Land Use Coordination, Servicing and Dispute Resolution:

Towards Certainty for Local Government Through Treaty Negotiations

October 2000

EXECUTIVE SUMMARY

The purpose of this paper is to establish principles and make recommendations on the successful negotiation of coordination of land use between local governments and First Nations, and the related issues of servicing and dispute resolution, through the treaty process. In short, this paper sets out what local governments want to achieve with respect to land use coordination with First Nations governments through treaties themselves and the treaty negotiation *process*, and how we believe this can be done.

Following the introduction in Part 1, Part 2 of the paper provides a review of local government interests in land use coordination as defined in existing UBCM policy and through consultations with UBCM members. The discussion paper on "Approaches and Options in Urban Areas" and results of the April 2000 policy session are discussed in detail. This section ends with a list of conclusions from the policy review. Part 3 focuses on examples of land use coordination arrangements between local governments and First Nations that have either been established post-treaty or as in one case, in anticipation of an addition to reserve. The "snap-shots" provided are taken from examples in the Yukon, Northwest Territories, Saskatchewan and British Columbia. Conclusions and lessons from these cases are provided. Principles and recommendations derived from the research and conclusions are contained in Part 4 of the paper.

PRINCIPLES

CERTAINTY – Achieving certainty with respect to land use, servicing and resolution of disputes can be the most useful role of the treaty for local governments. The conclusion of treaties in most cases will increase the level of activity by First Nations on their land, heightening the need for coordination with local governments. Without a common operating framework, such as is provided to local governments through the *Local Government Act*, uncertainty will persist.

STABILITY IN COMMUNITY RELATIONSHIPS - Local governments and First Nations have their own negotiations to conclude through the treaty process. This will support a secure and stable framework for community relationships.

FLEXIBILITY IN COORDINATION MECHANISMS – The type of mechanisms or structures needed to achieve coordination will vary depending on local circumstances. For example, the more First Nations land involved and the closer it is to settled areas, the more need there is for formal coordination structures. In some areas, it will be essential that land use coordination and dispute resolution measures are agreed to prior to finalization of the treaty. Success of the current relationship is also a factor in how much structure is needed.

FINALITY– An agreed to dispute resolution process is an essential part of coordination arrangements, since it provides closure should other attempts to coordinate land use and related activities fail. It also prevents unresolved conflicts persisting long term.

PREDICTABILITY FOR SERVICING – Land use and servicing are inextricably linked. In order for local governments to plan and provide for servicing needs adequately, community land use objectives and future plans must be known. Provision of and payment for services is an

important aspect of the local government – First Nation relationship. In future, agreements will often need to go beyond servicing and deal comprehensively with the range of intergovernmental issues. When local government and First Nations adhere to equivalent standards and regulations affecting servicing and land use, the many benefits that result include easier coordination and equal opportunity to attract development.

CLARITY– If 'consultation' is used as the coordination mechanism, then this term is best defined explicitly, and not left to interpretation by individual parties to agreements. Other terms, such as "dispute" are also important to define.

APPLICABILITY TO REGIONAL AND MUNICIPAL CONTEXTS – Regional Districts and municipalities in BC can have different needs with respect to how land use is coordinated and the formality of agreements and dispute resolution mechanisms.

UBCM RECOMMENDS THAT:

1. 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. 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. 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. 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 RESOLUTION;

5. 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.

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PART 1 – INTRODUCTION

1.1 Background

Coordinating the use of land between neighbouring communities is fundamental to maintaining harmonious relationships, providing services efficiently, and planning for compatible future development. Local government representatives have identified land use coordination as key to post-treaty relations at the local level, particularly in more densely populated regions[1].

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. Conflicts can arise over broad community objectives or specific cross-border land use impacts such as those involving noise, smell, light (or lack thereof), increased traffic, ground water pollution, and others. Land use coordination is the central subject of this paper, but the links to servicing arrangements between First Nations and local governments and dispute resolution are also discussed.

Policy development on First Nation – local government land use coordination in a post-treaty environment is vitally important because of the current void in this area. While there has been a number of comprehensive studies on service agreements between local governments and First Nations, and examples of successful intergovernmental relations documented, the subject of land use coordination has not received as much attention.[2] For this reason, the issue coordination of land-use between local governments and First Nations was identified by the UBCM Executive as a priority policy development area in 2000.

1.2 Context

In defining what is lacking with respect to policy on land use coordination, an experienced practitioner in the field states:

> *"The problem is how to achieve harmonious land use planning between two neighbouring but independent jurisdictions in the absence of a supervisory senior government scheme".*
>
> *"The need is for a system of establishing land use compatibility which treats both the First Nation and the surrounding local government, for the purposes of land use planning, as equals."*

[1] "Approaches and Options for Treaties in Urban Areas" prepared for UBCM and the provincial Ministries of Aboriginal Affairs and Municipal Affairs, November 1999.

[2] A number of studies have been completed in the last several years on service agreements between First Nations and Local Governments and some on Intergovernmental relations generally – see 'Other Studies' in Reference section.

"Because land use issues are local, the system must be local in order to be effective". [3]

Local governments in BC have raised these same issues:

Issue #1 - *Absence of a Supervisory Senior Government Scheme:*
Relationships between local governments and First Nations differ fundamentally from relationships between local governments because there is no common operating framework or scheme, such as provided to local governments by the *Local Government Act (*formerly known as the *Municipal Act).* The common legislative framework for local governments in BC creates a "level playing field" for them to operate in terms of taxation, land use and infrastructure and environmental standards, to name only a few areas. This fact needs to be thoroughly understood by the federal and provincial governments in order to avoid a basic misconception that the solution is for local governments simply to act as if a neighbouring First Nation was part of the BC local government system.

Issue #2 – *Need for a System of Establishing Land Use Compatibility*
Treaty negotiations heighten the need to explore land use coordination and related issues because their conclusion will likely bring increased activity on First Nation lands largely for the purposes of economic development. Conclusions on how land use coordination between local governments and First Nation governments can be dealt with effectively as a result of and through the treaty making process need to be generated.

Issue #3 – *Developing a System at the Local Level*
Treaty making should be understood as an opportunity for local government and First Nation neighbours to strengthen relationships due to the following factors:

- Local governments and First Nations share many of the same objectives and challenges in providing for local needs[4];
- Post treaty, First Nations will be self governing and no longer subject to the federal *Indian Act* and their lands will not be federally owned lands;
- Local governments and First Nations both stand to benefit substantially from increased coordination of land use and servicing, since it will result in compatible community developed and efficient and adequate servicing for those communities.

