments in relation to identifying their interests in specific land parcels.
- APPROACHES AND OPTIONS FOR TREATIES IN URBAN AREAS (1999)
This discussion paper examines some of the issues of concern to local government about the roles and responsibilities of First Nation governments and their relationship to local governments in treaties.
- LAND USE COORDINATION, SERVICING AND DISPUTE RESOLUTION: TOWARD CERTAINTY FOR LOCAL GOVERNMENTS THROUGH TREATY NEGOTIATIONS (2000)
This policy paper establishes principles and make recommendations on the successful negotiation of land use coordination and the related issues of servicing and dispute resolution between local governments and First Nations through the treaty process.
- POLICY ON ADDITIONS TO TREATY SETTLEMENT LAND POST-TREATY
- SELECTION OF PRIVATE LAND ON A “WILLING BUYER – WILLING SELLER” BASIS
Policy on these topics has been developed in direct consultation with UBCM members through policy conferences and articulated in letters to the provincial and federal governments.

**UBCM POLICY AND PRINCIPLES ON TREATY RELATED LAND INTERESTS:
POLICY PAPER EXCERPTS**

Local Government and Aboriginal Treaty Negotiations: Defining the Municipal Interest (1994)

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

Loss of Tax Base - If non-reserve settlement lands are removed from the municipal assessment rolls and then taxed by the First Nation, the loss of existing tax revenues may be significant in some cases. A process must be in place for compensating municipalities for loss of tax revenues. Federal and provincial governments and Crown corporations pay local governments grants in lieu of property taxes. If settlement lands are included within existing municipal boundaries and senior governments and Crown corporations undertake to develop property in the settlement area, then the grants-in-lieu may be lost as a source of municipal revenue unless they are replaced by other sources of revenue.

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

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

UBCM Response to Provincial Treaty Mandates: BC's Approach To Treaty Settlements (1997)

Land Selection - Local governments need to 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.

Land Use Planning and Selection - 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.

Access - 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.

Land Selection and Overlapping Claims - 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. 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.

Local Government Considerations for Land Selection and Land Access in Treaty Negotiations (1997)

This paper lists municipal considerations, stating that local governments may seek to maintain or provide for:

- lands for municipal growth and expansion;
- land contiguous to communities that are actively used for recreation or other purposes that have property development implications;
- lands considered unique to an individual community;
- land settlements consistent with growth projections of non-aboriginal community;
- workable local service agreements with neighbouring First Nations;
- consistent and predictable tax bases;
- consistency of zoning, community development planning, taxation, traffic regulation and bylaw enforcement; and
- consultative role in regional resource management issues that have impact on the local economy.

UBCM strongly supports the following federal and provincial government policies respecting their general approach to land selection:

- Private land (fee simple) is not on the table.
- Lands required for public purposes (for example, significant access routes or community water supplies) will not be on the table.
- Where Crown land within municipal boundaries could be the subject of negotiations, local governments will be involved in the negotiations established by the Memorandum of Understanding between the Province and the UBCM.
- Treaties will provide clear provisions regarding issues of public access to settlement lands.
- If treaty settlement lands will be adjacent to municipal lands, arrangements will be established between municipalities and First Nations to ensure compatibility of land use planning and zoning processes in the adjoining areas.

This paper represents a first step in identifying these interests and suggests that there is still considerable work to do in addressing local government concerns. The following points summarize our main conclusions on this issue and recommendations to treaty negotiators:

1. Link Land Selection with Governance and Land Access Issues

Land selection should not be dealt with in isolation in treaty negotiations. How local government will be affected by establishment of treaty settlement lands has as much to do with what types of jurisdiction, governance and access arrangements will exist on the land as it does with where the lands are located.

2. Understand and Consider Local Government Interests in Crown Lands

The general and specific interest of local governments in Crown lands need to be considered as part of the land selection process.

3. Involve Local Governments Early and on a On-going Basis in the Process

Early, on-going and full consultation with affected local government on land selection and access issues is necessary.

4. Consider Restrictions on Lands within Municipal Boundaries

Local governments require clarity and certainty on criteria and limitations on land selections within municipal boundaries.

5. Investigate and Provide Further Information on:

- status of future lands purchased by First Nations
- models for intergovernmental agreements
- coordination of land use and servicing
- federal government's "spheres of influence" approach to First Nation jurisdiction
- compensation - Community Adjustment Fund

Treaty Negotiations and Local Government Interest In Land (1999)

One of the provincial mandates for negotiating treaties is that private land held in fee simple is not on the table. This includes fee simple owned by municipalities. This memo provided an inventory of the various types of legal interests and tenures that local government's own in land.

