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# CONSIDERATIONS

## A Guide to Lower Mainland Area Local Government Interests in Treaty Negotiations

*(Includes LMTAC First Principles)*

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*“LMTAC coordinates and represents the collective interests of local governments, and through them their constituents, in defining and building relationships between First Nations and other orders of government.”*

Version: November 2005

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TREATY  
ADVISORY  
COMMITTEE

## Lower Mainland Treaty Advisory Committee

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## What is ‘LMTAC’?

The Lower Mainland Treaty Advisory Committee (LMTAC) coordinates and represents the interests of local governments, and through them their constituents, in defining and building relationships between First Nations and other orders of government. LMTAC is the largest Treaty Advisory Committee (TAC) in British Columbia and the most urban focused, providing input into negotiations with five Lower Mainland area First Nations: Katzie, Musqueam, Squamish, Tsawwassen and Tsleil-Waututh (Burrard). LMTAC is comprised of elected and staff representatives from 23 municipal and 3 regional districts. While LMTAC is not one of the principles in the BC Treaty Process (Canada, British Columbia and the First Nations), LMTAC representatives are full members of the provincial treaty negotiating team.

One of LMTAC’s key roles is to provide support services to member local governments dealing with broader Aboriginal issues such as land management, servicing, intergovernmental relations and communications with First Nations. Ongoing LMTAC initiatives include information gathering, education, research and analysis, and various targeted communications activities. LMTAC is the region’s most comprehensive resource body for local governments that do not have in-house capacity to monitor and address emerging Aboriginal issues, particularly in the urban context.

<b>LMTAC MEMBERSHIP 2005</b>	
<p><b>Full Voting Members</b></p> <ol style="list-style-type: none"> <li>1. Greater Vancouver Regional District</li> <li>2. Village of Anmore</li> <li>3. Village of Belcarra</li> <li>4. Municipality of Bowen Island</li> <li>5. City of Burnaby</li> <li>6. City of Coquitlam</li> <li>7. Corporation of Delta</li> <li>8. City of Langley</li> <li>9. Township of Langley</li> <li>10. Village of Lions Bay</li> <li>11. District of Maple Ridge</li> <li>12. City of New Westminster</li> <li>13. City of North Vancouver</li> <li>14. District of North Vancouver</li> <li>15. District of Pitt Meadows</li> <li>16. City of Port Coquitlam</li> </ol>	<ol style="list-style-type: none"> <li>17. City of Port Moody</li> <li>18. City of Richmond</li> <li>19. City of Surrey</li> <li>20. City of Vancouver</li> <li>21. District of West Vancouver</li> <li>22. City of White Rock</li> <li>23. Squamish-Lillooet Regional District</li> <li>24. District of Squamish</li> <li>25. Resort Municipality of Whistler</li> <li>26. Sunshine Coast Regional District</li> </ol> <p><b>Observers</b></p> <ol style="list-style-type: none"> <li>27. Village of Pemberton</li> <li>28. Fraser Valley TAC</li> <li>29. Town of Gibsons</li> <li>30. District of Sechelt</li> <li>31. City of Nanaimo</li> </ol>

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**GLOSSARY OF TERMS****28****1.0 INTRODUCTION****1.1 What's New in This Version**

Originally endorsed by the Full LMTAC in 1999 and 2000, a comprehensive review of LMTAC's 39 First Principles was initiated in October 2003. Following considerable consultation with each member jurisdiction, amendments that were both technical and substantive in nature were suggested to several of the existing 39 principles. Further, four new First Principles were proposed for adoption. On October 26, 2005 the Full LMTAC Board endorsed the amendments and proposed new First Principles, bringing the First Principle review to a conclusion.

The *Considerations* paper now consists of 43 First Principles. The First Principles (section 3.0) provide the framework for more detailed exploration of interests found later in this paper (section 4.0) and give fuller expression to the perspectives of Lower Mainland area local governments affected by treaty negotiations. Policy papers developed to elaborate upon a First Principle have also been noted throughout.

Definitions for words followed by an asterix (\*) may be found in the Glossary of Terms.

**1.2 Background**

This paper outlines the key interests of local governments represented on the Lower Mainland Treaty Advisory Committee (LMTAC). Since 1995, members of LMTAC have been actively engaged in identifying local government interests as they relate to issues typically discussed in treaty negotiations – issues such as land, fiscal, resources and governance.

Local government interests in treaty negotiations are communicated to the provincial government through of the Union of BC Municipalities (which provides a province-wide local government perspective) and individual Treaty Advisory Committees like LMTAC (which provide a region-specific local government perspective). Although local governments are not one of the three principles in the BC Treaty Process, LMTAC is a full member of the provincial negotiating team and provides advice and guidance to provincial negotiators and its member local governments on treaty and Aboriginal issues from a community perspective.

As the voice for Lower Mainland area local governments at five separate treaty tables, LMTAC works to identify issues relevant to its membership and to articulate related interests. These interests were cataloged in a series of interest papers produced by LMTAC, including previous versions of the *Considerations* paper beginning in 1997 through 2000.

The November 2005 version, like previous LMTAC interest papers, is an evolving document that will be updated and revised as new issues arise from treaty negotiations and as feedback and commentary is received from LMTAC's member local governments.

### 1.3 Objectives

This paper was developed to assist the membership of LMTAC in:

- identifying various social, economic, and policy issues of interest to Lower Mainland area local governments involved in treaty negotiations;
- linking general local government interests to specific substantive issues arising in Stage 4 Agreement-in-Principle (AIP)\* and Final Agreement\* negotiations;
- expressing principles which LMTAC member local governments believe should be integrated into treaties with First Nations;
- developing a framework to assist member local governments in effectively responding to issue-specific questions arising from Stage 4 AIP\* and Final Agreement\* negotiations.