1.3 Purpose

The purpose of this paper is to establish principles and make recommendations on the successful negotiation of coordination of land use between local governments and First Nations, and the related issues of servicing and dispute resolution, through the treaty process. In short, this paper sets out what local governments want to achieve with respect to land use coordination with First Nations governments through treaties themselves and the treaty negotiation *process*, and how we believe this can be done. This will be accomplished through a review of existing UBCM policy on land use coordination between local governments and First Nations post-treaty, the results of consultations with UBCM members, and examination of practice in a number of other jurisdictions.

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[3] Theresa M.Dust, Economic Development on Aboriginal Lands and Land Use Compatibility, November 1998.
[4] See Appendix B for a summary of common issues among local governments and First Nations.

The paper is organized as follows:
Part 2 – UBCM policy and consultations on land use coordination
Part 3 – Research on practices in other jurisdictions
Part 4 – Principles and recommendations

Recognizing that circumstances will differ for local governments across the province, this paper does not make recommendations about which methods should be used to coordination land use and servicing between First Nations, nor does it recommend a particular dispute resolution process. It does suggest a range of approaches to these issues that could be taken by local governments, based on experiences in other jurisdictions.

PART 2 – UBCM POLICY AND CONSULTATIONS ON LAND USE COORDINATION

2.1 SURVEY OF EXISTING UBCM POLICY

Land use coordination has been a subject covered in a number of previous UBCM policy and discussion papers[5]. References are quoted below. Over time, the development of local government policy in this area has evolved from increasingly detailed statements of interest to identification of strategies to address the issue.

2.1.1 Local Government and Native Land Claims (1991)

The connection between land use coordination and certainty was identified in the first policy paper on treaty negotiations approved at a UBCM convention:

Land Use Planning (pg. 14)
Planning and zoning are local government's most extensive regulatory activities. The control of land use patterns and growth, the prevention of incompatible land uses and the facilitation of the expansion of facilities and services to growing or changing areas are important functions of local governments.

Planning powers imply certainty for local governments, which is critical to orderly growth and development. Settlement of land claims will require new, cooperative forums of planning to be developed. Issues relating to the powers of new native governments within and adjacent to municipalities will be extremely important to negotiations.

2.1.2 Defining the Municipal Interest in Treaty Negotiations (1994)

A subsequent convention-approved policy paper continued by stating:

Standards (pg. 11)
Local government are interested that general provincial and federal standards relation to environmental protection, and resource planning, etc., will apply on settlement lands within or adjacent to local government boundaries. There should be compatibility and harmonization with

[5] A chart showing the evolution of UBCM policy development on Aboriginal issues is found in Appendix A.

respect to land use, subdivision development standards used by First Nations and those of local governments.

Planning (pg. 15)
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. Further, land use planning is one obvious area where there may be potential for disputes between local and aboriginal governments. This calls for a clearly defined and widely accepted dispute resolution procedure. Balancing the development priorities and potential on settlement lands with those of the neighbouring regional districts or municipalities is critical in terms of the carrying capacity of the land base and costs for appropriate infrastructure financing, particularly in an urban context.

2.1.3 UBCM Response to Provincial Government Treaty Mandates (1997)

In the 1997 comprehensive review of provincial treaty mandates it was pointed out that:

Cooperative Management and Land Use Planning (pg. 15)
The recommendation to the province is to support strong intergovernmental relationships between local governments and First Nations governments through the development of clearly defined mechanisms for cooperation, consultation and dispute resolution. Linkages and coordination are needed for
1. *Regional planing, zoning and growth management initiatives*
2. *Planning and construction of infrastructure*
3. *Local service delivery*

2.2 APPROACHES AND OPTIONS FOR TREATIES IN URBAN AREAS (1999)

This discussion paper[6] provides a useful description of what the situation is today with respect to coordination of land use planning between local governments and between local governments and First Nations and how treaties may change the situation[7]. It also outlines some local government concerns with respect to land use: lack of harmonization; loss of regulatory control with the potential to lead to a patchwork of jurisdictions with incompatible standards and development. The intention is not to repeat this discussion here. For the purposes of this paper it is important to note that what makes the situation between First Nations and a local government different to that of the local government to local government relationship, is the lack of a common operational framework in the former case. In other words, if treaties resulted in First Nations becoming subject to the *Local Government Act* and therefore under the same operating framework or set of rules as local governments, this issue would likely be of much less concern.

[6] The ideas in the paper were generated by a Working Group comprised of staff from the provincial ministries mentioned above and a majority of local government representatives, including UBCM and Treaty Advisory Committee (TAC) representatives. Excerpts of the discussion paper were presented at the 1999 UBCM Convention and comments made by participants are incorporated in it.

[7] The BC Treaty process will result in treaties with First Nations that will include self-government powers providing jurisdiction over land that is no longer federal Indian Reserve lands but becomes “settlement land”.

The report describes seven options that were identified by the workshop participants for structuring the relationship between First Nations and local governments in the area of land use planning. The options range on a spectrum from minimum to maximum coordination:

1. Independent authority with reciprocal consultation agreements
2. Independent authority with mandatory referral and/or consultation
3. Establishment of a formal consultative body
4. Local Government Status
5. Joint Land Use Plans
6. Concurrent Planning Authority
7. First Nations land would be subject to local government land use plans

Other than Option 1, all Options place some degree of constraint on First Nations authority and on local government's authority over land use in areas bordering on First Nations land. On review of these options by members during a study session at the 1999 UBCM convention, the most favoured options were ones in which the independent planning authority is retained by the First Nation and local government and there is a defined mechanism for coordination. Joint planning was thought to be most relevant in the regional context (e.g. where First Nations could take part in the development of regional plans (growth strategies).

The paper noted that Settlement land will take a variety of forms including former reserve land, land adjacent to former reserve land, and possibly 'satellite' parcels of land inside well developed parts of an established community. Also, some land may become settlement land through purchase after a treaty has come into effect, depending on the treaty terms. The various options listed above were noted to be more applicable to some of these types of land rather than others, meaning that the method of land-use harmonization need not be the same for all types of land. These points were considered at the April 2000 policy session.

2.3 APRIL 2000 UBCM POLICY FORUM

Local government representatives most recently considered questions around how local governments and First Nations governments could coordinate uses of land in a post-treaty world at the April 2000 policy session. The issue was considered from both a municipal perspective and a regional district (RD) perspective using three different scenarios describing the location of First Nation land post-treaty:

Scenario A – Settlement land is adjacent to municipal or RD land
Scenario B - Settlement land is NOT adjacent to municipal or RD land[8]
Scenario C – Settlement land that is completely surrounded by Municipal or RD land

Participants discussed what arrangements or agreements (mechanisms) should be adopted to ensure adequate land use coordination between First Nations and municipalities with respect to the 3 scenarios described above.

[8] This scenario is intended to suggest that a particular regional district consider impacts of First Nation land located outside and not adjacent to their own boundaries. Obviously it would fall within the boundaries of another regional district.

