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**TO:** CITY MANAGER **DATE:** 2006 January 18

**FROM:** DIRECTOR PLANNING AND BUILDING **FILE:** PC 1400 20  
*Reference: LMTAC*

**SUBJECT:** TREATY SETTLEMENT LAND: FISCAL IMPACTS ON LOCAL GOVERNMENTS

**PURPOSE:** To provide feedback to UBCM regarding a recent report on the potential fiscal impacts on local government resulting from treaty settlement lands.

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**RECOMMENDATION:**

1. **THAT** a copy of this report be sent to the Union of BC Municipalities, 60-10551 Shellbridge Way, Richmond, B.C. V6X 2W9.

**REPORT****1.0 BACKGROUND**

The UBCM, in conjunction with the Ministry of Aboriginal Relations and Reconciliation (MARR) and the Ministry of Community Services (MCS), distributed a report to member municipalities entitled "Treaty Settlement Land: The Fiscal Impacts on Local Government". This report was prepared by an independent consultant in light of concerns expressed by local government about the potential for fiscal impacts arising from the transfer of lands to First Nations as a result of the treaty process. The UBCM has requested feedback from its members by 2006 February 03 to determine if the report adequately reflects the concerns of local government. This report addresses that request.

**2.0 REPORT REVIEW**

The report provides an overview of the current treaty negotiation process in B.C., noting that as a result of treaties, land will be transferred to the jurisdiction of First Nation governments. Nearly all of the land intended to be transferred to First Nations is either reserve land or land held by the federal or provincial crown (any privately-owned parcels would be acquired strictly on a willing seller/willing buyer basis). Lands converted to First Nations governance as a result of the treaty process is called Treaty Settlement Land (TSL).

The report summarizes concerns expressed by local government at the potential conversion of crown land in municipal areas to TSL. The report also identifies any comparable situations across Canada and how compensation, if any, is identified and paid. For the most part, these

examples are limited to additions to reserve lands, which have the same effect of removing lands from the taxable jurisdiction of the local government. In the vast majority of cases, compensation is limited to servicing agreements that see the First Nation compensate the local government for the provision of services. It is also typical that lands are not transferred until the servicing agreements are complete.

An exception to this approach is used in Manitoba, whereby a municipality can apply for compensation if it believes that it has suffered a tax loss that has not been offset by the revenue earned through a service agreement. That compensation is based on the revenue earned in the year before transfer, less the annual revenue to be earned through the servicing agreement.

Based on a consideration of local government concerns and the examples involving land transfer to First Nations, the report proposes three alternatives to address local government concerns about the possibility of a negative fiscal impact associated with such a transfer.

The UBCM has indicated that it is particularly interested in members' responses to four specific questions. The questions, and staff's assessment, is as follows:

**1. Is your local government concerned about the fiscal impacts from treaty settlement lands?**

Burnaby is a highly urbanized municipality, and any removal of lands for treaty purposes – although unlikely – would create issues surrounding loss of revenue and servicing costs.

**2. Do you think the report adequately presents the concerns of local governments with respect to the issue of fiscal impacts and are there any local government concerns that have been overlooked?**

The report adequately summarizes local government concerns regarding the direct fiscal impacts of a land transfer. However, the issues of land use harmonization, equity in property taxation and the potential creation of tax havens have not been addressed. The report recognizes that these are related issues that are difficult to separate. While not direct costs associated with land transfer, certainly these are issues with a financial component that are of concern to all local governments, including those adjacent or near to new First Nations' jurisdiction. In the final analysis, the creation of a "level playing field" is paramount to local government.

**3. Which of the three approaches presented in Chapter Five make sense from your local government's perspective?**

As proposed, all three of the approaches to addressing local government concerns about the possibility of a negative fiscal impact are problematic, as follows:

1. *Let the parties resolve it themselves on their own timetable.* From the local government perspective, this could be problematic as there is a lack of certainty. Most land transfers completed at this time are dependent on finalizing the servicing agreement in advance. Further, this approach strictly addresses the costs of specific servicing, it does not account for previous capital investment or revenue based on future uses. Nor does this approach address the need to capture both hard and soft services in a servicing agreement.
2. *Set the framework at the time of treaty.* This approach sets out the principles of a future servicing agreement prior to any land transfer. It takes as its starting point that local government is the default provider of services until such time as the First Nation takes over servicing responsibility. As proposed, the principles are unlikely to completely satisfy the concerns of local government in that it permits servicing to be “unbundled” and for the First Nation to pay for only those services it chooses, or does not provide.
3. *Share taxing jurisdiction until a servicing agreement is in place.* This approach has local government exercising taxing authority over the land in question, or sharing it with the First Nation, until an acceptable servicing agreement is put in place. As in the first case, this approach does not provide certainty, and it strictly addresses the costs of specific servicing (not accounting for previous capital investment). It does, however, alleviate the tax loss in the immediate period following a land transfer.
4. **What does your local government think about the role that the consultant suggests for provincial adjustment assistance for local governments?**

The consultant cites the Nisga’a Final Agreement Adjustment Fund as a provincial mechanism which could mitigate adverse economic impacts associated with a treaty. However, the specifics of the Nisga’a fund are likely to be unpalatable to local government. To qualify for assistance, the applicants had to demonstrate that they experienced an adverse economic impact within a limited period following the Treaty coming into effect, that the impact was directly related to the Treaty and that the negative impact was not offset by a positive impact, among other criteria. Local governments may not be aware of the full impacts resulting from a treaty for many years, particularly related to the development pattern of the First Nation land and any negotiated servicing agreements. Further, this approach is strictly concerned with mitigation through adjustment assistance, not compensation. That is, funding could be made available to establish servicing agreements, aid relationship building or conduct up front engineering work to determine the extent of servicing needs.

If local government is strictly interested in the provision of servicing, such an approach would be helpful. If local government is interested in any measure of compensation for the lost tax base, this proposal will not be accepted.

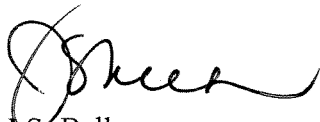
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From: Director Planning and Building  
Re: Treaty Settlement Lands and Fiscal Impacts  
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### 3.0 CONCLUSION

“Treaty Settlement Land: The Fiscal Impacts on Local Government” summarizes the concerns of local government pertaining to the transfer of lands within a municipality to First Nations jurisdiction, while proposing three approaches to mitigating any negative fiscal impact. As drafted, all three proposals are likely to meet with some level of opposition from local governments, as discussed above.

As a final caveat, it is recognized that the relationship between any given municipality and First Nation is likely to be the key in whatever approach is adopted. As the report itself points out, where the relationship is good, any of the three approaches could be successful. Where the relationship is poor, all could be difficult.

It is recommended that a copy of this report be forwarded to the UBCM.



J.S. Belhouse  
DIRECTOR PLANNING AND BUILDING

KSF:  
Attachment

Copied to: Director Finance