### 1.4 How to Use This Paper

There are four key audiences for this paper:

- **LMTAC Members** – *use this paper as a “guide” to help understand and communicate Lower Mainland area local government interests in treaty negotiations to senior governments, Councils, Boards and the public. This paper is of particular interest to LMTAC representatives at specific treaty tables; use this paper as a summary of local government interests as expressed by the full membership of LMTAC (not just one specific jurisdiction).*
- **Provincial Negotiators** – *this paper will assist Provincial negotiators in understanding the key interests of Lower Mainland area local governments and in communicating these interests to the other parties at the treaty table (Canada and First Nations). Use this paper to also understand the nature and scope of public policy issues with which local governments have expertise.*
- **Other Parties in the Treaty Process or Involved with Aboriginal Issues** – *use this paper to help understand the breadth of functions performed by local governments in the Lower Mainland area and the nature and scope of public policy issues with which local governments have expertise. Local governments are important public institutions that can play a key role in building lasting intergovernmental relationships and in negotiating and implementing successful treaties in an urban setting.*
- **Public At-large** – *this paper will be comprehensive summary of local government interests in treaty-making as expressed by members of LMTAC.*

## 1.5 Methodology and Approach

There are several steps associated with identifying and articulating local government interests. This paper follows logically the steps used by LMTAC members.

**Important Note:** Only steps 1 to 3 are presented in this paper. Step 4, the development of additional specific commentary, will be implemented by LMTAC members as treaty negotiations progress and as local governments are requested to provide specific commentary on detailed and emerging issues. Such commentary is typically requested during chapter development and land selection discussions in Stage 4 of the Treaty Process.

Step	Action	Implementation
<b>Initiate 1</b>	Identify Issues of Relevance to local government	See Table of Contents. (e.g. lands, resources, governance).
<b>Frame 2</b>	Link Issue to LMTAC’s First Principles	See Section 3.0.
<b>Explore 3</b>	Explore Underlying Interests	See Section 4.0.
<b>Add 4</b>	Additional Specific Commentary	During treaty chapter development and land selection (Stages 4 and 5), LMTAC will provide additional specific comments based on already established LMTAC principles and interests.

## 2.0 CONTEXT FOR NEGOTIATIONS

### 2.1 Role of Local Governments

A review of Framework Agreements (Stage 3) across British Columbia reveals that many of the issues of interest to First Nations involved in treaty negotiations are also the responsibility and/or interest of local governments. There is a practical necessity for ensuring that local governments are an integral part of treaty negotiations and post-treaty implementation.

In British Columbia, local governments are recognized as an independent, responsible and accountable order of government. Local governments are also the most accessible level of government, closest to its constituents and often staffed by local citizens. The importance of the role of the public, and of public processes, is a central defining characteristic of local government.

Local governments are also the implementing arm of government, dealing with both hard (e.g. water treatment, transportation infrastructure) and soft (e.g. community centres, planning) service delivery issues. As such, local governments tend to be pragmatic and practical organizations that seek to develop and implement “on-the-ground” solutions to important community issues.

Members of LMTAC strongly believe that senior levels of government need to recognize that treaties will be implemented at the local level and that day-to-day relationships in the post treaty environment will be between neighbouring Aboriginal and non-Aboriginal communities. The successful implementation of treaties – particularly in the urban setting where intergovernmental relationships are most important – is therefore inextricably tied to the direct participation of local governments in treaty negotiations and to the recognition that local governments are an important community-based form of public government, not a private, third-party interest.

## **2.2 Intergovernmental Linkages**

There are many misperceptions about the linkages between local governments and Aboriginal communities. The variety and breath of these linkages varies from region to region and from province to province. However, local governments and First Nations share many important commonalities. Such commonalities include, but are not limited to:

- shared broad community objectives, such as to maintain healthy populations, vibrant and dynamic economic systems, and sustainable and productive urban living environments.
- shared interests in creating employment and regional economic development opportunities for their constituents. Several case studies in Canada and the United States highlight the ability of local governments and First Nation to jointly pursue lucrative commercial or industrial enterprises.
- strong community ties and more accessible representational structures. Civic officials and Aboriginal council members are directly responsible to their constituents and often work within well established community-based forms of governance.
- shared need to work together in the post-treaty environment. It is at the local or community level at which the day-to-day relationships between First Nations and other levels of government will take shape, particularly in the urban setting.

## **2.3 Urban Treaty Considerations**

Treaty negotiations involve a multitude of complex and competing, multi-party public policy issues, many of which are intensified by the interconnections between communities and organizations in the urban setting. Treaty-making in urban settings will need to account for and accommodate these realities.

There are numerous reasons why urban treaties will be distinct from those of rural agreements. The implementation of treaties in urban centres is complicated by several factors including:

- complex network of existing government structures and management regimes
- numerous competing private interests
- unique economic development and land use considerations
- limited available Crown land for treaty settlements
- higher population densities
- an absence of past models to provide insight on how relationships with other governments may develop in the post-treaty urban environment.

In Canada, the United States, Australia and New Zealand – countries where there have been predominant ‘Aboriginal rights’ movements – there are few existing precedents that can be utilized to assess the socio-economic impacts of comprehensive urban treaty settlements or measure the impacts of local government participation in treaty implementation. Unlike in rural areas, the outcome of urban treaty negotiations will have a more visible impact on communities both Aboriginal and non-Aboriginal.