Land Use Coordination with Municipalities and Regional Districts
The option of having separately developed land use planning by First Nations and local governments harmonized through referral of plans only (as is currently the case between municipalities as required by the *Local Government Act*) was the least favoured option in all cases. Joint Planning between First Nations and local government was seen as most viable as an option when Settlement lands are surrounded by lands within local government boundaries (scenario C). For scenarios B and C, strongest support was for separate planning with an agreement on harmonization and coordination which specifies the party's mutual understanding and their rights and obligations to and with each other with respect to consulting on land use plans.

Role of Treaty in fostering Land Use Coordination
Participants were asked whether the treaty making process has a role and does not need to deal with land use coordination or whether (1) the treaty has an enabling role (as in the Nisga'a Final Agreement), (2) the treaty should serve as a trigger for the negotiation of an agreement or arrangement or (3) whether the arrangement on land use coordination should be attached to but not part of the treaty. The majority of participants believed that arrangements for land use coordination should be attached to but not part of a treaty (i.e. not constitutionally protected). In other words, this topic should be dealt with by First Nations and local government as part of the treaty process and local government-First Nations "treaty related" agreement would stipulate the process by which land use would be coordinated. Some participants expressed the hope that these agreements could be reached well ahead of the treaty.

2.4 CONCLUSIONS AND POLICY QUESTIONS

This part has provided a review of local government interests in land use coordination as defined in existing UBCM policy and through recent consultations with UBCM members. The paper on "Approaches and Options in Urban Areas" and results of the April 2000 policy session were discussed in detail.

From this overview, a number of conclusions can be drawn from a local government perspective on (1) why this subject is important to address through treaty negotiations and (2) what kind of mechanisms and other arrangements are needed to ensure land use coordination occurs post-treaty.

Conclusions from Policy Review

1. Land use planning and coordination creates certainty for local governments.

2. Stable servicing relationships are built on effective land use planning and coordination.

3. Mechanisms for coordinating land use will help reduce the possibility of disputes, but should disputes arise, a process needs to be available to resolve them.

4. Referral of independently developed land use plans between local governments and First Nation governments is often <u>not sufficient</u> to ensure coordination.

5. The level of coordination of land use required, is directed related to the location of the lands involved. Maximum coordination, including joint planning, are best suited to situations when First Nations land is surrounded by municipal or Regional District lands.

6. Separate planning with an agreement on harmonization and coordination, which specifies the parties' mutual understanding and their rights and obligations to and with each other with respect to consulting on land use, can lead to successful coordination in cases where First Nations lands and local government lands are near to or adjacent to one another.

7. The treaty *process* is an appropriate place and time for coordination of land use planning, servicing and a dispute resolution process to be clearly defined for and by local governments and First Nations.

8. Development of an agreement to achieve between the First Nation and local government to achieve the above goals, can be *attached* to the treaty, but should not be contained *within it* since latitude is needed to allow agreements to evolve and adapt to changing relationships over time.

This discussion gives rise to the following question:

If the treaty process should deal with the issue of land use coordination between local governments and First Nations governments and the related issues of dispute resolution and servicing, how can this be done and what would it look like?

To help answer this questions, the next section looks at how the issue of First Nation – local government land use coordination has been dealt with in other contexts.

PART 3 - RESEARCH ON PRACTICES IN OTHER JURISDICTIONS

This part of the paper looks at agreements on land use coordination that currently exist in other jurisdictions. The jurisdictions chosen are primarily ones in which land use coordination was addressed in a treaty process. The goal is to learn from these examples how the topic of land use coordination at the local level was approached, by seeking answers to the following questions:

1. Where is the First Nations Land - is it within or adjacent to municipal boundaries?
2. What is the disposition of the First Nations land, (i.e. Indian Reserve lands or "settlement lands" or something else)?
3. What kinds of coordination mechanisms or processes have established on paper between the municipality and First Nation?
4. What is actually used in practice for coordination, not just on paper?[9]
5. How is regional planning addressed?
6. What do the agreements say about dispute resolution and servicing in connection with land use coordination?

The intent of this section is to provide a sampling only for the purpose of providing possibilities for the BC context, and not an extensive study.

3.1 YUKON UMBRELLA FINAL AGREEMENT

The Council of Yukon First Nations and the Governments of Canada and the Yukon signed the Yukon Umbrella Final Agreement (UFA) in 1991. The document forms the basis for settlement of outstanding land claims of individual Yukon First Nations.

With resource management planning at a regional level, the UFA establishes that there will be a single land use planning process outside the boundaries of municipalities and national parks. This planning process is to be directed by a Yukon Land Use Planning Council made up of three persons which may make recommendations to Government and each affected Yukon First Nation on land use policy, goals and priorities, including priorities for regional land use plans and general terms of reference for Regional Land Use Planning Commissions. These Commissions may be established to develop a regional land use plan dealing primarily with natural resource management. The issues of land use planning and coordination between First Nations and local governments are dealt within individual First Nation Final Agreements.

3.1.1 City of Whitehorse and First Nation Land Selections

Within the Yukon Comprehensive Claims process, if a municipality fell inside a First Nation's traditional territory boundary, then available lands with the municipality could be agreed to as part of the land allocation for that First Nation. In negotiations involving land selections within a municipality, the Yukon Government basic negotiating principle was to seek the First Nation's agreement not to exercise certain of their land based self-government powers (planning and zoning, building standards, control of animals, etc.) on these lands, so that municipal bylaws

[9] Information on current practice was obtained through telephone interviews with local, territorial and federal government staff.

would continue to apply. This principle was applied as follows: generally the larger the community and the more complex the local governance is, the more restricted the self-government powers on Settlement Land within municipal boundaries should be.

In the City of Whitehorse case, land selection negotiations with two of the three Yukon First Nations are complete. Both these First Nations have agreed to restrict their land-based self-government powers on their lands, and the land quantum is relatively small. However, the real challenge may be yet to come with respect to managing land use coordination. Negotiations with the Kwanlin Dun First Nation, which has the largest interest in the City, are on-going. In addition, there is as yet no agreement with the Kwanlin Dun on the extent of self-government powers on municipal lands.

3.1.2 Village of Mayo & Nacho Nyak Dun First Nation

The Nacho Nyak Dun (NND) First Nation signed a Final Agreement and Self-Government Agreement in 1993 with the Governments of Canada and Yukon. Sections 25-28 of the Self-Government Agreement deal with Compatible Land Use, Local Service Agreements, Regional or District Structures and Mayo Community Lands respectively.

