TO: UBCM Members

FROM: Chair Robert Hobson, President

DATE: September 9, 2009

RE: PROPOSED RECOGNITION AND RECONCILIATION ACT

The provincial government had been working towards developing legislation that would formally recognize Aboriginal rights and title, and provide mechanisms for shared decision-making and revenue sharing on crown land. It is now UBCM’s understanding that legislation is no longer forthcoming as expeditiously as the Province indicated earlier this year. This was recently confirmed in the Throne Speech.

Prior to learning that legislation was not to be introduced, the First Nations Relations Committee was pro-active in wanting to develop a policy paper and determine local government interests around the legislation. As such, a survey was circulated among members seeking input on implications that the legislation may have on communities and what actions UBCM might take. UBCM received 50 responses and we would like to thank those who took the time to respond. Your input is valued. UBCM may be dealing with some of the issues around shared decision-making and revenue sharing in the future as the provincial government and First Nations continue discussions regarding reconciliation.

UBCM has completed a preliminary review of the feedback received from the survey. These results are attached for your information.

Pre-Convention Session: A Discussion on First Nations Reconciliation

The program for the pre-Convention session on Recognition and Reconciliation Act to be held on the morning of Monday, September 28th has been changed.

The session will aim to provide a status update on the proposed legislation as well as next steps. The Honourable Minister George Abbott will be in attendance. As well, representatives from the First Nations Leadership Council have been invited to speak.

With legislation not forthcoming, this session will also be an opportunity to discuss various initiatives that fall under the umbrella of reconciliation and how they relate to one another. These initiatives include the BC Treaty Process, the New Relationship, Transformative Change Accord, and the Common Table.
Summary of Results
UBCM Survey on Proposed Indigenous Recognition and Reconciliation Act

In early summer 2009 UBCM undertook a survey of local government implications and interests in response to the provincial government’s proposed legislation on indigenous recognition and reconciliation. UBCM understood that there was a great deal of uncertainty around the legislation and wanted to be pro-active in understanding the implications to local governments.

The purpose of the legislation as outlined in the discussion paper was in part to:
- Recognize Aboriginal rights and title throughout BC;
- Establish mechanisms for shared decision-making in regard to planning, management and tenuring of Crown land and resources; and
- Establish revenue and benefit sharing agreements between First Nations and the Province.

In general, the survey asked questions about the potential implications the proposed legislation may have on local governments such as reduced land use authority on crown land that is occupied by a third party. The survey also asked questions around local government interests in crown land. In addition, the survey asked what action items UBCM and the Province can take to address the implications.

UBCM understands the proposed legislation is no longer forthcoming due to the feedback received by First Nations people. However, UBCM would like to report to its members the following summary of results.

Reduced Local Government Authority on Crown Land with a 3rd Party Occupier

Out of the 50 surveys returned, a significant majority of local government respondents (80%) said they would be affected if they had reduced land use planning authority on crown land with a third party occupier. It was noted that in some instances, the third party occupier was the local government itself or another local government. Therefore there would be a direct impact on local government interests and operations.

Examples of land use activities on crown land occupied by a third party that may be affected by proposed legislation include:
- Use of the foreshore
- Recreational areas
- Institutional lands
- Gravel pits/aggregate and quarry pits
- Residential (e.g. social housing, affordable housing, special-needs housing)
- Utilities
- Transportation infrastructure
- Landfills
- Flood protection works
Local Government Interests in Crown Land

A significant majority of survey responses noted the following as examples of local government interests in crown land:
• Statutory rights of way
• Roads/highways
• Water and sewer infrastructure
• Parks
• Easements

In addition, watersheds and community forests were noted by over 50% of responses as examples of local government interest in crown land. Other interests in crown land included gravel and soil extraction pits, and crown land for recreational use.

The comments received from respondents on local government interests in crown land focused on three issues: (1) access for local government purposes, (2) land use planning, and (4) protection of green space. It was noted in survey responses that local governments require access to crown land for infrastructure purposes. For example, according to one survey response, “the most important use of crown land is for our drinking water treatment and watershed.” As well, various survey responses cited the importance of preserving local government leases and licenses on crown land including provisions for renewal.

From a planning perspective, a local government’s interests in crown land are manifested in its official community plan (OCP) and zoning bylaws. For example, local government land use plans (i.e. OCPs) identify crown land for specific purposes such as commercial, industrial or recreational use. Concern was expressed about potential complications that may arise if local governments land use planning and regulation scheme was to be amended to accommodate a new layer of decision-making.

Protecting green space either for recreational use or for its environmental value was also articulated as an interest. For one local government there is an interest in securing crown land in order to protect investments already made in recreational infrastructure. For other local governments, undeveloped crown land surrounds the community and acts as green/recreational space and an urban containment buffer.

Land Use Conflict

The potential for inconsistent land use in accordance with OCPs, zoning regulations and public expectations if local governments had reduced authority to manage land use on crown land, was cited several times in survey responses. It was noted that local governments vest a lot of resources in public planning processes that result in OCPs and regional growth strategies (RGSs).

This local government authority to develop land use planning by-laws and regulations is instrumental in guiding a community’s growth in an orderly way. It allows for a community to plan for appropriate settlement patterns that minimizes conflict between
land uses and minimizes the effects on the environment. The planning process and local governments authority around land use planning is essential to maintaining:

• Livability in a region, particularly an urban region like the Lower Mainland;
• safety;
• public health; and
• the environment.

Reduced land use planning authority may mean the development of crown land that is inconsistent with a local government’s policy initiatives to manage growth and therefore inconsistent with interests of the overall community.

There were also different responses requesting that UBCM lobby for rights of local governments to manage their community land use. For example, one response would like to see municipally owned fee simple land be treated the same way as privately owned fee simple land (i.e. off the table). Another respondent would like UBCM to lobby to ensure all lands within a municipality continue to be subject to the Local Government Act (no exemption).

**Inefficient Services**

There were some survey responses that highlighted the challenge local governments would have in providing efficient servicing plans within their boundaries if they experienced reduced authority to manage crown lands. In order for local governments to ensure appropriate services, local governments require some kind of certainty over its land use plans. Based on its land use plans, a local government is able to plan for and provide adequate hard (e.g. water, sewage disposal) and soft services (e.g. recreational facilities, libraries).

**Action Items for UBCM and the Province**

The number one action item survey respondents requested was clarity and consultation on the proposed legislation. Local governments would like to see the Province be forthcoming with information. It was suggested that UBCM and the Province ensure all communities are well informed on potential implications the new legislation could have on local government. There were several requests for UBCM to advocate for extensive consultation with local governments before the proposed legislation is considered in the legislature. Regional consultation forums throughout the province was cited as one example of a process for seeking input from local governments. There was a further suggestion that local government participation should be structured similarly to the consultation process undertaken during drafting of the Community Charter, where a task force or working group was established through UBCM.

Various survey responses requested that UBCM be a party to negotiations and participate in the development and drafting of the legislation rather than commenting once draft legislation has been prepared. It was expressed that UBCM needs to “educate” those responsible for drafting the proposed legislation so they understand the overlap being placed on the Local Government Act. There was also a suggestion to
include Treaty Advisory Committees and the Ministry of Community & Rural Development to assist in minimizing potential implications for local government and any unintended consequences.

Local governments would like to ensure local government jurisdiction is not diminished and that the Province respects local governments as a form of government. Exempting local governments from the legislation was cited as an action that the provincial government could take to address local government implications. Other respondents would like to see lands within municipal boundaries be exempt.