### 3.0 FIRST PRINCIPLES

There are several broad principles which help to inform Lower Mainland area local government interests in treaty negotiations. These principles were developed in 1999 and June 2000 through a policy development and consultation exercise that directly involved all 26 municipal and regional district governments represented on LMTAC. In October 2003, LMTAC initiated a process once again with each of its member jurisdictions to review the existing 39 First Principles to reflect a number of treaty negotiation developments. On October 26, 2005 the Full LMTAC Board concluded the First Principle review by endorsing amendments, as well as, adopting four new First Principles. The *Considerations* paper now consists of 43 First Principles that provide the framework for more detailed exploration of underlying interests found later in this paper (see section 4.0). ]

#### >> Preamble <<

Successful treaty negotiations are linked to the ability of local governments to effectively respond now and in a post-treaty environment. Members of LMTAC believe that:

- *The Governments of British Columbia and Canada should support the expeditious amendment of the Constitution of Canada to provide, protect and prescribe the powers of local government.*

Local governments also believe in the successful and timely resolution of outstanding Aboriginal rights and title issues. Members of LMTAC believe that:

- *First Nations should be encouraged to file all Aboriginal claims under the BC Treaty Process within a reasonable timeframe as a means of achieving certainty.*

## GENERAL PRINCIPLES

### Brief Description:

### Principle:

#### **Uniqueness of Urban Treaties**

1. Treaty agreements in other regions of the Province should not be used as a precedent or template for urban treaty settlements. Provisions in Lower Mainland area treaties should reflect the complex realities of the urban environment specific to each treaty.

#### **Local Governments are Not Third Party Interests**

2. Local government shall be recognized in the treaty process as an independent, responsible, accountable and equal order of government, with interests distinct from those of other orders of government.

#### **Respect Canadian Constitution**

3. Treaties should uphold the principles of the *Canadian Constitution* and the *Canadian Charter of Rights and Freedoms*.

#### **Respect Heritage**

4. Treaty settlements must respect the values, heritage, culture and traditions of Aboriginal and non-Aboriginal peoples.

#### **Open and Transparent Negotiations Funded By Senior Governments**

5. Tripartite\* treaty negotiations must be open and provide for meaningful public input throughout the negotiations. The cost of the public process is to be funded as an essential part of treaty-making by the tripartite negotiating parties.

#### **Resolution of Overlaps/Shared Territory**

6. Final Agreements\* shall not be completed until all conflicting land, water and resource issues (of those Aboriginal peoples who qualify under the BC Treaty Process) have been resolved. Final Agreements\* shall include the details of the overlap/shared territory resolution agreement.

#### **Need for Certainty**

7. Local governments strongly support the need for final treaty settlements to provide certainty with respect to Aboriginal rights and title.

#### **Role of LMTAC**

8. LMTAC is the voice of Lower Mainland area local governments on all issues relating to the treaty process.

#### **Consistent Application of Principles**

9. LMTAC's First Principles will be applied to all Lower Mainland area treaty agreements.

## LAND PRINCIPLES

### **Brief Description:**

#### **Cash Settlements in Urban Areas**

### **Principle:**

10. Urban treaty settlements should be composed primarily of cash and other fiscal considerations rather than land, because of scarcity of unencumbered and uncommitted lands in the Lower Mainland area.

#### **Private & Local Government Lands and Assets Protected**

11. Privately-owned fee-simple\* lands, Crown Corporation lands, and local government-owned lands and assets, including those acquired through a local government process, must not be available for land selection. Lands and assets include, but are not limited to: local government facilities, rights-of-way, lands leased from other governments, roads, Crown lands subject to a local government license/tenure, municipal and regional parks, conservation and protected areas, greenbelts, school board lands, and local government commercial operations (i.e. forest lands, park concessions).

#### **Post Treaty Additions to Treaty Settlement Lands**

12. Lands to be added *after* the treaty is signed must remain subject to local government jurisdiction and taxation unless otherwise agreed to by local governments through a community consultation process.

*(Additions to Treaty Settlement Lands & Treaty Negotiations - Background Briefing Note to First Principle #12, October 2004)*

#### **Clarity and Consistency in Regulatory Jurisdiction over Lands**

13. Lands received by a First Nation, as part of a treaty settlement and under the jurisdiction of a First Nation government, should be subject to the same provincial and federal legislation that is applicable to local government.

#### **Importance of Access**

14. There must be continued access (via land, water or air) to local government lands and assets on, between or adjacent to treaty settlement lands\* as well as to privately-held and leased lands on, between or adjacent to treaty settlement lands\* for the purposes of, but not limited to, infrastructure development and maintenance.

## RESOURCE and ENVIRONMENTAL PRINCIPLES

### Brief Description:

### Principle:

#### **Resource Sustainability**

15. Sustainability\* of local economies is a regional priority in the post-treaty environment. Lower Mainland area renewable, natural resources (including, but not limited to, forests, water and fish) must be collaboratively managed on a sustainable basis in order not to undermine the economic base of local governments and their communities.

#### **Consistent Environmental Regulatory Controls**

16. Clarity and consistency in regulatory jurisdiction with respect to natural and physical resources are paramount in the post-treaty environment. Development of resources can have a significant impact on local governments.

#### **Conservation / Environmental Protections**

17. International agreements and Federal and Provincial legislation with respect to conservation (of wildlife, migratory birds, fish and other species) must be incorporated into all treaties.

Present, future and potential refuge and environmentally-sensitive areas, including but not limited to, the Fraser River Basin, Boundary Bay Wildlife Management Area, Maple Wood Flats Conservation Area and Indian Arm, must be identified and protected during the treaty process.

#### **Protect Habitats**

18. Locally, nationally, and globally environmentally significant habitats in the Lower Mainland area must be recognized and protected.

#### **Agricultural Lands**

19. Local government strongly supports the preservation of viable agricultural land. Treaty settlement land\* designated as Agricultural Land Reserve (ALR) must remain subject to the jurisdiction of the Agricultural Land Commission (ALC). Any removal of land from the ALR must follow the same procedures as for any other applicant.