With respect to First Nation lands within the Village of Mayo's boundaries (Mayo Community Lands), in the Agreement the First Nation agrees not to exercise local government type powers, including planning, zoning and land development, unless otherwise agreed to by the Village of Mayo. With respect to other First Nations lands that are not within the settled area of Mayo, the Agreement tries to promote land use coordination in two ways:

1. Allowing the First Nation, Yukon Government and or municipal governments to set up a joint planning structure to develop land use plans; and

2. Requiring consultation (a defined term[10]) between the First Nation and local government where a proposed land use of Settlement or non-settlement lands may have significant impact on the use of the adjacent land with the purpose of resolving an actual or potential incompatibility. Significant adverse impacts on adjacent lands are not permitted by the Agreement.

Where consultation does not resolve the issue, the parties are directed to use the dispute resolution process established in the Final Agreement and failing this, an arbitrator can be appointed to make recommendations to change or vary an existing or proposed land use, modify a land use plan or regulation, or recommend the preparation of a new zoning bylaw or amend the existing one.

Given these Agreements and structures, how have the NND First Nation and Village of Mayo coordinated land use in actual practice? Today, coordination is primarily ensured by the fact that

[10] Consultation means to provide to the party to be consulted, notice of a matter to be decided in sufficient detail to allow that party to prepare its views on the matter; a reasonable period of time to prepare those views and present them to the party obliged to consult; and full and fair consideration of those views (NND Self Government Agreement page 1).

municipal bylaws apply on NND lands within the Village of Mayo. They have not established any joint planning structures, however joint First Nation – local government Council meetings occur about once a month. They have not had to resort to dispute resolution as yet. The observation of the Village administrator is that a complex planning structure to coordinate land use was not needed due to two factors:

1. The relatively small amount of First Nations land within the municipality – dispersed parcels in a community of approximately 500 people
2. The good relations and working relationship that exists between the two parties.

3.2 NORTHWEST TERRITORIES - GWICH'IN COMPREHENSIVE LAND CLAIMS AGREEMENT

The Gwich'in Final Agreement was signed in 1992 by the First Nation and Governments of NWT and Canada. The Gwich'in people number about 2,200 and live in the McKenzie Valley. The final agreement is called a comprehensive land claim agreement and unlike comprehensive claims in BC, the negotiations did not deal with self-government powers; these were left to be negotiated.

Gwich'in Municipal Lands

Part 22 of the Final Agreement deals with "Gwich'in Municipal Lands" (GML). This section recognized that as part of land selection process, it was important for the Gwich'in to have lands within municipal boundaries for "residential, commercial, industrial and traditional purposes". At the same time, the Gwich'in agreed that these lands would be held in fee simple and therefore subject to municipal land use bylaws, expropriation (under certain conditions) and taxation. GML have similar characteristics to other privately owned land with some exceptions:

1. While GML which are developed or "serviced lands" are subject to municipal property taxation, undeveloped ones are exempt
2. Local governments may acquire GML if necessary by negotiation or expropriation, although as a general rule, they will not be expropriated;
3. If the municipality and Gwich'in cannot agree on acquiring GML for public purposes, they may use a specified arbitration process
4. If GML are sold or granted by the First Nation to an individual, they will be no longer "Gwich'in lands"
5. If a new local government boundary is established – either through extension of an existing municipality or creation of a new one, Gwich'in settlement lands within the boundary are automatically converted to GML

Planning and Management of Land and Water

The mechanisms set up in the agreement for planning and management of land and water are focused on resource lands. The Agreement establishes a joint Gwich'in public government Land Use Planning Board and a Land and Water Board for the Gwich'in settlement area. The Planning Board has the responsibility for developing land use plans for the Gwich'in settlement area in consultation with affected communities. This Board takes over from a Regional Land Use Planning Commission and the agreement directs that the work done by that body is to be used by the joint planning board. Once the plans are approved by government, the authorities

which grant licences, permits, leases, or interested related to the use of land or water must act in accordance with the plan.

3.3 SASKATCHEWAN TREATY LAND ENTITLEMENT (TLE)

In Saskatchewan, the provincial and federal governments agreed that many Indian bands did not receive the amount of land to which they were entitled under their signed treaties. As a result, a Saskatchewan Treaty Land Entitlement Agreement (STLEA) was negotiated which gave bands money with which they could buy the amount of land to which they were entitled, including land in urban centres.

Article 9 of the of the STLEA deals with creation of urban entitlement Reserve lands, (note that these are not settlement lands of the type that will result from the conclusion of BC treaties). It requires that an agreement be entered into between the Band and the affected municipality before the lands selected by the band can be set apart as an "entitlement reserve". The Article 9 Agreements vary in content depending on the individual circumstances of the parties at the time that the agreement is negotiated.[11]

It was recognized that while Article 9 outlined basic elements to be negotiated (compatibility of bylaws, provision of municipal services and standard arbitration clauses), it did not address specific issues. In response, in late 1993 the Federation of Saskatchewan Indian Nations (FSIN) and Saskatchewan Urban Municipalities Association (SUMA) established a joint task force and developed a report on "Establishing Urban Development Centres" (on First Nations lands within municipalities). This report was intended to provide guidance to First Nations and urban municipalities on their specific and mutual interests in negotiating Agreements.

3.3.1 Muskeg Lake Band and City of Saskatoon

The Muskeg Band's urban reserve lands were created in 1988. The Article 9 agreement in effect create a land use compatibility scheme for the First Nation and local government when the First Nations land is within municipal boundaries.

1. In the Article 9 Agreement developed by the parties, the Muskeg Lake Band agreed that: the use and development of their reserve land would at all times be in accordance with Provincial laws and City bylaws.
2. If the Band passed its own bylaws affecting land use of development, those Band bylaws would be consistent with Provincial laws and City bylaws.
3. All subdivisions reserve land would be in accordance with the laws in place for other developments through the negotiation of a "standard" development agreement.

All applicable legislation (federal, provincial and City) is enforced on the reserve lands and the City will also enforce Band bylaws on reserve lands on behalf of the Band.

[11] Theresa Dust, Treaty Land Entitlement & Urban Reserves in Canada, City of Saskatoon, Sept. 1992

Dispute Resolution & Servicing Arrangements
With respect to coordination mechanisms and dispute resolution, the City and Band also have agreed to meet at least once a year in a joint session to ensure harmonious operation of the agreement and resolve any issues that may arise.

The City provides all normal city services to the reserve lands in return for an annual lump sum payment by the Band.

3.3.2 Yellow Quill Band and City of Saskatoon

The City of Saskatoon also negotiated an Article 9 Agreement with the Yellow Quill Band know as the "Municipal Services and Compatibility Agreement". With respect to land use, the Yellow Quill Band agrees that it will take steps necessary to ensure that at all times, the occupation, use, development and improvement of the land is "essentially the same as that which would be allowed if the Land were not reserve land". In addition to land use, they also agree to ensure compatibility in regard to building and fire standards, public health and safety and business regulation. The parties also agreed that any municipal bylaws which are not in conflict with the Indian Act or any Band bylaw, apply to the Land and can be enforced.

