

## SUPPORT FOR THE BC TREATY PROCESS BACKGROUND BRIEFING NOTE TO NEW LMTAC FIRST PRINCIPLE #42: Support for the BC Treaty Process\*

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This Briefing Note includes information on:

1. Development of LMTAC policy
2. Background on provincial policies and various types of non-treaty agreements
3. Other related LMTAC interests and concerns

### 1. Development of LMTAC Policy

LMTAC members initiated development of a background briefing note on Support for the BC Treaty Process in order to elaborate upon a proposed new First Principle for adoption by the LMTAC Board. A new First Principle was recommended by local governments in light of the creation of the new provincial Ministry of “Aboriginal Relations and Reconciliation” (and dissolution of the “Treaty Negotiations Office”), as well as a recognition by local governments of an increased number of agreements being negotiated between senior governments and First Nations outside the BC Treaty Process.

#### ***New First Principle #42 – Support for the BC Treaty Process***

*LMTAC supports the tripartite BC Treaty Process and does not support bilateral or unilateral actions on the part of senior governments.*

### 2. Background:

#### **Provincial Government Service Plan 2005/06- 2007/08**

According to the *Government of British Columbia Budget 2005 Service Plan 2005/06- 2007/08* for the Treaty Negotiations Office (predecessor to the Ministry of Aboriginal Relations and Reconciliation), one of the provincial government’s objectives is to build trust with First Nations through a reconciliation and recognition framework<sup>1</sup>. Performance measures for this objective include reaching a number of “non-treaty agreements” that facilitate and strengthen relationships between First Nations and governments<sup>2</sup> with the target of concluding one to two agreements each year between 2005 and 2008.

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<sup>1</sup> Government of British Columbia Budget 2005 Service Plan 2005/06- 2007/08 for the Treaty Negotiations Office, Pg.9.

<sup>2</sup> Ibid. Pg. 12.

**MOU between UBCM and Provincial TNO (renewed 2003):**

The new *Memorandum of Understanding between the Union of BC Municipalities (UBCM) and the Provincial Treaty Negotiations Office (TNO) on Local Government Participation in the Negotiations of Treaties and Other Agreements* (2003) was intended to update and replace the following agreements that previously existed between UBCM and the Province on aboriginal matters: 1993 MOU, 1994 Protocol (establishing *Treaty Advisory Committees*) and 2000 Protocol (on *Interim Measures*).

The purpose for this new agreement was to provide local governments with further certainty around their participation in the negotiation of treaties and other agreements with First Nations with the potential to affect local government interests. This certainty was required in light of the major changes undertaken by the Province with respect to the treaty negotiation process and the elimination of annual funding to *Treaty Advisory Committee* (TAC) as of April 1<sup>st</sup>, 2002.

Among the significant changes between the new MOU and the original 1994 agreement was that “other agreements” were added to include:

- incremental agreements;
- treaty related measures; and
- any *other agreements* related to lands and resources which may be reached between a First Nation and Provincial Government pre-treaty.

Under the MOU and subject to confidentiality, UBCM has the responsibility of disseminating the most current list of provincial initiatives with First Nations including economic measures, treaty related measures, and accommodation and interim measures agreements, which are negotiated and approved by the Treaty Negotiations Office (now the Ministry of Aboriginal Relation and Reconciliation) or other line ministries. A review of the most recent<sup>3</sup> interim measures listing demonstrates that the Province has pursued some initiatives with First Nations who have not entered the treaty process.

The following is a summary of various types of agreements entered into between senior governments and First Nations:

**Interim Measures Agreements and Treaty Related Measures<sup>4</sup>:**

- **Interim Measures (IMs) Agreements**

*Interim Measures* agreements (IMs) provide for the protection, management or use of land and resources before treaties are concluded, however they not required to be directly linked to a treaty. The agreements are designed to deliver immediate benefits to First Nations; serve as building blocks for final treaties; and provide a greater degree of certainty for land management and for business development. Interim measures agreements may provide funding for land protection, economic development studies and joint venture development, land-use planning, governance development and cultural heritage initiatives. More than 75 interim measures agreements have been signed under the BC Treaty Process.

**Forestry/Range Agreements<sup>5</sup>**

The Ministry of Forests *Strategic Policy Approaches to Accommodation* (Final Draft July 2003) is intended to facilitate the provincial objective to create certainty on Crown lands and promote economic development by

<sup>3</sup> May 2005 Interim Measures List

<sup>4</sup> Sources: BC Treaty Commission website [www.bctreaty.net](http://www.bctreaty.net) (FAQs) and Indian and Northern Affairs Canada website [www.ainc-inac.gc.ca](http://www.ainc-inac.gc.ca)

<sup>5</sup> Source: Ministry of Forests website: [http://www.for.gov.bc.ca/HAA/FN\\_Agreements.htm](http://www.for.gov.bc.ca/HAA/FN_Agreements.htm)

addressing asserted aboriginal rights and title by providing access to timber and revenue sharing through negotiated agreements with First Nations. Access to the revenue and timber volumes outlined in this policy will be through a negotiated interim measures agreement, referred to as Forestry/ Range Agreements (FRAs), between the Minister of Forests and the First Nation.