*(Agricultural Land Reserve & Treaty Negotiations;  
Background Briefing Note to LMTAC First Principle #19,  
September 2004)*

**Respect Local Government Leases and Licenses**

20. Local government leases and licenses (including, but not limited to, park tenures and agricultural, mining, forest and range leases/licenses on Crown lands), and the economic and environmental viability of these agreements, as well as any provisions for their renewal, must be respected and preserved.

**Access, Usage, Maintenance and Protection of Water Resources**

21. Local government and private interests in water must be preserved. Interests include, but are not limited to: ground water, aquifers, natural drainage systems, watersheds, reservoirs, water licenses, water lots, shoreline and easement access for servicing, historic rights of water use, purity control standards and water use regulations.

**Protect Annual Allowable Cut**

22. *Annual Allowable Cut* (AAC) within the existing timber supply areas and Forest Districts must not be negatively impacted by treaty settlements.

**Protect Fish Stocks**

23. The protection of fish stocks is a primary concern, and the rights and responsibilities of all fishers engaged in native, commercial or recreational fishing should be given due consideration.

*(Local Government Fisheries Backgrounder Paper - First Principle #23, October 2001)*

**GOVERNANCE PRINCIPLES**

**Brief Description:**

**Principle:**

**Respect Government Authorities**

24. Treaties must recognize and respect the authority and jurisdiction of Federal, Provincial and local governments.

**Application of Criminal / Civil Laws**

25. Canadian Criminal Law should continue to apply as well as existing precedents set out in Civil Law in British Columbia.

**Democracy and Accountability**

26. Treaties should contain provisions for accountable, democratically elected governing entities.

**Rights of Representation**

27. Treaties must uphold the principle of “no taxation without representation” for all persons residing on treaty settlement lands.\* Mechanisms need to be developed to ensure that all persons who are living on treaty settlement lands\* and who are paying taxes or levies to the First Nation have access and a voice in First Nation governance systems.

*(Background Discussion Paper to LMTAC First Principle #27- Rights of Representation, March 2003)*

**Delivery of Local Programs/Services**

28. Aboriginal self-government provisions must provide for First Nation participation in, or partnerships with, local governments for more effective and efficient delivery of programs and services.

**Equivalent Regional Standards**

29. Standards and regulations (including enforcement provisions) that apply to treaty settlement lands\* must be at least equivalent to established regional standards set by Federal, Provincial or local governments for issues including, but not limited to: environmental protection, public health, labour, safety, fire protection, building codes, air quality and solid waste.

**Dispute Resolution Accessible to Local Governments**

30. Treaties should include an effective dispute resolution mechanism that is accessible to local governments, particularly relating to inter-jurisdictional issues such as, but not limited to: planning, land use, natural resources, growth management, stewardship and transportation.

*(Dispute Resolution and Land Use: Backgrounder to LMTAC First Principle #30, February 2002)*

**Consistency in Law Making Authorities**

31. In the matters of local government, law making authorities granted to First Nations under treaty and related agreements must be consistent with those law making authorities exercised by local government.

**Address Off-Reserve/TSL\* Issues**

- 32. Lower Mainland area local governments have increasing Aboriginal populations that are not from the traditional territories\* of Lower Mainland area First Nations as well as Aboriginal populations that will reside off future treaty settlement lands\*. Treaties must include mechanisms to ensure that the costs of providing programs and services to these populations do not become the responsibility of local government.

*(Local Government and Urban Aboriginal Issues; Backgrounder to First Principle #32, September 2002)*

**Participation in and Delivery of Regional Programs/Services**

- 33. Treaties must identify regional programs and services (such as, but not limited to, air quality, solid waste management, Regional Growth Strategies and Land and Resource Management Plans) in which First Nations must participate, either through direct involvement in the existing program/service or indirectly through a contract with local government

This principle recognizes that some programs/ services affect all area residents and that regional delivery enhances economies of scale. This principle also emphasizes the importance of the various interconnections between urban communities in the Lower Mainland area.

**FISCAL PRINCIPLES**

**Brief Description:**

**Recognize Fiscal Capacities**

**Principle:**

- 34. Treaties must recognize the limited fiscal capacity of all levels of government and not impose any cost to Lower Mainland taxpayers, other than their contribution to treaty settlements through the cost-sharing Memorandum of Understanding between the Provincial and Federal Governments. Local government involvement in the B.C treaty process should be financed by the Province of British Columbia.

**Honour Service Agreements**

35. All existing and future service agreements must be honoured to ensure local governments receive financial contributions from all users of local government programs, services and infrastructure.

*(Services, Service Agreements and Treaty Negotiations: Backgrounder to LMTAC First Principle #35, January 2002)*  
*(Servicing Interests and Treaty Negotiations - Background Briefing Note to LMTAC First Principle #35: Respect Service Agreements, February 2005)*

**Cost Neutral Agreements for Local Governments**

36. No demand must be placed on local government tax revenues or revenue sources resulting from treaty settlements, particularly on the ability of local government to derive tax revenue from sources such as property taxes, service fees, utility charges and grants-in-lieu from Crown lands. Any revenue loss to local governments arising from treaty settlements must be fully compensated.

*(Fiscal Interests and Treaty Negotiations - Background Briefing Note to LMTAC First Principle #36, October 2004)*

**Fair sharing of Costs**

37. In order to ensure that no one local government is unfairly or disproportionately burdened, all costs associated with treaty negotiations, including administrative costs associated with responding to the needs of a treaty negotiation table, must be the responsibility of the Provincial and Federal Government.

**Flexible Cost Recovery Post-Treaty**

38. The Provincial *Local Government Act*, *Community Charter* and *Vancouver Charter* must enable local governments to develop flexible taxation and cost-recovery mechanisms when dealing with Aboriginal governments in the post-treaty environment.