Through a Protocol Agreement, the parties sought to promote opportunities for on-going coordination through establishment of a City-First Nation joint committee as a forum for voluntary cooperation and coordination.

Dispute Resolution & Servicing Arrangements
If the terms of the agreement with respect to compatibility are not met by the Band, after an initial period, the city may choose to withdraw any or all services until the "condition of the breach has been remedied" (pg. 6). In the event of any dispute with regard to the interpretation or enforcement of the agreement, the matter may, with the consent of both parties, be referred to binding arbitration.

The agreement includes a provision stipulating that the city will provide all normal city services to the reserve lands in return for an annual lump sum payment by the band.

3.3.3 City of Saskatoon, Rural Municipality of Corman Park and Red Pheasant First Nation

The Red Pheasant First Nation selected 80 acres of entitlement reserve land on the outskirts of Saskatoon within the rural municipality (RM) of Corman Park. This land is covered by a District Development Plan (DDP) that provides broad policies on land use within the City of Saskatoon and that part of the RM within a 3 kilometre radius of the City. The DDP is essentially a regional plan adopted by both the City and RM Councils to ensure compatible planning between them.

The Red Pheasant First Nation is the first to select lands within the RM and an area covered by the DDP. The First Nation has signed an agreement with the City and RM committing them to compatibility with the DDP on their lands within the planning area. The First Nation retains zoning authority on their lands, but they have agreed to submit to the regional planners a review

of any development on their lands, which confirms that it is consistent with the DDP. If there is disagreement over a compatible land use, the Agreement stipulates that the dispute may be taken to arbitration.

With this model, land use compatibility is left to a "technical assessment" and the First Nations and local governments involved each retain their independent zoning authority. Enforcement is an issue that has not been resolved through the agreement between the parties. Unlike in the other two agreements described above, there is little recourse should an incompatible development be built on First Nations land since there are no services provided and no "enforcement" of the DDP on First Nations land. As yet this has not been a problem.

3.4 BRITISH COLUMBIA

3.4.1 Sechelt Agreement in Principle and Nisga'a Final Agreement

For the purposes of this paper, it is important to understand how negotiations in BC to date have dealt with the issue of local government – First Nation land use coordination and the related issues of servicing and dispute resolution. The Nisga'a Final Agreement (NFA) and Sechelt Agreement in Principle (AIP) provide some clues as to the current direction taken on this issue by federal and provincial governments.

There is no separate chapter on land use planning in the NFA. In it, "planning" is discussed in relation to specific resources only (e.g. forests, fisheries, wildlife). In the Sechelt AIP, "Land Use Planning" comprises a separate chapter and on review there are three noteworthy points for local governments.

First, importantly, the Land Use Planning chapter specifically mentions Sechelt's continued participation in land use planning processes outside their borders:

> *12.1.2 British Columbia acknowledges that Sechelt plays a significant role in land use planning within the Sechelt Area and works cooperatively with its neighbouring communities.*
>
> *12.2.1 British Columbia will invite Sechelt to participate in any land use planning process affecting the Sechelt Area.*
> *a. Sechelt will have a right to participate in the same capacity as other members of any land use planning process affecting the Sechelt area*

These references reflect the need for coordinated land use planning on a regional scale. Second, this chapter has a reciprocal provision regarding consultation:

> *12.3.2 Sechelt will invite British Columbia to participate in any land use planning process on Sechelt Treaty Land affecting Crown Land.*
> *a. British Columbia will have a right to participate in the same capacity as other members of any land use planning process on Sechelt Treaty Land.*

These provisions underscore the need for reciprocal consultation respecting land use planning, again recognizing regional interests in land use decisions. While these provisions support the local government interest in land use planning harmonization and coordination, the definition of "land use planning process" used in these references is limited to provincial or Crown land planning (e.g. Land and Resource Management Plans - LRMPs), hence the references in this chapter of the Agreement do not pertain to local government planning. Reference is made in the AIP to local government planning in the Governance chapter:

> *15.2.1 Sechelt will continue to consult and may enter into agreements with neighbouring local governments to coordinate their activities with respect to zoning and land use planning.*

This is very similar to the provision in the NFA:

> *6. The Nisga'a Nation and the Regional District of Kitimat-Stikine may enter into agreements to coordinate their activities with respect to common areas of responsibility such as planning, health services, and infrastructure planning.*

The Sechelt AIP provision is more specifically focused on land use planning, requiring consultation by the Sechelt and leaving agreements optional. However, the provisions in both agreements function essentially as “place markers” without a lot of detail provided.

The final point of interest for local government is that as a current member of the regional district, the Sechelt would presumably participate in a regional growth strategy, (however, the AIP is silent on this matter). It also does not indicate whether and under what terms, the Sechelt Indian Government District’s membership in the Sunshine Coast Regional District would be referenced in the Sechelt treaty.

In neither the Nisga’a nor the Sechelt negotiations was there a process in place to allow negotiation of an agreement on land use coordination, servicing and dispute resolution between the local government and First Nation.

3.4.2 District of Matsqui and Matsqui Indian Band

The Matsqui Indian Band occupies four reserves, two of which were within the boundaries of the former District of Matsqui, which has since amalgamated and become part of the City of Abbotsford. Beginning in 1992, the municipality began collecting charges under the its water and policy services agreement with the Indian Band. The experience of negotiating this servicing agreement, and the evolution of the municipality’s relationship with the Indian Band, are described in a paper entitled “Balancing Needs and Rights: A New Relationship between the Aboriginal Community and its Municipal Neighbour” prepared by the municipality’s former administrator, Hedda Cochrane, in 1994. More information on the steps involved in developing a servicing contract between local governments and First Nations is provided in Appendix C.

The author’s comments (quoted below) on the connection between land use coordination and servicing in the Matsqui case are instructive. In particular, her comments on the views of the

Indian Band in relation to application of Municipal bylaws on Indian land, are notable, since this view is shared by other First Nations[12].

> *The municipality's overriding concern throughout the [servicing agreement] negotiating process was to avoid potential land-use conflicts between development on the reserve and the surrounding agricultural lands. This was certainly the most difficult issue we had to settle. On one hand, the First Nations reject the notion that a municipality has the right to interfere in their internal affairs and to dictate what development can occur on the Indian land. On the other had, the municipality has a legitimate concern about potentially negative impacts of development on a reserve which does not fit with the land use patterns established by its official community plan.*

The author goes on to say that the solution to what seemed to be irreconcilable differences was to agree that service to existing development on reserve would be substantially restricted and that any future development on the reserve, which required or had an impact on municipal services, must be in accordance with the Band's Physical Development Plan, attached to the servicing agreement. In practice, this arrangement did not have the desired effect, since the municipality was subsequently advised by the Band of their plans to construct a mobile home park which was not shown on the plan that was attached to the servicing agreement. The author reports that because of the relatively small size of the reserve and its location in the midst of Agricultural Land Reserve, the municipality continued to be concerned about the Band's development plans.

