

BRIEFING NOTE

To: LMTAC Member Boards and Councils
From: LMTAC Staff
Report Date: February 10th, 2011.
Subject: [Local Government Issues and Interests on the *First Nations Commercial and Industrial Development Act* and the *First Nations Certainty of Land Title Act*](#)

ISSUE

First Nations' Property Development Using FNCIDA and FNCLTA

- *Squamish Nation* publicized its intention to construct large-scale commercial and condominium developments on its Indian Reserves located in Vancouver and in West Vancouver/North Vancouver, where more than 25,000 additional residents could reside over the next 20 years. The projects are to be developed under Federal legislation: the *First Nations Commercial and Industrial Development Act* (FNCIDA) and the *First Nations Certainty of Land Title Act* (FNCLTA).
- Local governments have identified a number of issues and interests that need to be considered by the Province in drafting the enabling legislation required to implement FNCIDA and FNCLTA in British Columbia.
- As no FNCIDA projects have been approved thus far in BC, local governments have a unique opportunity to have their concerns put forward to the Provincial and Federal governments in order to shape how FNCIDA projects will be implemented in the province.

BACKGROUND

FNCIDA and FNCLTA

- FNCIDA was enacted in 2006. It was developed as a cooperative effort between the Federal government and five First Nations across Canada, including the *Squamish Nation*. FNCIDA's purpose is to increase the competitiveness of commercial and industrial development on reserve lands by allowing for relevant Provincial regulations to be replicated on reserves.
- Currently, Provincial regulations do not apply on Indian Reserves. Developers often view the resulting lack of regulatory certainty as a disadvantage to constructing projects on reserves.
- The effectiveness of FNCIDA was limited by its inability to duplicate Provincial land title registration systems. Interests on Reserve lands are registered under the Federal *Indian Lands Registry System* (ILRS), which contains two registration systems: the *Reserve Land Register* (RLR) and the *Surrendered and Designated Lands Register* (SDLR).
- Both the RLR and SDLR are deeds-based systems that do not guarantee legal protection to the same level as the Provincial Torrens-based lands registry system. FNCLTA legislation was subsequently drafted and passed in July 2010 to address this shortcoming, thereby allowing participating First Nations to request the establishment of a regulatory system equivalent to the Provincial land title system.

OVERVIEW

FNCIDA Process

- FNCIDA projects can be initiated by any First Nation, on a voluntary basis. The applicant First Nation submits a proposal which will be reviewed for eligibility by the Federal government. In demonstrating eligibility, the land to be used must be confirmed as Indian Reserve land or currently proposed as Indian Reserve land through the Federal *Additions-to-Reserve* (ATR) policy.
- The applicant First Nation must demonstrate that the lack of existing regulations is an impediment for proceeding with the development project, and that no other regulatory regime can be used to effectively implement it.
- The Province must be supportive of the project and agree to administer, monitor and enforce the regulations developed for the project.
- The regulations are then developed and a tripartite agreement is signed between the First Nation, the Province, and the Federal government.

Role of Local Government

- There is no defined role for local government in the FNCIDA process. Stakeholder consultation is required while the Province drafts the regulations, but local governments are not explicitly referenced.
- It is understood that the Province will require First Nations to negotiate service agreements with neighbouring municipalities and regional districts to service any FNCIDA project. At this time, negotiation of service agreements appears to be the only mechanism for local government involvement in the FNCIDA process.

IMPLICATIONS FOR LOCAL GOVERNMENTS

- The implementation of FNCIDA projects will have significant impacts on local governments, including taxation fairness, added servicing costs, capacity planning and other cross-boundary impacts of large developments.

Taxation Fairness

- As First Nations begin using FNCIDA to develop large, market housing projects, significant increases of non-Aboriginal populations living on Indian Reserves will ensue. If not managed properly, the increased demand for 'hard' and 'soft' services could have substantial negative impacts on both cost-recovery and service capacity of neighbouring municipalities and regional districts.
- Non-Aboriginal populations currently living on Reserve lands, which make-up the majority of people living on Indian Reserves today in the Lower Mainland, do not pay school, hospital, TransLink, or regional district taxes.
- Non-Aboriginal populations living on Reserve lands will also access services provided by both neighbouring municipalities and regional district and, therefore, will be "subsidized" by their neighbouring municipal and regional district tax payers unless a mechanism is implemented that allows for local governments to receive "full-cost-recovery" for services provided.
- While it may be possible to recover some of these costs through service agreements with First Nations, municipalities and regional districts are not confident that all costs will be recovered.

Cross-Boundary Impacts

- Increasing commercial, industrial, and market residential developments on Reserve lands will lead to an increased demand for municipal and regional services.

- Local governments do not have an unlimited capacity to provide services. *Official Community Plans* (OCP), *Regional Growth Strategies* (RGS) and strategic transportation plans are used to plan and manage future growth and servicing needs.
- A mechanism is needed to ensure that FNCIDA projects are developed consistent with a neighbouring OCP, RGS or transportation plan. If FNCIDA projects are not planned and aligned with available capacity, the ability of municipalities and regional districts to provide the additional services required by FNCIDA projects will be strained.
- Considering the capacity and legislative constraints for the provision of water and sewer services, future servicing of Indian Reserve lands will necessitate tripartite agreements involving the First Nation, municipality and the regional district.
- In the case of *Metro Vancouver*, for example, the new RGS and *Liquid Waste Management Plan* may require the regional district to be a direct signatory to service agreements and may necessitate amendments to the respective *Greater Vancouver Sewerage and Drainage District (GVS&DD) Act* and *Greater Vancouver Water District (GVWD) Act*.
- Municipalities, regional districts and Translink impose *Development Cost Charges* (DCCs) as one-time fees to offset costs related to the provision of services to developments. DCCs are imposed on every new residential, commercial, industrial, and institutional development. DCCs are required for FNCIDA projects to ensure that all neighbouring municipal and regional district costs are covered, and to prevent a “without fees” environment being created for developers.

Next Steps

- LMTAC Member Boards and Councils are encouraged to:
 1. Discuss and endorse LMTAC’s draft paper, dated December 10th, 2010, titled *Local Government Issues and Interests on the First Nation Commercial and Industrial Development Act (FNCIDA) and the First Nations Certainty of Land Title Act (FNCLTA)*; and
 2. Write to the Provincial Minister of *Aboriginal Relations and Reconciliation* (MARR) and Federal Minister of *Indian and Northern Affairs Canada* (INAC) in support of LMTAC’s draft discussion paper on FNCIDA and FNCLTA.