**Respect Existing Financial Commitments**

39. Treaties must respect and recognize existing Federal and Provincial fiscal commitments to local governments.

## **NEW FIRST PRINCIPLES (Adopted October 2005)**

### **Brief Description:**

### **Principle:**

#### **Local Government Involvement During Implementation**

40. The Province must continue to involve local government throughout all stages of the B.C. Treaty Process, including Stage 6 Implementation and any post-treaty reviews of treaty-related agreements to ensure that local government participation and consultation does not end with the signing of a Final Agreement.

#### **First Nation Participation in Regional Governance**

41. Provincial legislation must be provided to enable First Nation participation in regional governance structures. Self governing First Nations should be encouraged to participate in regional governance functions to the greatest extent possible. Any discussions of regional governance models must involve the direct participation of the respective regional district members from the very outset.

*(Regional Governance and Governance in the Region, April 2003)*

#### **Support for the B.C. Treaty Process**

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

*(Background Briefing Note to LMTAC First Principle 42 – Support for the BC Treaty Process, November 2005)*

#### **Assessment and Taxation Between Local Government Bodies**

43. First Nation governments participating in intergovernmental and/or regional governance structures, pre- or post-treaty, must comply with existing practice whereby member jurisdictions will not assess each other property taxes on utilities and related infrastructure, nor on the lands or rights-of way on which they are located. Treaty negotiations must work to uphold this important inter-governmental policy.

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## **4.0 UNDERLYING INTERESTS**

Underlying the broad principles identified by Lower Mainland area local governments represented on LMTAC are more detailed interests that help to further inform local government perspectives on treaty issues. The following section articulates these underlying interests.

**Important Note:** interests are constantly evolving. This section of the paper will be updated and revised as new issues arise from treaty negotiations and as feedback and commentary is received from LMTAC's member local governments.

## **4.1 GENERAL**

Local governments strongly believe that treaties should help to facilitate the deconstruction of the Federal *Indian Act* and the involvement of the Federal Department of Indian and Northern Affairs (INAC) in the lives of Aboriginal peoples in Canada.

### **4.1.1 Shared Values (Principles 3, 4)**

- The equality of all Canadians is a commonly held value. Regardless of age, gender, race, place of origin or residency, it is commonly held that all Canadians should be afforded equal rights, privileges, and opportunities. Treaties should seek to uphold these values while recognizing the unique social, cultural and constitutional place of First Nations in Canada.
- Negotiated settlements should assist all citizens in British Columbia to live in harmony by understanding and respecting each other's values, race, heritage, culture and traditions.
- Treaties should facilitate understanding and respect between Aboriginal and non-Aboriginal communities with the goal of creating inclusive and accessible communities for all.

### **4.1.2 Consistency (Principles 9, 12, 13, 16, 31, 33)**

- While treaties will be adapted to the specific needs of differing Aboriginal communities, key elements of the agreements – such as taxation, applicability of laws, land use planning requirements, and environmental regulations – should be consistent across all negotiations in the Province.

### **4.1.3 Public Information and Consultation (Principles 5, 40)**

- Members of LMTAC believe that the public should have opportunities to be well informed about the issues, process and expected outcomes of treaty negotiations.
- The Provincial and Federal governments must immediately expand the process of public dialogue to ensure that input and direction from local communities is received.
- No treaty should be ratified until substantial public review of the Agreement has occurred.

### **4.1.4 Interim Measures / Treaty Related Measures (Principle 42)**

- In the absence of clear criteria, commonly accepted definitions, and an acceptable consultation process between line ministries and local government, interim measures or related agreements outside of the established treaty process should be discontinued until a new process is developed that is linked to treaty negotiations and includes the direct involvement of local governments.

- Interim or related measures are inextricably linked to final treaty settlements because they set a baseline of expectations in treaty negotiations. Interim measures are frequently negotiated without the same openness and consultation required under the BC Treaty Commission process. This creates situations in which stakeholder and public interests can be bypassed.

## **4.2 LANDS and ASSETS**

Local governments have interests in land for a number of reasons. In the Lower Mainland, a significant proportion of local government revenue is derived from the land base through taxation. Local governments are also responsible for the maintenance of access through their jurisdictions and of public amenities within their boundaries. In keeping with existing growth management strategies, such as Official Community Plans (OCPs) and the Livable Regional Strategic Plan (LRSP), local governments wish to ensure that existing planning, land use, growth management, and transportation strategies are not negatively impacted by treaty settlements.

### **4.2.1 Certainty (Principles 6, 7)**

- For local governments, “certainty” means a desire to settle all First Nation claims without constantly seeking remedies through the courts.
- Consistent with the recommendations of the BC Claims Task Force Report (1991), Lower Mainland area local governments strongly support the recommendation that First Nations resolve issues related to overlapping traditional territories amongst themselves.
- Stage 4 Agreement in Principle’s should not be signed until overlap/shared territory issues are resolved. Early resolution would serve to eliminate uncertainties related to land selection and streamline the negotiation process.
- A specific deadline should be established for the filing of all Aboriginal claims under the BC Treaty Process to ensure the timely resolution of outstanding Aboriginal rights and title issues.

### **4.2.2 Land Inventories (Principle 11)**

- Senior governments should respect local government land inventories indicating lands not subject to treaty negotiations or available for land selection.
- Senior governments should assist local governments in the development of land inventories indicating specific Federal and Provincial properties, Crown lands, and other lands within local government boundaries. Values must be attributed to each property using current BC Assessment Authority data.

### **4.2.3 Land Selection (Principles 10, 11, 36)**

- Lands selected for treaty settlement should be integrated into one larger land base, not dispersed in an archipelago across the region. An integrated land base helps to realize economies of scale and rationalize hard and soft service delivery.

- Valuation processes used during treaty land selection should include the potential for future earning and the value of urban airspace, where appropriate.