There were 6 categories of interest identified:

1. fee simple ownership
2. future interests in land
3. joint ownership pursuant to a public/private partnership
4. interests in land less than fee simple ownership
5. mineral rights
6. water or riparian rights

Each of these categories contains many variations and the paper lists some of the more important of these variations.

Land Use Coordination, Servicing and Dispute Resolution: Toward Certainty for Local Governments through Treaty Negotiations (2000)

Recommendations:

1. That a basic criteria for the success of treaty negotiations be greater certainty for local governments through the creation of land use planning systems that connect local governments and First Nation governments; and that these systems be developed locally so that they respond to local circumstances.

2. That local government needs with respect to achieving land use and servicing coordination and dispute resolution with First Nations be acknowledged and accommodated within the BC Treaty Process.
3. That Provincial and Federal government negotiators recognize that aspects of the local government – First Nation relationship require definition *in a chapter of the treaty itself*, with the direct involvement of local governments and First Nations in its development.
4. That Provincial and Federal governments provide the opportunity during treaty negotiations for local governments to reach an agreement with First Nations *outside the treaty itself*, on land use coordination, servicing and dispute resolutions.
5. That local governments and First Nations have the opportunity to design and sign-off on land use coordination mechanisms, servicing arrangements and dispute resolution before treaties are concluded, and that in certain cases, Provincial and Federal Governments be prepared to not conclude a treaty until the completion of a local government – First Nation agreement.

Policy on Additions to Treaty Settlement Land Post-Treaty

In the second half of 1999, UBCM was provided with two draft federal discussion papers on issues of key interest to local government: *Post-Treaty Additions to First Nations Settlement Lands* and *Lands for Treaty Settlement Purposes: "Willing Seller, Willing Buyer"*. At that time, UBCM provided an initial response to both papers through TNAC and additional input following a policy workshop with members in April, 2000. The information below is based on the results of this workshop and has been conveyed to the provincial government by letter to the Minister.

Because of the variety of their interests in land, local governments have the a number of concerns with the prospect of adding lands to TSL after the treaty effective date:

- Local government would lose the tax base from private property converted to settlement lands.
- Local government land-use bylaws and zoning would no longer be applicable once the land becomes settlement land. As a result, there would be the potential for incompatible land uses and land use conflict.
- Business owners or individuals who leased/rented homes or businesses on occupied fee simple lands which are converted to settlement lands, would be faced with a new jurisdiction and may not have the same representation as they had with local government.
- Infrastructure coordination and supply issues.

The view of UBCM members is that there should be no conversion of fee simple land to TSL post-treaty. First Nations should be able to acquire land in fee simple, but there should be no change jurisdiction.

Where, because of extraordinary circumstances, it is impossible to avoid a provision in treaties that allows for addition of lands to TSL after treaty, such as in the Sechelt AIP, putting conditions of time and quantity limits on conversions is the preferred option for local government. The Sechelt model provides for flexibility and explicit local government involvement. Conversion of land to TSL must be dealt with on a case by case basis which allows local government input on the conditions applied to treaty settlement land additions post-treaty.

Municipal Consent and Regional District Involvement - Where lands are added to TSL, while they may or may not lie within municipal boundaries, they will always lie within regional district boundaries. In addition to the requirement that municipal consent be obtained in the former case, notification and consultation and/or consent with regional districts needs to be added as a condition where the proposed additional lands are outside municipal boundaries.

Selection of Land for Treaties on a “Willing buyer – Willing seller” Basis Pre-Treaty

Recognizing that in urban areas land transfers of any size will be difficult since Crown land is scarce, the idea of acquiring private land pre-treaty on a willing seller-willing buyer basis for treaty settlements has been put forward by the provincial and federal governments for discussion with third parties.

Local government representatives have defined their interests in the issue of acquisition of private land pre-treaty on a willing seller-willing buyer basis for treaty settlements as:

1. Continued payment of property taxes to local government, to avoid loss of tax base
2. Land selection process with timely and complete local government input conducted first, to avoid ad hoc selection of parcels including one that may have key significance to local government
3. Continued application of local government bylaws (i.e. remaining under existing jurisdiction) to avoid incompatible land uses and potential land use conflicts

As the approaches to land acquisition for treaty settlement evolve at successive treaty tables, it is UBCM’s view that responsiveness to local governments issues and interests has decreased. There is a need to revisit the province’s approach to acquisition of land, (including private land) for treaty settlement purposes in a way that will address local government interests while recognizing the practical realities of treaty settlements in urban areas.