With respect to linkages of Forest/Range Agreements to negotiations led by other agencies: FRAs will not limit the positions the parties may take in future treaty negotiations and will not recognize, affirm or deny the existence of aboriginal rights, including title. There may be situations where other agencies, such as the *Treaty Negotiations Office* (now Ministry of Aboriginal Relations and Reconciliation) are negotiating broader framework agreements such as interim measures and there may be potential for those agreements to incorporate references to processes undertaken by the Ministry of Forests.

The Ministry of Forests *Strategic Policy Approaches to Accommodation* further states that the Ministry will look for opportunities to co-ordinate its accommodation initiatives with the initiatives of other agencies. However, any participation in coordinated initiatives should not adversely impact the ability of the Minister to address operations issues in a timely manner.

- **Treaty Related Measures (TRMs)**

*Treaty Related Measures* (TRMs) are a type of interim measures agreement that must be directly linked to treaty negotiations. These agreements are signed by all three parties: Canada, BC and a First Nation and are cost shared by BC and Canada. Following a commitment by all three parties to discuss the issue at the treaty table, government negotiators must seek mandates to negotiate specific TRMs. Negotiators will consult with local governments and third parties during the negotiation of TRMs, and efforts will be made to minimize the impact of TRMs on affected groups.

TRMs are designed to facilitate treaty negotiations and bring certainty and economic resource development to First Nation and neighbouring local economies. TRMs are temporary arrangements negotiated within the treaty process, and may or may not become part of a treaty when it takes effect.

#### Examples

TRMs are designed to resolve matters on an interim basis and to facilitate negotiations. Examples of TRMs include:

- studies to generate information that will expedite treaty negotiations (such as governance studies and land selection);
- protection of Crown land for treaty settlements;
- land acquisition for treaty settlements;
- First Nation participation in land, resource and park planning and management; and
- Economic and cultural opportunities.

- **Differences between Interim Measures (IMs) and Treaty Related Measures (TRMs):**

*Treaty Related Measures* differ from *Interim Measures* in two ways:

- costs associated with TRMs are shared between Canada and BC, and, therefore, neither government can commit to a TRM without the agreement of the other; and
- TRMs must be directly linked to treaty negotiations through a negotiated agreement between Canada, BC and the First Nation. They must also specify the link to the treaty. As such, TRMs can only be negotiated at a treaty table.

Other Interim Measures Agreements, that are not *Treaty Related Measures*, may be negotiated away from the treaty table. They may also be negotiated by Canada or BC independently or bilaterally.

### 3. Other Related LMTAC Interests and Concerns

#### Local Government Interests with Non-Treaty Agreements

*The following list of local government interests have been compiled based upon the expressed views of LMTAC members during Executive and Board discussions and in consultation with LMTAC Table Representatives.*

- **Commitment to the BC Treaty Process** — Local governments support the resolution of treaties and require a renewed commitment to the BC Treaty Process on the part of senior governments.
- **Agreements Related to the BC Treaty Process** — Preference for all future agreements (i.e. other kinds of Interim Measures) related to land and resources to be negotiated under, and directly linked to, the BC Treaty Process.
- **Local Government Participation and Inclusion in Negotiated Agreements** — Local governments support the tripartite BC Treaty Process because local governments actively participate as full members of the provincial negotiation teams, whereas bilateral or unilateral actions are often undertaken at the exclusion of local governments.
- **Transparent Consultation Processes** — Tripartite treaties negotiations must be open and provide for meaningful public input through the negotiations (*LMTAC First Principle #5*).
- **Need For Certainty** — Local governments strongly support the need for certain and final definitions of Treaty right. Treaties should provide a clear and exhaustive definition of powers that First Nations governments may exercise (*LMTAC First Principle #7*).

#### Local Government Concerns with Non-Treaty Agreements

- **Reduced Incentive For First Nations To Conclude Treaties** — LMTAC supports the tripartite BC Treaty Process, and does not support bilateral or unilateral actions on the part of senior governments that would in effect reduce the incentive for First Nations to enter into or proceed with the resolution of treaties.
- **Agreements That Exclude Local Government Participation** — Unilateral and/or bilateral agreements that are negotiated independent of the treaty table to the exclusion of local governments.
- **Lack of Public Information and Community Involvement** — Communities and therefore, local government interests, may be greatly impacted by non-treaty agreements and may only be informed about agreements once they are concluded; with minimal or no opportunity to express their interests or influence outcomes.
- **Limited Resources For Treaty Settlements** — Local governments are concerned that if senior governments and First Nations focus their resources on non-treaty activities and agreements this may result in a lack of sufficient resources available for the negotiation of treaty settlements under the BC Treaty Process.
- **The Impact of the Province's *New Relationship*** — Subject to further interpretation of the Province's *New Relationship* document, local governments are concerned about the practical implications of the *New Relationship* on the negotiation of IMs (including FRAs), TRMs and other agreements. Furthermore local governments are concerned with the lack of clarity surrounding their role within the context of this new provincial strategy.