### ***Local Government Lands***

- Local government-owned lands should not be included in treaty settlements and not be made available for land selection. Such lands include, but are not limited to, lands leased or licensed to/by a local government, fee-simple lands and encumbered Crown lands subject to local government tenures/licenses, and park land dedicated through subdivision.
- Should ownership of these lands not be respected, local governments should be compensated for the future value potential of those lands.

### ***Local Government Assets***

- Local governments wish to continue to own, operate and/or manage the following local government facilities including, but not limited to:
  - Garbage and Disposal Sites
  - Municipal and Regional Recycling Facilities
  - Fairgrounds and Exhibition Centres
  - Water Resources and Watersheds (including drinking water extraction, treatment and distribution systems)
  - Local Government Administrative Offices and Public Facilities
  - City Halls (including head offices, satellite offices and operations facilities)
  - Municipal Court Buildings
  - Public and Community Halls
  - Civic Centres
  - Theatres, Community Theatres, and Cultural Facilities
  - Economic Development and Business Improvement Area Offices
  - Sports Centres (e.g. curling rinks, ice skating/hockey arenas, fitness centres, indoor and outdoor swimming pools)
  - Leisure and Recreation Centres (youth centres and seniors' recreation centres)
  - Lawn Bowling Facilities
  - Parks and campgrounds
  - Lodges
  - Public Markets
  - Golf Courses
  - Tennis Courts
  - Botanical Gardens and other outdoor displays
  - Cemeteries
  - Animal Shelters (i.e. shelters, dog pounds and animal hospitals)
  - Police stations, Community Police Stations, Crime Prevention Offices, Community Prisons, Firing Ranges, and Other Related Facilities
  - Fire Halls and Rescue Service Facilities
  - Hospitals, Health Clinics, Ambulatory Dispatch Centres, Community and Continuing Care Facilities, Mental Health Facilities and Institutions

- Elderly Care, Victim Abuse Shelters and Rehabilitation Centres
  - Schools, School Playgrounds and School Board-Related Facilities
  - Playgrounds - other than school playgrounds noted above
  - Museums and Archives
  - Libraries and related facilities
  - Public Housing and Related Development Projects
  - Marinas and Marina Operations
  - Airports
  - Other public facilities
- Should ownership of these assets not be respected, local governments should be compensated for the future value potential of those assets.

### ***Privately Held Lands***

- Existing privately held lands should not be included in treaty settlements.
- Treaties should respect long-term private leases, including but not limited to, park use permit holders in Indian Arm Provincial Park.

### **4.2.4 Treaty Settlement Lands (Principle 12)**

- Lands added to treaty settlement lands on a willing seller/willing buyer basis should be treated like all other fee-simple private land holdings.
- Treaties should establish a process for dealing with claims by a First Nation to foreshore lands, particularly to those lands that are accreted over time (e.g. river frontages).
- For lands transferred to a First Nation that would include self-government authority, a graduated land transfer process and specific land ‘Settlement Principles’ must be developed to ensure that undue economic strain is not placed on local governments and their taxpayers. Local governments need adequate time to accommodate changes to land status, hence the reason why local governments must be directly involved in developing the process to guide land transfers to First Nations. Case studies in Canada and the United States repeatedly indicate that poorly planned, non-graduated lands transfers often create undue social and economic burdens on local communities.

### **4.2.5 Heritage Sites (Principle 4)**

- Lower Mainland area local governments support and encourage the protection and preservation of cultural and heritage sites of significance.
- Local governments support the B.C. First Nation Heritage Impact Assessment under the *Historical Resources Act*.
- Local governments believe strongly that the heritage of local communities and regions must not be forgotten during the treaty negotiation process. Lower Mainland area communities each have their own unique history and are differentiated by their historical traditions and community activities.

#### 4.2.6 Discovered Rights

- Treaties should set out a process by which First Nations and Lower Mainland area local governments can work together to deal with archaeological artifacts that are discovered in areas away from treaty settlement lands in the post treaty environment.
- At present, local governments have no capacity to deal with “discovered rights” or to resolve disputes with First Nations over these rights, particularly when First Nation interests in the lands where the archaeological artifacts were found conflict with existing local government interests.

#### 4.2.7 Access (Principle 14)

- Maintaining access corridors within a municipality or regional district for transportation, communication, public works, service delivery or other purposes is of vital interest to Lower Mainland area local governments. Consideration should be given to including a “peaceful enjoyment” clause in the treaty to ensure continued access to local government owned lands.
- Access to or through reserve land or treaty settlement lands for the purposes of infrastructure and service development, as well as access for emergency and law enforcement services, is critical. Local governments also have specific interests in accessing beaches, foreshores, and parkland which are important for recreational and development purposes.
- Lower Mainland residents should continue to have access to Lower Mainland beaches and parks to engage in recreational opportunities (such as hiking, boating, and camping) and livelihood pursuits (such as farming and fishing).

#### 4.2.8 Land Management (Principles 12, 13, 16, 29, 30, 33, 41)

- The principle of reciprocal consultation with respect to planning and land use issues must be contained within treaties. Local governments and First Nations should be provided an opportunity to comment on the development of community plans, land use bylaws or other such documents when such plans/bylaws affect their respective jurisdictions.
- Treaties should include a specific timeframe for consultation.
- Clarification is required regarding the linkages between Federal Bill C-49, the First Nation *Land Management Act*, and treaty agreements signed under the BC Treaty Process.

### ***Balanced Urban Growth***

- Growth on treaty settlement lands must be compatible with the carrying capacity of the landbase and the interests of neighbouring communities to ensure that local infrastructure is not overburdened.
- Treaties should include provisions to ensure that, working in coordination with existing local governments, First Nation governments develop official land use, transportation, and strategic plans to define the long-term growth potential of their communities.
- First Nations should also participate in regional growth management/livable region strategies.