3.4.3 Central Okanagan Regional District, City of Kelowna & Westbank First Nation Master Agreement

In the early 1990s, the Westbank First Nation filed an application with the Department of Indian Affairs to transfer lands located in the southeast of Kelowna, commonly known as the Gallagher Canyon Lands, to Indian Reserve status. In considering the application, the federal government expressed its wish to see an agreement reached by the First Nation and the local government which would deal with concerns around the proposed application for Reserve status (although such an Agreement is not required for a proposal to be approved, under the federal "Additions to Reserve" policy). The parties negotiated a Master Agreement that records the parties mutual understanding and their rights and obligations to each other with respect to the Gallagher Canyon Lands. Because this agreement provides one of the best examples of a comprehensive arrangement between a First Nation and local governments, covering all three areas of land use coordination, servicing and dispute resolution, a full summary is provided in Appendix D.

Some of the proposed reserve land was within the City of Kelowna and some outside the city boundaries and within the Regional District boundaries. The end result is that the Reserve land will be adjacent to the municipal lands and within the regional district.

[12] Theresa Dust makes a similar observation: "the First Nation, while it may anxious to get along with its neighbours, is often fearful of any involvement by the surrounding municipality. This is in part because control of land and the use of land is fundamental to First Nations' concepts of self government and self determination", from *Economic Development on Aboriginal Lands and Land Use Compatibility*, November 1998

Land Use Coordination
In the Agreement, the Westbank First Nation is required to establish a plan for the lands prior to development. The plan must be in accordance with the stated intention for the land, which is to develop housing and a neighbourhood commercial centre for their members, (permitted land uses delimited in the Agreement). The land use plan was to incorporate all appropriate development standards and be "consistent to the fullest extent possible" with all applicable provincial laws, and compatible with City land use bylaws, and District land use bylaws. Finally, in the Agreement all parties acknowledge the need for consistent land use planning within the region.

These statements lay out the ground rules for achieving land use coordination, and the mechanism to achieve agreement is consultation. The First Nation agrees to consult with the District and City during the preparation or future amendment of the land use plan and also allow advance notice and sufficient time to comment on any proposed development on the lands which could affect traffic volumes on the local road. The District and City agree to make every reasonable effort to assist Westbank in developing plans as they relate to conservation, protection and use of land and water resources located on the Lands. As with the Yukon Agreements, consultation is a defined term in the Master Agreement and a joint consultation process is described in detail.

The First Nation and local governments agreed to participate in the joint consultation process where any proposed development on the First Nation lands, City lands or District lands is within 500 meters of any boundary of the other party. The consultation process is required in advance of any one party making a final decision on the use and development of any lands within their respective boundaries. The three parties commit to making best efforts to accommodate and address the concerns of the others and ensure to the extent possible that compatibility is achieved.

Dispute Resolution & Servicing Arrangements
If concerns are not addressed through consultation as designated through the process, the Master Agreement includes a Dispute Resolution process which includes time limits for resolving the dispute and the possibility for appointment of an arbitrator.

The Agreement enables the parties to negotiate agreements for providing services to the Reserve lands. The Agreement emphasizes that neither the District nor the City have an obligation to provide any services to the Reserve lands or the occupiers of that land in the absence of a mutually acceptable service agreement. The Westbank Indian Band agrees to pay the same rate for services to the Gallagher Canyon lands as are paid by others elsewhere.

3.4.4 District of MacKenzie, Regional District of Fraser-Fort George and the McLeod Lake Indian Band: Treaty 8 Adhesion and Settlement Agreement

Treaty No. 8, covering parts of northeastern BC as well as portions of Saskatchewan, Alberta and the Northwest Territories, was signed in 1899. The McLeod Lake Indian Band located north of Prince George, never received any of the treaty benefits provided to other First Nations in the area. The Band submitted their claim for land and benefits under Treaty No. 8 in 1993 and

began negotiating an agreement with the federal and provincial governments. The negotiations took place outside the BC treaty process, through the federal "specific claims" process.

The "Treaty 8 Adhesion and Settlement Agreement" was initialed by the parties in September 1999 and ratified by all three as of April 2000. Under the Agreement, the McLeod Lake Indian Band receives about 20,000 hectares of Crown land from the Province of BC, which will become Indian Reserve lands. These lands are within Regional District of Fraser-Fort George boundaries. The First Nation also receives 8.1 hectares of land which are located within the District Municipality of MacKenzie and which will also become reserve.

Land Use Coordination & Servicing – District of MacKenzie
There is nothing in the Adhesion and Settlement Agreement with the McLeod Lake Indian Band that coordinates land use and servicing with the District of MacKenzie.

In the early days of the Settlement negotiations, the District of MacKenzie was informed that the First Nation had selected lands within District boundaries. The municipality had some concerns about the site selected, including their ability to service it, and decided to approach the Band directly. When they learned that the Band's primary interest was to eventually develop housing, the District suggested some alternative sites capable of being serviced by sewer and water and the Band chose a different site.

At this time the District of MacKenzie indicated to the province that they could support the land selection, provided that they could sign an agreement with the Band that would deal with servicing and the related issues of land use coordination and standards, (this was a second choice; their first choice was to see the land remain fee simple, or become reserve but subject to municipal planning and bylaws). The District drafted an initial agreement and began discussions with the Band in 1996. Band managers changed and over time discussions ceased. In the meantime, the Settlement Agreement has been finalized and the District is still without certainty on this subject. They believe they have a commitment from the provincial negotiators to have a servicing agreement between the First Nation and the municipality completed before turning over the land to the federal government for conversion to Indian reserve status. Because the completion of a local government-First Nation agreement was not required before conclusion of the Adhesion Agreement, at this point there appears to be little incentive for anyone, other than the local government, to resolve the issue.

Land Use Coordination & Servicing – Regional District of Fraser-Fort George (RDFFG)
Of the sites selected for the Settlement Agreement, the site at Bear Lake was one in which the regional district became significantly involved. After they became informed of the site the First Nation had selected, which was located within the commercial area of the unincorporated community of Bear Lake, the RDFFG approached the Band directly to discuss their objectives and alternatives. In the end, the Band decided against the original site and selected another site that was not commercially zoned. Bear Lake is covered by a official community plan and has a zoning bylaw, however nothing in the Settlement Agreement speaks to land use coordination mechanisms or servicing arrangements. RDFFG is currently working with the Band to develop a servicing agreement for the site. Their preference was for this type of agreement to become an addendum to the Settlement Agreement, like the addendum addressing rights of way and other

interests of BC Hydro, but this did not occur and instead, the regional district has been given assurances by the province that their interests will be addressed.