### ***Coordinated Planning***

- First Nations and local governments need to inform each other about their existing planning processes.
- Treaties should provide a mechanism to ensure that planning, land use, growth management, and transportation strategies on Aboriginal settlement lands are compatible with or harmonized with neighbouring local government strategies to ensure that the carrying capacity of the land base is not exceeded and that the appropriate infrastructure and level of services are maintained.
- First Nation should be full participants in regional planning processes.

### ***Dispute Resolution Involving Lands***

- Treaties must include a specific process for dealing with land use designations that are perceived as incompatible by neighbouring communities, whether for environmental, design, safety, or other reasons. In particular, an effective dispute resolution mechanism is needed to address zoning decisions that have transboundary impacts.
- Dispute resolution on planning issues should include a public hearing process than involves more than merely consultation. Such a process must ensure that local governments and First Nation governments work cooperatively as community partners.

## **4.3 RESOURCES and the NATURAL ENVIRONMENT**

In the post treaty environment, Lower Mainland area natural resources such as forests, water and fish must continue to be managed on a sustainable basis in order to not undermine the economic base of communities and local governments.

### **4.3.1 Environmental Management (Principles 16, 17, 29)**

- There should be consistency in environmental standards and regulations on treaty settlement lands and neighbouring lands.

- First Nations should be subject to the Federal *Environmental Assessment Act* and Provincial conservation laws. Local governments acknowledge that specific First Nation cultural practices may be exempt.
- A central information and communication body is needed to facilitate dialogue between local governments and First Nations on stewardship and environment issues. Forums must be created to promote region-wide responsibility on environmental issues (e.g. air quality, watershed management) and to develop common rules of stewardship (e.g. respecting sustainability and biodiversity). Stewardship of public and private lands is increasingly a priority reinforced by local residents, and responsible stewardship will require joint planning amongst all the jurisdictions involved.

#### **4.3.2 Parks / Green Zones (Principles 11, 14, 20)**

- Treaties should neither restrict public access nor restrict water-based recreational opportunities in the Lower Mainland area parks. Parklands provide numerous outdoor recreation and educational opportunities for residents.
- Local governments should be compensated for the funds expended on park development and maintenance that does not directly impact the immediate community.
- Park land dedicated through subdivision should be respected and not included in treaty settlements.
- Local government interests in maintaining ‘green zones’ adjacent to Crown lands should be respected.

#### **4.3.3 Fisheries (Principle 23)**

- Local governments wish to continue to work to restore and enhance fish bearing streams and waterways and protect stream habitat.

#### **4.3.4 Water (Principle 21)**

- Treaties must ensure adequate protection for the purity of water sources and aquifers.
- Existing local government water licenses and existing infrastructure to service Lower Mainland area watersheds should not be subject to treaty negotiations.
- Local governments in the Lower Mainland want reassurance of the continued use of water flowing from Crown Land, and that in the process of dealing with water resource issues, no economic hardship should result to existing property owners.

#### **4.3.5 Forests (Principle 22)**

- Treaties must recognize that the forest resource is an important component of the local industrial base in some communities impacted by Lower Mainland area treaties.
- Treaties must recognize the importance of conservation and preservation of forested areas, including the recognition of mountain backdrops as visual amenities.

- Logging or harvesting within community watersheds, community forests, or sensitive mountain areas affecting a watershed or forest, must not be a practice permitted in treaties.

#### **4.3.6 Energy**

- First Nations should receive the same energy rates or incentives as those given in the private sector.
- Future development of private power plants or similar facilities on treaty settlement lands should conform to Provincial regulations and local by-laws.
- Existing local government energy generation facilities should not be subject to treaty negotiations.

### **4.4 GOVERNANCE and JURISDICTION**

Consistency between First Nation and local government jurisdictions must be a key objective of treaty settlements in urban areas.

#### **4.4.1 Local Government Powers (Principle 24)**

- Local governments wish to continue to make laws in the following policy fields, including but not limited to:
  - Recreation
  - Public Safety and Nuisance (includes noise and pet controls)
  - Policing Services
  - Fire Protection Services
  - Engineering Services
  - Economic Development
  - Property Taxes, Special Assessments, and User Charges
  - Health Regulations
  - Social Planning
  - Housing and Building Regulations
  - Environment Protection and Waste Management
  - Land Assembly and Banking
  - Regional Planning
  - Land Use, Zoning, and Community Planning (including subdivision controls)
  - Flood Control, Water Management, and Watersheds
  - Traffic, Roads and Transportation (including street lighting & sign regulation)
  - Public Transit
  - Emergency Programs and Services
  - Heritage and Conservation

#### **4.4.2 Structure and Scope of Aboriginal Government (Principles 26, 27, 28, 32, 33, 41)**

##### ***Simplify Government***

- In complex urban regions like the Lower Mainland, there is the potential for multiple overlapping local government and Aboriginal authorities. Aboriginal self-government should strive to simplify this structure, not add to its complexity.

##### ***Democratic Accountability***

- While the precise structure of Aboriginal self-government is likely to vary by each community, local governments believe strongly that self-governing First Nations should uphold the principles of democracy and accountability.
- Treaties should include Lower Mainland area-wide mechanisms for dealing with the social and economic well-being of Aboriginal peoples who reside within the traditional territory of another First Nation.

##### ***Linkage Between Participation and Responsibilities***

- Should some local government powers be shared with future First Nation governments, First Nations must assume full responsibility for their actions, including coordinating their actions with existing local government, Provincial and Federal agencies.
- First Nations who become members of a regional district should accept all of the associated responsibilities and costs of membership.