3.5 CONCLUSIONS AND LESSONS

The snapshots of local government – First Nation land use coordination discussed in this section reveal that some of the theoretical options generated by local government representatives described in part 2 have had practical application. At the same time, there are not many jurisdictions that are analogous to the BC context, where modern day treaties are being negotiated and will result in a change from Indian Reserve lands to "settlement lands" over which First Nations will have self-government powers. There are even fewer precedents for highly urbanized areas in BC, although negotiation of the Treaty 8 Adhesion and Settlement Agreement and additions to reserve lands provide some useful lessons.

This said, there is much to be learned from practices for coordinating land and arranging for service provision and resolving disputes from other jurisdictions. The goal of this paper is not to provide a single solution for local government and First Nations to structure their relationship. There is no one mechanism that can be applied in each case. "What works" in each situation will depend on a number of factors, including the degree of comfort with the current working relationship and past experience, and also the amount and location of the lands involved.

Conclusions
This survey reveals some common approaches taken to land use coordination noted as follows:

Alternatives for First Nations lands within municipal boundaries[13]:

1. agreement with First Nation that they will not exercise their land based self-government powers, including planning, zoning and building standards on their lands, so that municipal bylaws apply
2. First Nations lands are held in fee simple and therefore subject to municipal bylaws
3. treaty requires an agreement between local government and First Nation to achieve compatibility of land use, provision of services to First Nations lands and dispute resolution
4. agreement with First Nations that their lands will be subject to municipal bylaws and if they develop their own land use regulations, that these will be consistent with municipal bylaws and if not, agree that services can be withdrawn
5. recognize and incorporate in an agreement successful existing practices between local government and First Nations for achieving coordination
6. Joint Council meetings between First Nation and municipal elected leaders
7. First Nation is subject to legislation that parallels *Local Government Act* with respect to provisions concerning development and use of land

Alternatives for 'new' First Nations lands outside of Municipal boundaries

1. establish a joint planning body

[13] Similar approaches would be equally applicable in many regional districts, particularly those containing more populated areas.

2. require an agreement on consultation on land use and development between the local government and First Nation, defining both the terms and the roles and responsibilities as part of a consultation process
3. First Nation retains land use planning authority over their lands but agrees to ensure compatibility with local governments through submission of all development proposals to local government for technical review and concurrence
4. establish a dispute resolution process within a compatibility/coordination agreement between the First Nation and local government to ensure closure
5. First Nation participates in the development of, and adheres to, regional plan (e.g. "Growth Strategies" or "Growth Management Plans") through inclusion in regional government structures or by other means
6. First Nations lands are held in fee simple and therefore subject to regional district bylaws

Lessons

1. Since they are both concerned with local needs, local governments and First Nations share many broad objectives, such as to support community health, economic prosperity and sustainable and productive living environments.

2. Although some degree of control over land use or lack thereof raises fears on the part of First Nations and local governments for different reasons, not dealing with the issue is not an option, particularly when treaties are negotiated and a new jurisdictional landscape results.

3. One option for coordinating land use on First Nation land within municipal boundaries is for the First Nation to agree not to exercise its powers in the areas of planning and zoning, and adhere to applicable local government bylaws and requirements. In other jurisdictions, this option tends to be used where the First Nation land holdings are small, even a single parcel. It should be emphasized that in B.C., a patchwork of jurisdictions within a municipality should be avoided.

4. Consultation may be sufficient as a means of coordination where good relations exist. Where consultation is used as a means of coordination, a precise definition and specific responsibilities of each party is needed to make it meaningful and effective.

5. Treaties can require that agreements on land use coordination between local governments and First Nations be concluded prior to its finalization. This creates the greatest possible certainty for local government.

6. Land use agreements should be as comprehensive as possible, linking the related issues of land use coordination, servicing and providing a means of resolving disputes should all other efforts fail.

7. Processes to coordinate land use can be created through both technical means (e.g. planner level) or political means (e.g. council to council meetings) which can be specified in agreements.

PART 4 – PRINCIPLES AND RECOMMENDATIONS

This discussion of achieving coordination of land use, efficient service delivery and effective resolution of disputes between local governments and First Nations post-treaty points to one important fact. Local governments and First Nations have their own negotiations to conclude which are brought into focus by the treaty process. In different degrees, meeting the needs of different circumstances, these negotiations need to address how land uses are coordinated, how services are provided and how disputes between the local government and First Nation will be resolved. The treaty itself needs to recognize and support this fact. In some cases, it may be desirable, from a local government perspective, to require that First Nations and local governments conclude an agreement on land use coordination during the treaty process to ensure that these critical issues are dealt with satisfactorily and that treaties are not the start of uncertainty for local governments, rather than the ending.

The following principles are derived from the research and conclusions contained in this paper.

PRINCIPLES

CERTAINTY – Achieving certainty with respect to land use, servicing and resolution of disputes can be the most useful role of the treaty for local governments. The conclusion of treaties in most cases will increase the level of activity by First Nations on their land, heightening the need for coordination with local governments. Without a common operating framework, such as is provided to local governments through the *Local Government Act*, uncertainty will persist.

STABILITY IN COMMUNITY RELATIONSHIPS - Local governments and First Nations have their own negotiations to conclude through the treaty process. This will support a secure and stable framework for community relationships.

FLEXIBILITY IN COORDINATION MECHANISMS – The type of mechanisms or structures needed to achieve coordination will vary depending on local circumstances. For example, the more First Nations land involved and the closer it is to settled areas, the more need there is for formal coordination structures. In some areas, it will be essential that land use coordination and dispute resolution measures are agreed to prior to finalization of the treaty. Success of the current relationship is also a factor in how much structure is needed.

FINALITY– An agreed to dispute resolution process is an essential part of coordination arrangements, since it provides closure should other attempts to coordinate land use and related activities fail. It also prevents unresolved conflicts persisting long term.

PREDICTABILITY FOR SERVICING – Land use and servicing are inextricably linked. In order for local governments to plan and provide for servicing needs adequately, community land use objectives and future plans must be known. Provision of and payment for services is an important aspect of the local government – First Nation relationship. In future, agreements will often need to go beyond servicing and deal comprehensively with the range of intergovernmental issues. When local government and First Nations adhere to equivalent standards and regulations

affecting land use and servicing, the many benefits that result include easier coordination and equal opportunity to attract development.

CLARITY– If 'consultation' is used as the coordination mechanism, then this term is best defined explicitly, and not left to interpretation by individual parties to agreements. Other terms, such as "dispute" are also important to define.

APPLICABILITY TO REGIONAL AND MUNICIPAL CONTEXTS – Regional Districts and municipalities in BC can have different needs with respect to how land use is coordinated and the formality of agreements and dispute resolution mechanisms.

RECOMMENDATIONS

These recommendations are based on the conclusions in this paper and the above principles.

UBCM RECOMMENDS THAT:

1. 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. 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. 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. 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 RESOLUTION;

5. 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; AN 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.

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APPENDICES

APPENDIX A

APPENDIX B

APPENDIX C

APPENDIX D

UBCM REVIEW of The Master Agreement Between Westbank First Nation, Regional District of Central Okanagan, City of Kelowna, Black Mountain and South-East Kelowna Irrigation Districts

Background and Purpose
In the early 1990s, the Westbank First Nation filed an application with the Department of Indian Affairs to transfer lands located in the southeast of Kelowna, commonly known as the Gallagher Canyon Lands, to Indian Reserve status. In considering the application, the federal government expressed its wish to see an agreement reached by the First Nation and the local government which would deal with concerns around the proposed application for Reserve status.

The purpose of the Master Agreement is to record the parties mutual understanding and their rights and obligations to and with each other with respect to the Gallagher Canyon Lands.

This Master Agreement is of interest to other local governments in that it addresses common concerns about harmonizing uses and activities on First Nations land with those on adjacent lands. These types of concerns have been expressed by other local governments with respect to both reserve land and to those lands which would be under First Nation jurisdiction post-treaty, known as "Treaty Settlement Lands", (Clause 9.1 makes clear that the Master Agreement is completely separate from treaty negotiations and nothing in the agreement is intended to prejudice a future treaty settlement). The Master Agreement is innovative and unique, and it provides food for thought to other First Nations and Local Government seeking ways to advance their working relationship.

Elements of the Agreement
The Master Agreement is divided into the following parts:
Part 1 – Interpretation
Part 2 – Westbank Covenants
Part 3 – District Covenants
Part 4 – City Covenants
Part 5 – Black Mountain Irrigation District (BMID) Covenants
Part 6 – South-East Kelowna Irrigation District (SEKID) Covenants
Part 7 – Joint Consultation Process
Part 8 – Dispute Resolution
Part 9 – General Provisions
Below is a description of aspects of the Agreement that are particularly innovative.

Part 1 – Interpretation
The Agreement defines two terms, "Joint Consultation Process" and "Dispute" which helps to clarify the parties understanding of what rights and obligations they have in communicating with one another in order to avoid and when need be, resolve disputes.

"Joint Consultation Process" means the cooperative, reciprocal land use consultation plan agreed to by the parties and more particularly described herein;

"Dispute" means any controversy, dispute, disagreement of claim whatsoever involving one or more parties arising out of or relating in any way to this Agreement, including any such matter concerning the effect, content or interpretation of this Agreement or the rights and obligations of any party arising hereunder.

Part 2-6 – Covenants

This part of the Agreement contains the majority of the parties' rights and obligations to each other. The covenants refer to existing easements, access, existing and future licenses, harmonizing standards and land use planning.

In Part 2, the Westbank First Nation:

1. Recognizes all existing easements of the District, city and Irrigation Districts (IDs)
2. Commits to providing access by the IDs to their works located on or beyond the Lands
3. Commits to providing a right of way to one of the IDs and to support the City and/or District to obtain access rights of way
4. Recognizes existing and future water licenses held by the IDs
5. Agrees to harmonize applicable standards with respect to water quality
6. Agrees to dedicate the highway crossing the lands as a public road
7. Commits to creating and establishing a land use plan which is in accordance with the stated primary purpose of the lands (to be used for community housing for Members) and as consult with the other parties on the plan including giving reasonable consideration to all comments
8. Commits to limiting the land uses to an agreed list: Community Housing, Neighbourhood Commercial Centre and Outdoor recreation
9. Commits to a minimum parcel size of 5 acres
10. Commits to providing advance notice to the City and District on any proposed development on the lands
11. Agrees to paying a Road Improvement Contribution (like a Development Coast Charge or DCC) and consult with the City and District on road improvement needs and costs
12. Agrees to conditions concerning payment for City or District services to the lands
13. Exempts the City, District and IDs from taxation pursuant to any bylaws of the Westbank in respect of easements or rights of way or similar rights granted.

In Parts 3 & 4, the District and City:

14. Acknowledge that any concerns regarding the transfer of the Gallagher Canyon Lands will be addressed through the agreement
15. Agree to participate in the Joint Consultation Process
16. Commit to providing comments and assisting Westbank in developing their land use plan
17. Agree that they may enter into service agreements with Westbank
18. Commits to using Road Improvement Contribution remitted by Westbank for the sole purpose of improving arterial highways on or in the vicinity of the Gallagher Canyon Lands

In Parts 5 & 6, the Irrigation Districts make the same commitments as the City and District with respect to concerns regarding the transfer of lands and Westbank land use planning. With respect to water service, both agree to considering any application by Westbank for water service in a fair and equitable manner similar to any other application for lands within or outside the boundary of the ID.

Part 7 – Joint Consultation Process
In this part, the Westbank First Nation, Central Okanagan Regional District and City of Kelowna agree to procedures on consultation with respect to land uses or developments. They commit to using their "best efforts to accommodate and address the concerns of the other regarding any proposed developments" and "shall ensure, to the extent possible, that any such proposed use or development is consistent with and compatible to surrounding land uses or developments".

The provisions address two common concerns of local government (lack of harmonization of land use, no input or prior consultation on land development) by ensuring that:
1) That advance consultation on land use occurs and that legitimate opportunities for input are provided and
2) That the need for compatibility and consistency of uses of adjacent land within different jurisdictions is recognized. This in effect, commits to planning on a regional basis, falling short of a joint planning process.

Part 8 – Dispute Resolution
The parties agree to a stepped procedure for dealing with a dispute, beginning with notification of the other parties describing the nature of the breach or disagreement. It provides a time limit of 60 days for negotiations and the terms of arbitrated settlement, if no satisfactory solution is found within the 60 days. The Master Agreement also specifies that the parties may seek interim injunctions or similar court orders pending a final decision of an arbitrator.

Part 9 – General Provisions
This part contains details on how "notice" of one party by another must be given. It is also stated that the parties must enter into any further agreements or make any other efforts necessary to giving affect to the covenants specified in the agreement.

Summary: Significance of the Agreement
Servicing Agreements are the most common type of accord between local governments and First Nations. The Master Agreement on the Gallagher Canyon Lands goes beyond a service agreement and deals with a range of issues fundamental to the relationship between local governments and First Nations. These issues include land use, communications, access and servicing. The Master Agreement gives substance to the mutual understanding between the parties in that it identifies their rights and obligations in respect of one another.

The land use provisions are of particular significance, providing assurance to all parties by making a commitment to plan, be consistent with a stated purpose, consult reciprocally through a defined process, agree to a stepped dispute resolution process. It is our view that the Master Agreement is a significant achievement and has useful lessons for all local governments and First Nations in BC and for their relationship post-treaty.