#### **4.4.3 Intergovernmental Relations (Principles 28, 30, 33, 43)**

- Since local governments exercise substantial jurisdiction at the local level, and it is at the local or community level at which the *de facto*, day-to-day relationships between self-governing First Nations and other governments will take shape, treaties should create mechanisms and processes to open meaningful dialogue between First Nations and local governments.
- Treaties must recognize and specifically provide for intergovernmental relations between local and First Nation governments, particularly on issues such as education, health, transportation, land use planning, air quality, and zoning which require substantial interaction between various levels of government.
- Self-government arrangements and co-management regimes established in treaties should encourage cross representation. In other words, consideration should be given to non-Aboriginal representatives sitting on First Nation Councils/Boards, and First Nation representatives sitting on local governments Councils/Boards.
- Local governments strongly believe that final treaty settlements must include a formalized process of dispute resolution to deal with issues that directly involve local government. Such a forum would have access to both traditional and alternative dispute resolution processes

and strive to deal with cross-community issues and impacts as well as treaty rights that apply outside of settlement lands.

#### **4.4.4 Program and Service Delivery (Principles 28, 33, 35, 41)**

- Treaties should acknowledge the importance of economies of scale in program and service delivery. For some policy fields, some consideration should be given to establishing a ‘Lower Mainland Coast Salish region’ to help rationalize program and service delivery, rather than have each individual First Nation responsible for its own programs and services.
- Lower Mainland area treaties, as well as the *Local Government Act* and *Community Charter* should encourage the development of new partnerships between First Nations and local governments to work together on implementing cost-effective community programs and services.
- Treaties should stipulate which mandatory programs, services, and infrastructure must be delivered by First Nation governments or purchased from neighboring municipalities.
- Treaties should also articulate a specific mechanism or principles for determining the fiscal value of local programs and services and use of existing infrastructure. Numerous case studies in Canada and the United States indicate that First Nations and local government often disagree on appropriate costing formulas and valuation techniques.

## **4.5 FISCAL**

Any fiscal impacts on local government resulting from treaty settlements should be determined as early as possible in the treaty process.

### **4.5.1 Economic Development**

- Treaty settlements should welcome First Nation economic interests into our local, Provincial, and national economies as full participants, and increase the economic self-sufficiency of Aboriginal peoples across the Lower Mainland region. The economic best interests of all local residents, whether Aboriginal or non-Aboriginal, must be considered.
- Treaties should acknowledge shared First Nation and local government interests in creating strong local economies.
- Treaties should include provisions and mechanisms for coordinated local government/First Nation economic development, including the formation of joint Economic Development Councils.

### **4.5.2 Cost Recovery (Principles 35, 37, 38)**

- Where programs, services and/or infrastructure are provided by local government, and are used by and benefit residents outside the tax base for that local government, a mechanism for fair contribution to those services needs to be in place. This is of particular importance to

Lower Mainland area local governments since First Nations in urban areas are more likely to rely on the hard and soft services of neighbouring municipalities.

- Local governments should be compensated for any loss of infrastructure and investments made on local government lands and assets as a result of treaty settlements.

#### 4.5.3 Taxation and Local Government Tax Bases (Principles 34, 36, 37, 43)

- Local governments are primarily concerned about the potential impacts treaties may have on:
  - property tax revenue;
  - grants-in-lieu of property taxes;
  - intergovernmental taxation; and
  - access of new tax sources.

**Example 1:** Per-capita grants could be impacted if First Nations request the pro-rata portion of the grant related to the First Nations population. Under the current allocation process for the unconditional grant, for instance, the population living on reserve lands within a municipality is counted as part of the municipal population. Smaller municipalities with relatively large reserve populations could experience a drastic loss of revenue as a result of changes to the current system of counting population.

**Example 2:** The Federal and Provincial governments (including Crown corporations) pay Local Government grants-in-lieu of property taxes. If treaty settlement lands are within municipal and regional district boundaries, then grants-in-lieu will be lost as a source of municipal revenue.

**Example 3:** Under treaty agreements, First Nations may negotiate enhanced access to Provincial grant programs. Unless the Province increases the total grant money available, the local government portion will be reduced, thus creating financial strain for many communities.

**Example 4:** If First Nations negotiate tax exemptions for regionally mandated programs and services, it will reduce the tax base of affected municipalities and regional districts, thereby diminishing the local capacity to fund capital and operating expenditures.

- Local governments should be compensated for the loss of any tax revenues.
- All parties to treaty negotiations must recognize and respect the strict budgetary process designated by the Provincial *Local Government Act* and *Community Charter* requiring local governments to balance their budgets. Ensuring financial stability is critical to the continued ability of local governments to provide the services expected by their residents at a reasonable cost.

## GLOSSARY OF TERMS

Agreement-In-Principle (AIP)	in Stage 4 of the BC Treaty Process, the negotiating parties work towards finalizing an “Agreement-in-Principle” (AIP). The AIP outlines topics for negotiation and the related treaty provisions developed by the parties.
Fee-Simple	an estate of virtually infinite duration in land, conveyed or granted.
Final Agreement	in Stage 5 of the BC Treaty Process, negotiating parties work to resolve outstanding legal and technical issues from the AIP, hence creating a Final Agreement. This document will bind all parties to a treaty.
Sustainability	the ability to make development meet the needs of the present without compromising the ability of future generations to meet their own needs. Definition adapted from <i>Our Common Future</i> , World Commission on Environment and Development
Traditional Territory	the geographic area that a First Nation has identified as the land it historically used and occupied.
Treaty Settlement Lands (TSL)	term used to refer to lands owned by a First Nation post-treaty. It is anticipated that TSL will be held in fee-simple.
Tripartite	of three (3) parties. In the BC Treaty Process, parties at the negotiating table include the Governments of Canada and British Columbia as well as members of the First Nations Summit.